

Hon. Grant Robertson
Minister of Finance
Parliament Buildings
Wellington 6160
(by email)

11 July 2019

Dear Minister,

Productivity Commission Draft Report on Local Government Funding and Financing

I am writing to draw your attention to recommendation R7.2 made by the Productivity Commission in their draft report on Local Government Funding and Financing, and the potential for that recommendation, if implemented, to fundamentally undermine the principle of wellbeing that underlies the Government's latest budget, and which was recently reintroduced into the Local Government Act. The recommendation reads as follows:

Local government legislation should be amended to require councils to:

- *Match the burden of rates to the benefits of council services, as a first step in setting rates;*
- *Consider ability to pay as a second step;*
- *Set out the reasons for their rating decisions in each step in a clear and transparent manner; and*
- *(in applying the ability-to-pay principle) consider coherence and consistency with the income-redistribution policies of central government.*

Councils should continue to have the power to determine, on reasonable grounds, the appropriate allocation of rates within their district or region.

It is the first bullet point in the recommendation that I am particularly concerned about. When local authorities make funding decisions, they are required to act in accordance with section 101(3) of the Local Government Act 2002 (the LGA). The whole of section 101 is reproduced below:

101 Financial management

(1) A local authority must manage its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the community.

(2) A local authority must make adequate and effective provision in its long-term plan and in its annual plan (where applicable) to meet the expenditure needs of

the local authority identified in that long-term plan and annual plan.

(3) The funding needs of the local authority must be met from those sources that the local authority determines to be appropriate, following consideration of,—

(a) in relation to each activity to be funded,—

(i) the community outcomes to which the activity primarily contributes;

and

(ii) the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and

(iii) the period in or over which those benefits are expected to occur;

and

(iv) the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and

(v) the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities; and

(b) the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural wellbeing of the community.

Section 101(3) sets out the considerations that a local authority must take into account when determining how its funding needs should be met. The considerations are in two parts. Firstly, in subsection (a), there is a list of five considerations relating to each activity to be funded. One of these considerations is the distribution of benefits from the activity to be funded. Secondly, in subsection (b), there is a single requirement to consider the overall impact on the wellbeing of the community. That is, the consideration of benefits is only one of five benefits that must be taken into account in relation to each activity to be funded, and this is subject to an overall consideration of the impact on community wellbeing. The recommendation above has the effect of overturning the centrality of wellbeing to the consideration, by elevating the benefit principle to a position of primacy.

The Productivity Commission says that “Local government legislation currently provides only weak support for allocating rates primarily according to who benefits from council services.” (Finding F7.2, p.193) In actual fact the LGA provides no support for making the benefit principle the primary consideration. Instead it identifies benefits as one of five considerations relevant to each activity funding decision, and subject to a second authority-wide consideration relating to wellbeing.

Although the Commission’s wording could be read as implying that this is an oversight on the part of the legislation, when one considers the purpose and role of local government as set out in sections 10 and 11 of the LGA, one can quickly see that the process in s.101(3) is fully consistent with these sections.

Sections 10 and 11 of the LGA are reproduced below:

10 Purpose of local government

(1) The purpose of local government is—

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

11 Role of local authority

The role of a local authority is to—

- (a) give effect, in relation to its district or region, to the purpose of local government stated in section 10; and
- (b) perform the duties, and exercise the rights, conferred on it by or under this Act and any other enactment.

The section 101(3) process is in full accordance with sections 10 and 11, as it places democratic decision making and the wellbeing of the community in the primary position. The LGA changes advocated in Recommendation R7.2 would fundamentally change the s.101(3) process, and thereby undermine the ability of the local authority to fulfil its statutory purpose and role, which includes making wellbeing central to their considerations, rather than a subsidiary consideration. This is contrary to the intent and wording of the LGA, and at odds with the Government's policy objectives with respect to community wellbeing.

For this reason I urge you to reject recommendation R7.2.

Sincerely,

Christopher Robinson