

The Committee Secretariat
Justice and Electoral Select Committee
Parliament House
WELLINGTON

SUBMISSION OF THE AUCKLAND COUNCIL TO THE JUSTICE AND ELECTORAL SELECT COMMITTEE INQUIRY INTO THE 2016 LOCAL AUTHORITY ELECTIONS

1.0 Introduction

- 1.1 The Auckland Council would like to thank the Committee for the opportunity to make comments for the consideration of the Committee on its inquiry into the 2016 Local Government elections.
- 1.2 The Council's submissions arise from an initial paper presented to the Council's governing body and then presented to each of the 21 local boards for their comment before final adoption by the governing body. The following local boards presented their comments with a request that they be attached to the Council's submission to the Select Committee: Henderson-Massey Local Board, Maungakiekie-Tamaki Local Board, Whau Local Board.

2.0 Background

- 2.1 Auckland Council is responsible for local government elections in its area, which comprises a population of 1,493,200 and a total of 1,044,481 electors. The 2016 elections for Auckland Council involved 170 elected member positions for which there were 468 candidates. The positions were:
 - one mayor
 - 20 governing body members, elected on a ward basis
 - 149 local board members for 21 local boards
- 2.2 Elections for three district health boards and four licensing trusts were held at the same time.
- 2.3 The Council engaged with the community through a number of initiatives, including:

- a campaign based on a theme of “Show Your Love” which we tested with audiences prior to implementing
 - showyourlove.co.nz web pages providing information about candidates, supplied by the candidates themselves
 - heart-shaped ballot boxes placed in shopping centres
 - a range of advertising – billboards, adshells, bus backs, press, magazine, radio, digital, ethnic radio and newspapers
 - digital displays on bus shelters showing real time rates of voting returns, comparing returns from different areas
 - targeted social media: videos and articles via VoteAkl social media sites, Facebook, Instagram, Twitter, YouTube
 - “Our Auckland” – the Council’s news channel
 - Auckland Council channels for posters, such as libraries and service centres
 - the “Love Bus”, a brightly coloured Kombi van, which visited areas that were frequented by people, such as shopping centres, and gave presentations to community groups
 - a “Kids Voting” programme in schools where classes were taught the elements of voting and undertook mock voting.
- 2.4 Surveys and research undertaken by the Council before and after the elections showed, among other results, that voters’ awareness of the elections increased as a result of the Council’s campaign, more people intended to vote than actually voted and more people would prefer online voting to postal voting. The full results of the research are available on <http://www.knowledgeauckland.org.nz> .
- 2.5 As a result of this activity, Auckland Council and its Electoral Officer interacted with many citizens as candidates or voters. The following submissions result from comments made by participants and from the experience of Auckland Council staff and its Electoral Officer and through reports to the local boards and the Council’s governing body.

3.0 Matai names

- 3.1 The Local Electoral Act 2001, in section 56, prohibits the use of official titles in candidate names when a candidate nomination is submitted. Names that can be used include a registered name or a name by which the candidate has been commonly known for the six months prior to an election. The Auckland Council area has a large Samoan population and a number of Samoan candidates wished to include their matai names on the voting paper.
- 3.2 Although sometimes referred to as ‘matai titles’, legal advice provided to staff is that a matai name is more in the nature of a name than of a title denoting the holding of some sort of office.
- 3.3 The Births, Deaths, Marriages and Relationships Registration Act 1995 under section 18 includes a similar prohibition on the use of titles as in the Local Electoral Act, yet we understand that a birth name can be changed by deed poll to include a matai name. If this is not prohibited under the Births, Deaths, Marriages and Relationships Registration Act 1995 then it should also be not prohibited under the Local Electoral

Act 2001. To avoid doubt, the legislation should give guidance on the use of matai names.

Recommendation

- 3.4 Amend the Local Electoral Act 2001 to include in section 56, for the purposes of avoiding doubt, a statement on whether a matai title is, or is not, a prohibited title under section 56 (c)(iii).

