

Auckland Regional Amenities Funding Amendment Bill

Private Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Auckland Regional Amenities Funding Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Auckland Regional Amenities Funding Act 2008 (the principal Act). It would correct an anomaly in the financial reporting requirements that apply to “specified amenities” such as the Auckland Festival Trust, the Auckland Regional Rescue Helicopter Trust, and Surf Life Saving Northern Region. The bill would replace a requirement for specified amenities to prepare financial statements in accordance with New Zealand equivalents to International Financial Reporting Standards (NZ IFRS) with a requirement to prepare in accordance with generally accepted accounting practice (GAAP).

Although NZ IFRS are part of GAAP, they are designed to be used by for-profit entities. However, none of the specified amenities is a for-profit entity, so NZ IFRS standards do not fit their circumstances. Replacing the specific requirement to prepare in accordance with GAAP would ensure that specified amenities are required to comply with the appropriate set of accounting standards issued by the External Reporting Board, namely public benefit entity (PBE) standards.

This change would also align the reporting requirements in the principal Act with a requirement under the Charities Act 2005 for larger registered charities to prepare in accordance with GAAP. This amounts to a requirement to prepare in accordance with PBE standards because for-profit entities are ineligible for registration under the Charities Act. This alignment is needed because all of the specified amenities are registered charities.

Compliance with Standing Orders

Pursuant to Standing Order 291(2) we have considered the preamble to the bill, and consider that the statements in it have been proved to our satisfaction.

Proposed amendments

This commentary covers the two main amendments we recommend to the bill as introduced.

Clarity of commencement date

The bill as introduced does not state when the proposed changes would come into effect. We think it is important to make these transitional provisions clear. We propose that the changes would apply for a financial year that was in progress or recently completed when the legislation commenced, as well as for future reporting periods.

We therefore recommend adding clause 4A, which would insert new section 4A, setting out the transitional provisions in Schedule 1AA.

Retrospective validation

In practice, none of the specified amenities have been preparing a second set of financial statements in accordance with NZ IFRS. Since 2014-15, when the Charities Act requirements to prepare in accordance with GAAP came into force, they have been preparing their financial statements in accordance with PBE standards. Although this is appropriate for their status, it means they have all technically been in breach of section 39 of the principal Act, which requires them to report in accordance with NZ IFRS.

We are well aware that it is not common practice for Parliament to pass retrospective legislation. Although it is unusual to validate non-compliance with statutory obligations, we consider that retrospective validation would be appropriate in this case, and consistent with the Legislation Guidelines (2018 edition). The non-compliance is minor and due to a technical error, and no apparent harm has been caused to third parties. We therefore recommend including a provision to validate non-compliance by the amenities with the financial reporting requirements of the principal Act if they had complied with the Charities Act requirements.

Clause 3 of Schedule 1AA would treat financial reporting requirements as satisfied if it met the requirements of section 42A(1) of the Charities Act.

Appendix

Committee process

The Auckland Regional Amenities Funding Amendment Bill was referred to the committee on 25 September 2019. The closing date for submissions was 7 November 2019. We received and considered 14 submissions from interested groups and individuals. We heard oral evidence from one submitter at a hearing in Wellington.

We received advice from the Ministry of Business, Innovation and Employment.

Committee membership

Dr Jian Yang (Chairperson)

Ginny Andersen

Kanwaljit Singh Bakshi

Sarah Dowie

Paul Eagle

Hon Peeni Henare

Willow-Jean Prime

Lawrence Yule

Dr Parmjeet Parmar participated in our consideration of this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Dr Parmjeet Parmar

Auckland Regional Amenities Funding Amendment Bill

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Preamble

- (1) The Auckland Regional Amenities Funding Act 2008 (the **principal Act**) provides for funding for specified amenities in the Auckland region;
- (2) Section 39 of the principal Act requires that the specified amenities prepare financial statements that contain a statement of financial position prepared in accordance with New Zealand International Financial Reporting Standards and that contain the other statements and information set out in section 39(2)(b);
- (3) The specified amenities are registered charitable entities under the Charities Act 2005;

