

**Submission to the
Governance and Administration Select
Committee**

**On the Local Government Regulatory
Systems Amendment Bill**

Auckland Council, August 2018



Mihimihi

<p>E whakamau ō kamo ki te āhuru mōwai e hora ake nā i mua i a koe.</p> <p>E mīharo ki tā te ringa tangata i hanga ai hei kākahu i tā te ringa atua.</p> <p>E takahi rā koe mā runga i ngā tapuwae o te tini – pō te ao, ao te pō.</p>	<p><i>Cast your eyes over the sheltered haven that lies before you.</i></p> <p><i>Marvel at what the human hand has created to embellish what was created by the hand of God.</i></p> <p><i>Follow in the footprints of the many now passed – dawn till dusk and dusk till dawn.</i></p>
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August 2018

**Ko te tāpaetanga o te Kaunihera o Tāmaki Makaurau
Auckland Council Submission**

**Auckland Council Submission to the Governance and Administration Select
Committee on the Local Government Regulatory Systems Amendment Bill**

Executive Summary

1. Auckland Council welcomes the opportunity to submit on the matters raised in the Local Government Regulatory Systems Amendment Bill (Bill).
2. We have included in our submission recommendations on additional matters which Auckland Council believes should be incorporated into the Bill.

Local Electoral Act 2001

Mandate to promote elections

3. The council strongly supports a clear mandate in the Local Electoral Act 2001 (LEA) to promote elections.
4. The proposed change to the LEA does this by adding to the principles in section 4 of the LEA:
“(aa) representative and substantial electoral participation in local elections and polls”
5. The Bill also adds to the duties of the electoral officer in section 15 of the LEA:
“(da) facilitating and fostering representative and substantial electoral participation”
6. Auckland Council, and the majority of New Zealand councils, appoint as Electoral Officer an external provider of election services. The responsibilities of such people are to focus on conducting the elections. They do this under contract with a focus on a particular election date. The council works closely with the Electoral Officer to ensure candidates and voters have access to resources they need to stand for election and to vote.
7. The council has had the role of raising general community awareness about an election taking place and encouraging participation, since the council has access to a greater variety of communications resources than the Electoral Officer. It does this more particularly in an election year but also throughout the term. It is more appropriate that the mandate for promoting participation in elections should lie with the local authority and not the Electoral Officer. This would not prevent the local authority from contracting the Electoral Officer to undertake the promotion if the local authority wished to do this.

Recommendation 1

Auckland Council supports the proposed addition to the principles in the Local Elections Act 2001 but submits that the duty to facilitate and foster representative and substantial electoral participation should lie with the local authority.

Local Government Act 2002 and Local Government Official Information and Meetings Act 1987

Public notices

8. The Bill amends the meaning of public notice in the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987 to require publishing a public notice to a council's website as well as in newspapers. This is the council's current practice and so the council does not oppose this proposal.
9. Nevertheless, the council expresses concern that there is increasing inconsistency between requirements for public notices under different statutes:
 - (i) The Resource Management Act 1991 defines public notice as publishing to the council's website with a summary in the newspaper
 - (ii) The Legislation Bill, currently before the House, defines a public notice to be either a notice published in the Gazette, published in a newspaper or published on a website. This definition will apply to all legislation where there is no over-riding definition.

Emergency meetings

10. The council notes that the proposed provision for an emergency meeting simply replaces an existing provision for an extraordinary meeting when such an extraordinary meeting is called at shorter notice than 3 working days.
11. The council does not oppose this proposal.

Recommendation 2

Auckland Council supports the proposed changes to the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987 in relation to public notices and emergency meetings but notes its concern about inconsistent definitions in different statutes regarding the meaning of public notice and submits they should be aligned.

Submissions for additional changes

Local Government Act 2002

Temporary alcohol bans

12. The Local Government Act 2002 provides for temporary alcohol bans for large scale events to be made by a bylaw (section 147A) or by resolution relating to a bylaw (s147B). Auckland Council makes temporary alcohol bans by resolution relating to the Auckland Council Alcohol Control Bylaw 2014. This approach enables decisions to be made quickly in response to new large-scale events.

13. Auckland Council has made seventeen temporary alcohol ban requests for large-scale events at various locations since 2015, for example, the 2017 Ed Sheeran concert at Mount Smart stadium. Temporary alcohol bans at or in the streets surrounding large-scale events can reduce the risk of litter, noise, public urination and violence resulting from attendees consuming alcohol on their way to or from the event.
14. The Local Government Act 2002 intends that a precautionary approach be taken regarding temporary alcohol bans for large-scale events. The intent recognises that:
- certain large-scale events can result in alcohol-related crime or disorder regardless of location
 - large-scale events can be held at locations with no past evidence of alcohol-related crime or disorder.
15. However, the Local Government Act 2002 provisions do not fully implement this intent. The provisions only allow a precautionary approach for temporary alcohol bans for large-scale events made by a bylaw (section 147A). Temporary alcohol bans by resolution are required to meet the same criteria as a permanent alcohol ban which requires past evidence of alcohol-related crime or disorder at the event location.
16. This evidence requirement fails to achieve the intent of the Local Government Act 2002, is excessive given the temporary nature of the alcohol ban, and can result in unnecessary or unintended consequences including:
- increased compliance costs for Auckland Council and police to source evidence
 - decision-makers accepting the risk of legal challenge to temporary alcohol bans when the evidence requirement cannot be met
 - events not going ahead or being relocated to existing alcohol ban areas
 - decision-makers accepting the risk of alcohol-related harm by allowing events without a temporary alcohol ban
 - New Zealand Police waiting until alcohol-related harm occurs before being able to respond using powers under the Summary Offences Act 1981
 - public perception that large-scale events are unsafe
 - reputational risk for Auckland Council.
17. Auckland Council seeks an amendment to section 147B of the Local Government Act 2002 that allows councils to make temporary alcohol bans by using the same criteria as section 147A. Table 1 shows the recommended amendments to section 147B alongside the current wording of section 147A.