4.0 Vacancies occurring within six months of an election

- 4.1 At the inaugural meeting of the Howick Local Board, only four weeks after election day, one of the members resigned. This resulted in a by-election at a cost of over \$100,000. At the same time, the Council's Electoral Officer was aware of two other vacancies – Bay of Plenty Regional Council (death) and Waikato Regional Council (death).
- 4.2 The legislation provides for an appointment to be made if a vacancy occurs within 12 months of the next triennial election. There could be a similar provision for vacancies which occur within 6 months following an election. For a First Past the Post (FPP) election, this could be the highest-polling unsuccessful candidate, subject to a test for electoral mandate (such as the number of votes received by the highest-polling unsuccessful candidate being no less than 20% of the votes of the lowest successful candidate).
- 4.3 The rationale for this approach is that the community would not have changed its view within a period of six months on which, of the available candidates at the time of the election, it wished to elect. However, if the highest-polling unsuccessful candidate polled very low, then this rationale is not valid and, as stated in the previous paragraph, there should be a threshold to how many votes the highest polling unsuccessful candidate received, if the appointment to the vacancy is to be automatic.
- 4.4 Alternatively the appointment could be at the discretion of the local authority responsible for conducting a by-election. It would take the number of votes received by the highest polling unsuccessful candidate into account when deciding between appointing to the vacancy and holding a by-election.
- 4.5 The rationale does not apply to mayoral positions. If a mayoral position became vacant within six months of an election it not safe to assume the community's preference would be for the runner-up to be appointed.

Recommendation

- 4.6 Amend the Local Electoral Act 2001 by including a provision in section 117 "Extraordinary vacancies" to the effect that, if a vacancy occurs in the office of an elected member of a local authority, local board or community board within six months of a triennial election, the local authority responsible for conducting a by-election may fill that vacancy either by appointing the highest-polling unsuccessful candidate, providing the votes received by that candidate were at least 20% of the

lowest polling successful candidate, or by holding a by-election. This provision would not apply to the position of mayor.

5.0 Online voting

- 5.1 The Auckland Council wishes to establish online voting as an option for voters. A survey of Auckland voters conducted by the Council shows voters have a preference for online voting (out of a sample size of 1,259, 74 per cent said they would prefer on-line voting over postal voting). The Council is aware of the security risks associated with a voting system that is connected to the internet and so the Council is working closely with the Society of Local Government Managers, Local Government New Zealand and the Department of Internal Affairs to help ensure such a system would have the confidence of the community.
- 5.2 In order to gain the confidence of the community, it is the Council's wish to start with a small trial for the 2019 elections so that an online voting system can be made more widely available in 2022 if the trial is successful.
- 5.3 The Council wishes, for 2019, to provide online voting as an option for the disabled and voters who are overseas. To do this, changes to the Local Electoral Act 2001 and its regulations are required. It is currently not possible under the legislation to offer online voting to a subset of types of electors, such as the disabled and overseas voters.
- 5.4 The Local Electoral Act 2001 defines the following voting methods in section 5:
- voting method** means any of the following methods of voting that are prescribed for use at an election or poll:
- (a) the method of voting commonly known as booth voting:
 - (b) the method of voting commonly known as postal voting:
 - (c) any form of electronic voting:
 - (d) any method of voting involving a combination of more than 1 of the methods of voting referred to in paragraphs (a) to (c):
 - (e) any other method of voting (however described)
- 5.5 Section 139 of the Local Electoral Act 2001 provides for voting methods to be authorised by regulation:
- (1) The Governor-General may, by Order in Council, make regulations...
- ..(c) authorising the use of 1 or more voting methods in elections and polls, or any specified class of election or poll, or any specified election or poll, describing each authorised voting method, and prescribing conditions, standards, performance measures, and forms for the operation of that method:....
- 5.6 Section 139 (2) & (3) requires advice from the Minister, before the authorisation of a voting method, that the Minister is satisfied the voting method would be able to

operate consistent with the principles in section 4 and after consulting with organisations likely to be affected.

5.7 The Local Electoral Regulations 2001 clause 9 states:

Authorised voting methods

The voting methods that may be used at an election or poll are—

(a) postal voting; or

(b) booth voting; or

(c) a combination of booth voting and postal voting.

