

# May 2018 Monitoring Report

## Introduction

This month's monitoring report considers the implications for two provisions in the present local government act of the proposed amendment to the purpose of local government to include promoting community well-being. The two provisions which were included after this purpose was removed in 2012 are:

- Section 17A which provides that a local authority "must review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions." ; and
- Section 76AA which requires a local authority to adopt a policy setting out its approach to determining the significance of various matters and how it will respond to community preferences about engagement.

**This report argues that making the promotion of community well-being one of the purposes of local government will lead to a profound change in the operating environment. Specifically it is likely to require councils to take an evidence-based approach to assessing the impact of their decisions on each of the four well beings, drawing on current good practice in determining and measuring well-being in its various dimensions.**

## Background

Including the purpose of promoting community well-being is a policy commitment of the new government reflecting its acceptance of the local government view that the current purpose of local government lacks coherency, clarity and consistency, something which can lead to uncertainty about what services local authorities can and should provide. Introducing the new purpose is seen as resolving this difficulty and reflecting a broader empowering approach to local government enabling local authorities to shift their focus to "should we do this?" from "are we allowed to do this?".

The Department of Internal Affairs in its regulatory impact statement on the Bill states "the nature and extent of the impact of the changes (introducing the new purpose and removing the statutory focus on core services) depends on the way that local authorities interpret and apply the provisions. In practice, based on past experience, we do not anticipate significant direct effects to result from the change."

## Comment/Analysis

The purpose of promoting community well-being was first introduced into the local government act when it was enacted in 2002 and then repealed in 2012. The departmental comment is based on experience which is now for the most part 10 years or more out of date.

When the purpose was introduced in 2002 understandings of well-being were relatively limited. Generally, the purpose was applied by local authorities more as something of a 'comfort blanket' providing assurance that activities which

were outside the general run of infrastructure and regulation were nonetheless lawful than as creating a specific responsibility with definable outcomes.

Today the situation is very different. Over the past decade or so there has been a massive increase in the amount of research and policy interest taken in understanding well-being and developing means of both defining and measuring well-being across a number of different dimensions.

This has been happening both internationally, nationally and locally. Entities such as the OECD have developed well-regarded international indices. Well-being is increasingly measured at a national level as with the Treasury's developing work on the Living Standards Framework. Measuring well-being has also become an increasing practice at a local level. Santa Monica provides one example with the development of its well-being index with the financial support of the Bloomberg Foundation and the technical support of the London based New Economics Foundation. The widespread development of local data analytics capability is another important initiative. In New Zealand the work of Daniel Exeter and colleagues at the University of Auckland on the development of an Index of Multiple Deprivation can be seen as another example of a locally focused initiative.

This report argues that interpretation of the purpose of promoting community well-being should be seen as a very different undertaking from the practice of 10-15 years ago. Specifically there is now a publicly available knowledge base which supports the argument local authorities will be operating in an environment which virtually demands they apply currently accepted understandings of well-being and assess their practices accordingly.

Support for this view comes also from a change which the amendment Bill proposes for Section 14, principles relating to local authorities. This amendment will require councils, when taking decisions, to take account of the likely impact of any decision on each aspect of well-being (social, economic, environmental, and cultural). Given the depth of knowledge now available in the public arena about different constituents of well-being, this suggests that councils should as a matter of standard practice be incorporating in their decision-making processes an evidence-based analysis of the impact on the four well beings.

Reviewing English experience under similar circumstances it does not seem fanciful to argue that **councils which fail to undertake an evidence-based assessment of the likely impact of any decision on well-being may expose themselves to the risk of a successful application for judicial review.**

This potential is multiplied when the provisions of sections 17A and 76AA are examined. Section 17A requires a local authority to "review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions."

This wording broadly reflects a purpose of local government which was incorporated by the previous government in an attempt to have local government focus on core services. Its application in section 17A will inevitably be affected by the change in purpose. This can be seen by looking at the definition of "good-quality" which the amendment Bill preserves by placing it in the definition section. This includes a requirement that the services et cetera

covered in any review are effective and “appropriate to present and anticipated future circumstances”. It seems inevitable that interpretation of this phrase will be strongly influenced by the purpose of promoting well-being, and the principles of decision-making in section 14, hence again thanking councils back to the need to understand the different elements of well-being. In this respect, the 17A requirement for “appropriate to present and anticipated future circumstances” looks like a reinforcement of a good practice requirement to apply evidence-based understanding of well-being.

Arguably much the same situation will arise in compliance with Section 76AA. Decisions on matters such as the approach to determining significance and how the local authority will engage with communities, once the new purpose is in place, will be made under decision making rules which include assessing the likely impact on each of the four well beings. Again, the degree of knowledge we now have of how to measure well-being will make it very difficult for councils to avoid taking an evidence-based approach.

## **Conclusion**

The Department of Internal Affairs assessment of the likely impact of making the promotion of community well-being one of the two purposes of local government was undertaken without considering the extent to which research-based understanding of the nature of well-being, including its different dimensions and how best to assess them, has changed since this purpose was last in the legislation.

This report argues the inclusion of the purpose of promoting community well-being and supporting provisions, such as the change in decision-making rules, has the potential to be quite profound. It should be expected to impose an obligation on local authorities to apply an evidence-based impact analysis of the impact on the four well beings to every decision which is required to follow the principles in section 14 of the act.

From the perspective of councils themselves, this could either be seen as an additional and significant compliance burden, or a genuine opportunity to show leadership within their communities. Which it turns out to be will depend strongly on whether councils see themselves as mandated to take decisions on behalf of their communities (and thus largely imposing their own views), or as working in partnership with their communities seeking to take decisions within the spirit of co-governance.