- (4) In 2015, the Charities Act 2005 was amended to require that certain charitable entities (those whose total operating payments are \$125,000 or more in each of the 2 preceding accounting periods) prepare financial statements in accordance with generally accepted accounting practice (**GAAP**) (*see* section 42A of that Act):₂ 5
- (5) By the same Act that amended the Charities Act 2005, some legislation governing specific charitable entities was amended to achieve consistency with the accounting standard required under the Charities Act 2005 (*see* the Financial Reporting (Amendments to Other Enactments) Act 2013):₂
- (6) The principal Act was not amended:₂ 10
- (7) The requirement under the Charities Act 2005 to prepare financial statements in accordance with GAAP is in addition to any other reporting requirement under any other enactment:₂
- (8) Consequently, the specified amenities are currently required to prepare financial statements according to both New Zealand International Financial Reporting Standards and GAAP:₂ 15
- (9) The objects of this Act are to remove the requirement that specified amenities prepare financial statements according to New Zealand International Financial Reporting Standards and to permit specified amenities to prepare a single set of financial statements that comply with GAAP:₂ 20
- (10) For consistency, this Act also amends section 40 of the principal Act to clarify that the Funding Board's audited financial statements are prepared in accordance with GAAP:₂
- (11) The objects of this Act cannot be achieved without legislation:₂

The Parliament of New Zealand therefore enacts as follows: 25

1 Title

This Act is the Auckland Regional Amenities Funding Amendment Act **2019**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 30

3 Principal Act

This Act amends the Auckland Regional Amenities Funding Act 2008 (the **principal Act**).

4 Section 4 amended (Interpretation)

In section 4, insert in their appropriate alphabetical order: 35

financial statements has the same meaning as in section 6 of the Financial Reporting Act 2013

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

- 4A** **New section 4A inserted (Transitional, savings, and related provisions)**
- After section 4, insert:
- 4A** **Transitional, savings, and related provisions** 5
- The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 5** **Section 39 amended (Specified amenity does annual report)**
- Replace section 39(2)(b) with:
- (b) contains financial statements for the year prepared in accordance with generally accepted accounting practice; and 10
- (c) contains any other information reasonably necessary to enable the Funding Board to make an informed assessment of the amenity's operations for the year as set out in its annual plan.
- 6** **Section 40 amended (Funding Board does annual report)** 15
- Replace section 40(1)(c) with:
- (c) contains audited financial statements for the year prepared in accordance with generally accepted accounting practice; and
- 7** **New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in the Schedule of this Act as the first schedule to appear after the last section of the principal Act. 20

Schedule
New Schedule 1AA inserted

s 7

Schedule 1AA
Transitional, savings, and related provisions

5

s 4A

Part 1
Provisions relating to Auckland Regional Amenities Funding
Amendment Act 2019

- 1** **Interpretation** 10
- In this Part, **2019 Amendment Act** means the Auckland Regional Amenities Funding Amendment Act **2019**.
- 2** **Application of financial reporting amendments**
- (1) This Act, as amended by **section 5** of the **2019** Amendment Act, applies to the following financial years of a specified amenity: 15
- (a) financial years beginning after the commencement date of the **2019** Amendment Act; and
- (b) the financial year beginning—
- (i) on that commencement date; or
- (ii) before, and ending on or after, that commencement date; and 20
- (c) any financial year ending on, or in the 3-month period before, that commencement date.
- (2) This Act, as amended by **section 6** of the **2019** Amendment Act, applies to the following financial years of the Funding Board:
- (a) financial years beginning after the commencement date of the **2019** Amendment Act; and 25
- (b) the financial year beginning—
- (i) on that commencement date; or
- (ii) before, and ending on or after, that commencement date; and
- (c) any financial year ending on, or in the 5-month period before, that commencement date. 30

- 3** **When financial reporting requirements of specified amenities must be treated as satisfied**
- (1) This clause applies to financial years of a specified amenity that began on or after 1 April 2015 (the commencement date of section 42A of the Charities Act 2005). 5
- (2) However, this clause does not apply to financial years of the specified amenity that are described in **clause 2(1)**.
- (3) If the financial statements for the financial year were prepared in accordance with the requirements of section 42A(1) of the Charities Act 2005, section 39(2)(b)(i) (as in force before the commencement of **section 5** of the **2019** Amendment Act) must be treated as having been complied with for that financial year. 10

Legislative history

12 September 2019
25 September 2019

Introduction (Bill 176–1)
First reading and referral to Governance and Administration
Committee