5.8 The end result of the above provisions is that electronic voting is a voting method that is available under the Act but it is not yet authorised in the Regulations. For electronic voting to be available it simply needs to be added to the list of authorised voting methods in clause 9 of the Regulations.

5.9 Online voting can also be offered to a small section of electors when by-elections occur. A change to the Local Electoral Regulations to allow electronic voting as an authorised voting method would allow this to happen.

5.10 For electronic voting to be available to only a subset of electors such as voters who are disabled or overseas a change to the Act is required. There is a precedent with the Electoral Regulations, for the general election, which allow the Electoral Commission to offer a telephone voting service to just some electors (visually impaired) because they are defined as special voters for the general election, and the regulation making power at section 267 of the Electoral Act 1993 allows regulations to prescribe different methods of voting for different classes of special voters.

5.11 The Local Electoral Act 2001 in section 139 provides for regulations to be made:

(e) authorising the use of special procedures for the casting of votes by any specified class of person, including (without limitation) persons with specified disabilities, and persons living or travelling overseas or living in remote locations:

5.12 An amendment could be made that allows for separate authorised voting methods by specified classes or persons, or makes it clear that the existing provision above for special procedures may include the use of separate voting methods.

Recommendations

5.13 Amend clause 9 of the Local Electoral Regulations 2001 to include electronic voting as an authorised voting method.

5.14 Amend section 139 of the Local Electoral Act 2001 to allow regulations to provide for a separate authorised voting method to be used for the casting of votes by any specified class of person, including persons with specified disabilities, and persons living or travelling overseas or living in remote locations.

5.15 Make these amendments in time to be implemented for the 2019 elections.

6.0 Legal requirement for candidate to state whether residing in area

- 6.1 Section 61 of the Local Electoral Act 2001 requires that a candidate's profile statement must state whether the candidate lives in the area for which they are seeking election. For a candidate for a ward-based vacancy, the candidate must declare whether the candidate lives in the ward and, for a subdivision vacancy, the candidate must declare whether the candidate lives in the subdivision.
- 6.2 The reason for electing members on a ward or subdivision basis is to ensure a spread of representation. However, the residence statement does not give the elector any information about whether a candidate who does not live in the ward or subdivision lives just outside the ward or subdivision or lives a great distance away, possibly outside the boundaries of a council or local board altogether. Candidates who live just outside the ward or subdivision boundaries feel disadvantaged by this requirement.
- 6.3 It is also noted, that once a candidate is elected, the candidate is required to act in the interests of the full council area, or local board area, rather than the ward or subdivision.
- 6.4 The Auckland Council has received complaints about this requirement. While there is divided opinion over removing this requirement altogether, there is general agreement that it should apply to a full council area or local board area, but not the ward or subdivision area.

Recommendation

- 6.5 Amend the requirement in section 61 of the Local Electoral Act 2001 for a residency statement so that it applies only to whether the candidate's principal place of residence is in the full council or local board area and not the ward or subdivision area.

7.0 Timing of school holidays

- 7.1 The school holidays overlap with the postal voting period. Many people go out of the area during school holidays and do not vote. Currently local government elections are on the second Saturday in October. Moving election day to the first Saturday in October would provide one week before election day that would not overlap with school holidays. This still gives time to adopt the annual report and it provides an additional week between the elections and the end of the year for a new council to attend to business, such as a draft annual plan.

Recommendation

- 7.2 Amend section 10 of the Local Electoral Act 2001 so that local government triennial elections are held on the first Saturday in October.

8.0 Separation of District Health Board elections

- 8.1 A variety of election issues on the one voting document together with different voting systems and different ordering of names confuses voters. Auckland Council used the

First Past the Post electoral system and alphabetical order of names. The district health boards used the Single Transferable Vote electoral system and random order of names.

- 8.2 There is division of opinion on whether district health board elections should be held separately to local government elections. This would make voting for council elections simpler but it would increase costs to both a council and the district health boards.
- 8.3 There was, however, general agreement among local boards and governing body that the combined elections create confusion for voters. In the longer term, the option of online voting will be able to reduce this confusion as an online process has the potential to guide a voter through the voting process.

Recommendation

- 8.4 Note the confusion created for voters by the current system which combines local authority, district health board and licensing trust elections and that online voting has the potential to make the voting process more friendly to voters by being better able to guide voters through the process.

