
Local Government Official Information and Meetings Act Amendment Bill

31/01/2023

Submission on the Local Government Official Information and Meetings Amendment Bill

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa welcomes the opportunity to comment on the Local Government Official Information and Meetings Amendment Bill (**the Bill**).
- 1.2 This submission has been prepared by the Law Society's Property Law Section Ngā Rōia Ture Rawa and addresses the proposed amendments to the land information memoranda (**LIM**) provisions.
- 1.3 The Law Society does not wish to be heard on this submission.

2 Part 1 – Amendments relating to LIMs

- 2.1 The Law Society supports the amendments proposed by Part 1 of the Bill. While any limitation of a public authority's liability, as is proposed by the 'good faith' protection of clause 44D should be considered carefully, we consider the benefit of the public having ready and easy access to natural hazard information within a LIM outweighs the risk posed by such a limitation. Assistance from regional councils, as required by clause 44C, should also ensure the provision of such information to property purchasers in the future.
- 2.2 The Law Society agrees it is beneficial to enable the prescription of more detailed requirements by regulation at a later date, while enabling the provision of information on natural hazards and the impacts of climate change to commence sooner.

3 Opportunity for further reform

- 3.1 The Law Society considers the Bill is a missed opportunity for further reforms relating to LIMs. These reforms could have the potential to benefit all property purchasers, particularly first home buyers.
- 3.2 It is common practice for sellers of property or their real estate agents to provide a LIM as part of the property information pack when marketing their property for sale. This is particularly the case when a property is being sold by way of auction and buyers are required to complete their due diligence on the property before bidding for the property.
- 3.3 The issue that could benefit from reform is that if it transpires the LIM contains errors or omissions, it is currently only possible for a purchaser who purchased their own LIM directly from the Council to make a successful claim against the Council to recover the majority of any consequential losses. This is because, if a buyer did not purchase their own LIM and instead relied on the copy given to them by the vendor, there is no privity of contract between the purchaser and the Council in respect of the LIM. Currently, the purchaser may not be able to establish that the Council owes them a duty of care regarding the information contained in the LIM.
- 3.4 This position was affirmed in the case of *Monticello Holdings Ltd v Selwyn District Council*,¹ where it was held that '*the SDC does not owe a duty of care, to the world at large, to*

¹ [2016] 2 NZLR 148.

maintain complete records to ensure that any potential LIMs ever issued are correct...'. If a duty of care does exist, 'it must be founded on a sufficiently proximate relationship. And as the authorities suggest, in interactions with local authorities, such proximity will ordinarily be established by a fee-paying relationship (though this is not exclusively the case).'

- 3.5 The Law Society believes it is illogical that every potential buyer of a property must purchase their own LIM if they want to safeguard their right to take action against a local authority for supplying an inaccurate LIM. This results in the local authority selling multiple copies of the same LIM. The Law Society recommends the Select Committee seek advice as to amending the Local Government Official Information and Meetings Act to clarify that any prospective purchaser is entitled to rely on the accuracy of a LIM as at the date the LIM was issued, whether it is issued directly to them by a local authority or is supplied by a vendor. This will lower the costs and the burden on property purchasers. Given the content of a LIM is statutorily prescribed, and can only be obtained from the relevant local authority, the public should be able to rely on this information, regardless of who has paid for it.
- 3.6 Such an amendment may also reduce the compliance burden on local authorities, by reducing the number of LIMs issued. Local authorities would be entitled to increase the cost of providing a LIM to offset any other liability or compliance costs it incurs over time.
- 3.7 While the Law Society considers there are additional LIM reforms that would be beneficial in the longer term, the amendments proposed in the Bill, combined with the amendments proposed in this submission, would be a positive step forward.



Taryn Gudmanz
Vice President
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