Criteria for making or continuing bylaws (s147A)	Criteria for making resolutions relating to bylaws (s147B) incorporating suggested amendments
<p>(1) Before making a bylaw under section 147, a territorial authority—</p> <p>(a) must be satisfied that it can be justified as a reasonable limitation on people’s rights and freedoms; and</p>	<p>(1) Before making under section 151 a resolution relating to a bylaw under section 147, a territorial authority must be satisfied that—</p>

<p>(b) except in the case of a bylaw that will apply temporarily for a large scale event, must also be satisfied that—</p> <p>(i) there is evidence that the area to which the bylaw is intended to apply has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and</p> <p>(ii) the bylaw is appropriate and proportionate in the light of that crime or disorder.</p>	<p>(a) must be satisfied that it can be justified as a reasonable limitation on people’s rights and freedoms; and</p> <p>(b) except in the case of a resolution that will apply temporarily for a large scale event, must also be satisfied that—</p> <p>(a)(i) there is evidence that the area to which the bylaw applies (or will apply by virtue of the resolution) has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area; and</p> <p>(b)(ii) the bylaw, as applied by the resolution,— (i)—is appropriate and proportionate in the light of that crime or disorder—the evidence; and</p> <p>(ii)—can be justified as a reasonable limitation on people’s rights and freedoms.</p>
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Recommendation 3

Auckland Council recommends that the Select Committee add a change to the Local Government Act 2002 that allows councils to make temporary alcohol bans by using the same criteria as in section 147A of the Local Government Act 2002.

Local Electoral Act 2001

Election advertising and social media

18. Social media is used extensively by candidates for election. The question is sometimes raised as to whether a Facebook post, or even a ‘like’, constitutes electoral advertising. There is a need for certainty around this.
19. The council recommends providing guidance in the LEA that is consistent with the guidance in the Electoral Act 1993 in section 3A which states that an election advertisement does not include: *“any publication on the Internet, or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication of those views.”*

Recommendation 4

Auckland Council recommends that the Select Committee add a change to the Local Electoral Act 2001 that is consistent with the definition of election advertisement in the Electoral Act 1993 and which makes clear that an election advertisement does not include a publication on the Internet, or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication of those views.

Supplementary Roll/Deletions File

20. The Electoral Commission maintains what are known as supplementary rolls. These are electors who have enrolled after the close of the roll. This data is not currently available to local authorities.
 21. Requests for this data have been rejected due to an apparent lack of specific authority for the Commission to supply information. In the absence of this information the electoral officer must send details of the requests to the Electoral Commission and wait for confirmation. Electoral officers have advised us that this process has delayed the declaration of final results by as much as three days in some local elections.
 22. The Electoral Commission also maintains the deletions file – a list of people who have been removed from the roll. The same issues apply.
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Recommendation 5

Auckland Council recommends that the Select Committee agree that the supplementary roll/deletions file should be made available to local authorities to avoid the delay of declaring final results.

Citizenship of Candidates

23. Candidates for local government election must be New Zealand citizens. Current practice is to require a candidate to sign a declaration that they are a citizen. It is possible that a candidate does this in good faith believing themselves to be a citizen and later found that in fact they are not, forcing a vacancy and by-election.
 24. The citizenship provision could be made more certain by requiring each candidate to provide proof of their citizenship. This would be part of completing the nomination and would be required with the nomination papers prior to close of nominations.
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Recommendation 6

Auckland Council recommends that the Select Committee agree that the Local Electoral Act 2001 should include a requirement for candidates to provide proof of their citizenship.

Matai titles

25. The LEA in section 56 sets out the requirements for a candidate's name. Part of this is a requirement that the name does not include a title.

26. Auckland Council has a number of candidates at elections from the Samoan community and the question of whether a matai title is caught by this prohibition has been raised.
27. The Council has noted that it is possible to change a name by deed poll to include a matai title and the use of a so-called 'title' is more akin to a name than a title. The use of a matai title has been allowed in the past but there should be greater certainty around whether this is acceptable.

Recommendation 7

Auckland Council recommends that the Select Committee enquire into whether the Local Electoral Act 2001 should be changed to give greater certainty to the use of matai titles by candidates on their voting documents, noting the need for consistency with the Electoral Act 1993 and the Births, Deaths, Marriages and Relationships Registration Act 1995.