9.0 Electronic transmission of voting documents to and from voters overseas

- 9.1 Voters who are overseas during the postal voting period often do not have enough time to post back voting documents prior to election day, after receiving their voting documents in the post.
- 9.2 The select committee has previously recommended allowing electronic transmission. The government has supported sending blank voting documents electronically but has opposed the return of completed votes electronically.
- 9.3 Ultimately, online voting would solve this issue.
- 9.4 The Local Electoral Regulations describe postal voting in clause 6:

The voting method commonly known as postal voting involves—

- (a) the conduct of ordinary voting by—*
- (i) the electoral officer posting, or delivering by other means, voting documents to the residential or postal addresses of electors; and*
 - (ii) voters marking those documents in accordance with instructions on the documents; and*
 - (iii) voters returning those documents to the electoral officer by post, or other means of delivery, for counting; and*
- (b) the conduct of special voting in a manner prescribed by regulations (whether in a similar manner to the conduct of ordinary voting or otherwise).*

- 9.5 The term 'other means of delivery' is not defined but is assumed to be confined to physical delivery and not include electronic delivery.
- 9.6 Clause 51 deals with the issuing of voting documents and requires the electoral officer to 'send' the voting documents to electors together with a reply-paid return envelope.
- 9.7 It is not possible to construe the existing regulations to allow electronic transmission of voting documents.
- 9.8 The Electoral Regulations 1996, however, contain provisions in clause 45A to issue voting documents to electors overseas electronically.
- 9.9 The security of such a system should be as secure as postal voting, however the Council notes that postal voting is not entirely secure and that voting documents can go missing, or can be used by persons they are not intended for. A system that allows voters to vote more easily should not be jeopardised by unnecessary security concerns.

Recommendation

- 9.10 Amend the Local Electoral Regulations 2001 to allow for electronic transmission of voting documents to voters overseas in similar fashion to clause 45A in the Electoral Regulations 1996.

10.0 Legislative confirmation that local authorities may promote elections

- 10.1 Legislation should give a clear mandate to local authorities to promote elections to avoid any uncertainty about public funds being used for election promotion purposes. The Committee is aware of concerns around the decreasing voter turnout. In the current context where the Electoral Commission has the general election as its focus, it is the responsibility of local government to remind voters of their opportunity to participate in the democratic process.
- 10.2 The Council is aware that this has been agreed by Cabinet and a "Local Government Regulatory Systems Bill" is being prepared to give effect to this. The Council supports this.
- 10.3 The purpose of promoting the elections is to raise awareness and participation. This must be done in a politically neutral manner, without providing any candidates with an electoral advantage over other candidates.

Recommendation

- 10.4 Amend the Local Electoral Act 2001 to give a clear mandate to local authorities to promote local authority elections as in the Cabinet papers describing a proposed "Local Government Regulatory Systems Bill".

11.0 Electronic nominations and candidate profile statements.

- 11.1 The option to submit nominations electronically would benefit the candidate experience and it would lead to more accurate representation of candidate profile statements.
- 11.2 Currently over 600 profile statements have to be typed for Auckland Council elections, from copy supplied by candidates, and then proof-read. The potential for mistakes arising from mis-reading candidates' submitted originals would be reduced if content could be copied and pasted from originals submitted electronically.
- 11.3 The Local Electoral Act requires, in section 55, that nominations are to be submitted "in the prescribed manner" and the Local Electoral Regulations, in clause 25, state this must be in writing.
- 11.4 Section 61 of the Local Electoral Act requires a candidate profile statement to be submitted along with the nomination.

Recommendation

- 11.5 Amend the Local Electoral Regulations so that a nomination and the associated profile statement may be submitted electronically.

12.0 Consistency between Electoral Regulations and Local Electoral Regulations

- 12.1 The Council notes that there are provisions in the Electoral Regulations that would be useful for local government elections. Examples of such regulations are:
- Telephone dictation of vote by a voter with a disability (clause 23A, 23B)
 - Electronic issue of special voting papers to voters overseas (clause 45A)
 - Return of special voting documents electronically (clauses 47A, 47B, 47C)
- 12.2 The Electoral Regulations have been modernised to use technology but the Local Electoral Regulations have not. The Select Committee, in its report on its inquiry into the 2013 local elections, supported similar provisions in the Local Electoral Act 2001 (pages 11 and 12 of the report).

