

# **Local Government (Freedom of Access) Amendment Bill**

Member's Bill

## **Explanatory note**

### **General policy statement**

The New Zealand Bill of Rights Act 1990 guarantees citizens the right to “seek, receive, and impart information and opinions of any kind in any form” and the right to “freedom of peaceful assembly”. These rights can only be limited if doing so is “demonstrably justified in a free and democratic society”. The exercise of these rights by protestors who erect structures and tents on council administered land has been seen by some councils as akin to camping, which may prohibit the freedom of others to access the affected areas and present a health hazard, and the councils have resolved that this is not permitted behaviour through bylaw.

The subsequent removal of tents and structures by council enforcement officers or local authority agents can be passively, but wilfully obstructed causing a stand-off between council, enforcement agencies, and protesters, in some cases for lengthy periods of time. This exacerbates the potential health hazards, results in damage to property, and further restricts public use of and access to the affected land.

This Bill seeks to better balance the rights of councils to protect their property from being interfered with and ensure that communities have freedom of access to land that councils are responsible for administering, while ensuring the rights of members of the public to express their opinions in the form of protests and demonstrations on such land.

This Bill clarifies the law to ensure that persons who obstruct council enforcement officers or local authority agents from performing their duties, or fail to give true and sufficiently particular details when required by the Bill, are liable to be arrested without a warrant. This Bill also widens the scope in which an enforcement officer may remove and seize property.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides for the Bill to come into force on the day after the date on which it receives the Royal assent.

*Clause 3* provides that the Bill amends the Local Government Act 2002 (the **principal Act**).

*Clause 4* provides that the purpose of the Bill is to prevent persons from preventing, obstructing, or impeding an enforcement officer or local authority agent from carrying out their statutory functions, duties, or other tasks required of them, including by refusing to provide particulars, or by providing false or insufficient particulars.

*Clause 5* amends section 164 to allow enforcement officers to remove property in certain circumstances without that property being materially involved in the commission of an offence.

*Clause 6* amends section 178 to make it an arrestable offence to refuse to provide details to an enforcement officer, or to provide false or insufficient details.

*Clause 7* amends section 229 to make it an arrestable offence to breach section 229.

*Jonathan Young*

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### **The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Local Government (Freedom of Access) Amendment Act **2017**.
- 2 Commencement** 5  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act**  
This Act amends the Local Government Act 2002 (the **principal Act**).
- 4 Purpose** 10  
The purpose of this Act is to ensure communities have freedom of access to land that councils are responsible for administering by preventing persons from

obstructing, impeding, or preventing an enforcement officer or local authority agent from carrying out their statutory functions, duties, or other tasks required of them, including by refusing to provide particulars, or by providing false or insufficient particulars, and to widen the scope in which an enforcement officer may remove and seize property.

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**5 Section 164 amended (Seizure of property not on private land)**

In section 164, after subsection (1), insert:

(1A) An enforcement officer may seize and impound property that is not on private land if—

(a) the property has been erected, placed, or fixed for longer than a period totalling 5 days in any given 12-month period; and 10

(b) that erection, placement, or fixture was not done with the necessary consent; and

(c) before seizing and impounding the property, the enforcement officer—

(i) directed (orally or in writing) the person to whom the enforcement officer reasonably believed the property belonged to, to remove the property; and 15

(ii) had advised (orally or in writing) the person to whom the enforcement officer reasonably believed the property belonged to, that if he or she does not remove the property, the enforcement officer has power to seize and impound the property; and 20

(iii) provided the person to whom the enforcement officer reasonably believed the property belonged to, with the necessary time to remove that property without delay.

(1B) Where the person to whom the enforcement officer reasonably believes the property belongs to cannot be identified, an enforcement officer may affix a notice to the property and meet the requirements of **subsection (1A)(c)**. 25

(1C) For the avoidance of doubt, **subsections (1A) and (1B)** apply where the property has been erected, placed, or fixed for the purposes of a protest or demonstration. 30

**6 Section 178 amended (Enforcement officers may require certain information)**

After section 178(b), insert:

(2) Every person commits an offence against this Act who, in response to a requirement under this section,— 35

(a) fails or refuses to comply with that requirement; or

(b) gives false particulars; or

(c) wilfully gives particulars of their place of abode that are insufficiently precise to enable it to be identified readily.

- (3) Any constable may arrest any person without warrant who fails or refuses to comply with a requirement made under subsection (1), or who the constable reasonably suspects has, in response to a requirement under subsection (1), committed an offence under **subsection (2)**.

**7 Section 229 amended (Obstruction of enforcement officers or agents of local authority) 5**

After section 229(d) insert “or ” and also insert as subsection (2):

- (2) Any constable who has reasonable suspicion that a person has committed an offence under this section may arrest that person without warrant.