Recommendation

- 12.3 Modernise provisions in the Local Electoral Act 2001 or Local Regulations 2001, as appropriate, by including similar provisions to those in the Electoral Regulations which make use of modern technology to assist voters.

13.0 Electoral Officer to have access to the supplementary roll

- 13.1 The processing of special votes relies on the Electoral Commission checking that voters are on the electoral roll. If the electoral officer had access to the supplementary roll, the electoral officer could do this, with the potential to speed up the counting of special votes.
- 13.2 The Select Committee supported this in its report on its inquiry into the 2013 local elections, (pages 11 and 12 of the report).

13.3 Recommendation

13.4 Amend the Local Electoral Act 2001, Electoral Act 1993, or their regulations, as appropriate, to provide access to the supplementary roll to electoral officers.

14.0 Access to data associated with electoral roll

14.1 It is a concern that local government election turnouts are low. Having access to statistical data associated with the electoral roll, such as age groups of electors, would be helpful when planning election awareness campaigns.

14.2 Currently the Electoral Act allows information from the electoral roll to be supplied to various recipients for various purposes. Section 112, for example, provides for information from the roll relating to age and Maori descent to be supplied for the purpose of research into scientific or health matters. In that case, the information that is supplied includes the names and addresses of electors.

14.3 The Council is only interested in anonymous statistical data for the purpose of election promotion and planning.

Recommendation

14.4 Include a provision in the Electoral Act 1993 providing for anonymous statistical information from the electoral roll to be provided by the Electoral Commission to local authorities for the purposes election planning.

15.0 Time period for printing electoral rolls

15.1 Electoral rolls were not printed in time for the start of candidate nominations because the legislated time period is too short. The time period for printing needs to be extended. It was shortened as an unintended consequence of a previous change.

15.2 This could be achieved by bringing forward the date at which residential electors are entitled to be included under the Local Electoral Regulations 2001 clause 10(1).

Recommendation

15.3 Amend clause 10(1) the Local Electoral Regulations 2001 so that the date for entitlement of residential electors to be included on the roll is brought forward from 7 July to 1 July, thus allowing more time for the roll to be printed and distributed for public inspection.

16.0 Electronic access to electoral rolls for election staff

16.1 When processing candidate nominations, staff at the Council's service centres need to check whether nominators are on the electoral roll for the specified area. They may only have one printed hard-copy version to share between staff processing nominations for different candidates.

16.2 Typically many nominations are submitted on the final day for receiving nominations. If only one printed copy of the roll is available in a service centre where nominations are received and processed this can lead to a delays and those submitting nominations having to wait. It would be more efficient to access the current roll electronically online.

- 16.3 The Electoral Act 1993 provides for information on the electoral roll to be provided to local authority electoral officials on electronic storage media. Rather than using this mechanism for accessing the roll, the Council would prefer that electoral officials processing nominations had online access to the electoral roll hosted by the Electoral Commission.

Recommendation

- 16.4 The Electoral Commission to provide online access to electoral officials for the purpose of verifying the electoral qualifications of nominators of candidates and legislation amended as appropriate.

17.0 Relationship with Electoral Commission

- 17.1 The Council notes that there is confusion in the community as to who is responsible for local elections. Often, enquirers will contact the Electoral Commission which then supplies the Council's contact details to the caller. The caller contacts the Council, and the Council's call-centre gives the caller the contact details of the Council's election provider.
- 17.2 The Council believes that the customer experience would be improved if the Electoral Commission provided the contact details of the Council's election services provider rather than the contact details of the Council.

Recommendation

- 17.3 Encourage the Electoral Commission to supply the contact details of a council's election services provider, where this is a council's preference, to callers who mistakenly contact the Electoral Commission in regard to local elections.

18.0 Conclusion

The Council looks forward to appearing before the committee to speak to its recommendations.

Some of the Auckland Council local boards asked for their comments to be forwarded in full to the committee and these are attached.