

The Committee Secretariat
Justice Committee
Parliament Buildings
WELLINGTON

SUBMISSION OF THE AUCKLAND COUNCIL TO THE JUSTICE COMMITTEE INQUIRY INTO THE 2019 LOCAL ELECTIONS AND LIQUOR LICENSING TRUST ELECTIONS, AND RECENT ENERGY TRUST ELECTIONS.

Introduction

- 1.1 This is the Auckland Council submission to the Justice Committee's Inquiry into the 2019 Local Elections and Liquor Licensing Trust Elections, and Recent Energy Trust Elections. Auckland Council welcomes the opportunity to provide comments for consideration by the Committee.
- 1.2 The address for service is Auckland Council, Private Bag 92300, Victoria Street West, Auckland 1142.
- 1.3 Please direct any enquiries to Warwick McNaughton, Principal Advisor and Deputy Electoral Officer, Democracy Services, phone 021 191 1009 or email: warwick.mcnaughton@aucklandcouncil.govt.nz.
- 1.4 Auckland Council wishes to appear before the Justice Select Committee to discuss this submission.
- 1.5 Auckland Council local boards have provided feedback into this submission and their comments are appended.

2 Background

- 2.1 Auckland Council is responsible for local government elections in its area, which comprises a total of 1,065,383 electors. The 2019 elections for Auckland Council involved 170 elected member positions:
 - 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's submission sets out recommendations in respect of:
- (i) matters raised in the Committee's terms of reference regarding the 2019 elections:
 - low voter turnout
 - liquor licensing trusts
 - the role of council staff
 - disclosure of candidates or members with serious criminal convictions
 - irregularities
 - (ii) matters raised in the Committee's terms of reference regarding its recommendations arising from its report on the 2016 local elections:
 - Electoral Commission to be responsible for local elections
 - Same electoral system in all elections
 - Foreign interference
 - (iii) additional matters for consideration by the Committee:
 - disclosure of interests
 - probity
 - Māori wards
 - Review of representation arrangements
 - Timing of polls for creation of a Māori ward or change of electoral system

3 Low voter turnout

- 3.1 Auckland Council has undertaken research into voter awareness in conjunction with the 2013, 2016 and 2019 elections. The following are highlights from the survey results that might be of assistance to the Committee in its investigation into low voter turnout.
- 3.2 After the 2019 elections a random sample of 1,871 Aucklanders were surveyed online. The survey tested respondents' awareness of advertising and included questions relating to whether they voted or not. Of those who did not vote (643), the top four reasons given for not voting were:
- "I didn't know anything about the candidates" 11%
 - "I forgot to vote" 11%
 - "I did not know when voting finished, missed the deadline" 10%

- “I was away from home over the voting period” 8%
- 3.3 Of those who did not vote, 25% had filled in all or part of their voting documents but did not cast their vote. The top four reasons given were:
- “I didn’t send it off in time / ran out of time” 29%
 - “I forgot to send / complete it” 21%
 - “I had other commitments during that time” 17%
 - “I didn’t know anything about the candidates” 8%
- 3.4 Non-voters were asked “What could Auckland Council do to encourage you to vote?”. The top four (unprompted) replies were:
- “Have online voting” 19%
 - “It was my own fault” 8%
 - “More advertising” 7%
 - “Send reminders and notifications by post / email / txt” 7%
- 3.5 All respondents were asked whether they preferred online voting or postal voting if they had the choice. 66% preferred online voting and 26% preferred postal voting.
- 3.6 Of non-voters, 28% said they would have been more likely to vote if it had been booth voting.
- 3.7 Research was also undertaken into the impact of different messaging on voter behaviour. The most effective message was a social norm message “74% of Aucklanders are planning to vote. Join them and vote this election!”. As compared with other messages such as a message of concern about low voter turnout, this had a more positive effect. This indicates election administrators should be cautious about negative messaging such as highlighting low voter turnout.
- 3.8 Survey results are being written up for publishing onto the council’s website knowledgeauckland.govt.nz
- 3.9 Auckland Council held 50 one-stop shop events which provided people the ability to enrol (the Electoral Commission attended) and to cast special votes. Our experience of these could be described as “social voting”. A lot of people made use of them, enrolled then sat down to complete their voting documents. Typically, venues where the one-stop shops were held were packed with people wanting to vote.
- 3.10 Another project was “Vote Friday” through which business organisations gave staff time to fill out voting documents at work. 60 organisations, representing 55,000 employees, took part.
- 3.11 One of the answers to lifting turnout might include a multi-modal approach which does not seek to identify just one way for voting but develops options for voters. For example:
- Postal voting

- Booth voting
- Advance voting
- One-stop shops
- Vote Friday
- Marae-based
- Ballot boxes at convenient locations such as supermarkets
- Online voting (once considered secure)

Recommendations

- 3.12 Note the research conducted by Auckland Council which is available on knowledgeauckland.govt.nz.
- 3.13 Note the successful initiatives undertaken by Auckland Council including: Vote Friday and One-stop Shops.
- 3.14 Consider that the response to low voter turnout may best be through a multi-modal approach which provides voters with options.

4 Liquor licensing trusts

- 4.1 Licensing trusts are established under the Sale and Supply of Alcohol Act 2012 (or the earlier Sale of Liquor Act 1989 and continued under the 2012 Act). The Law Commission, when it reviewed alcohol legislation prior to the 2012 Act, noted that licensing trusts were well supported by their communities and there was the ability for the community to petition for those trusts with monopoly powers to become competitive. It recommended no change to the law around licensing trusts.
- 4.2 Of the licensing trusts in the Auckland area, only the Portage and Waitakere Licensing Trusts have the sole right to establish and operate on-licences in hotels and taverns, and off-licences in their districts. The other licensing trusts are the Birkenhead, Mt Wellington and Wiri Licensing Trusts.
- 4.3 The aspect of licensing trusts that impinges on election administration the most relates to trust areas. Because these are not aligned with local government areas there are 26 more permutations of voting packs required in the Auckland Council area.
- 4.4 An example is the Birkenhead Licensing Trust. This was constituted in 1967 with its area being the whole of the then borough of Birkenhead. The area has not changed since then.
- 4.5 Any change to the western trust boundaries would have implications in terms of existing licences. However it may be possible to align the boundaries of the other three trusts, say with local board boundaries. Auckland Council has not considered this in detail.

- 4.6 Apart from the issues around trust areas, the election of trust members adds complexity to the voting documents used for council elections

Recommendations

- 4.7 Note that with the passage of time trust boundaries no longer align with local government boundaries in the Auckland area and this creates complexity in terms of the number of different combinations of voting documents that are required.

5 The role of council staff

- 5.1 The Committee's terms of reference include the role of council staff during election periods around decisions to release or not release information or any public statements that may be construed to affect the election outcome.
- 5.2 Auckland Council staff were involved in three types of scenarios regarding requests for information:
- (i) Ordinary requests for information from the public which are dealt with under the procedures in the Local Government Official Information and Meetings Act 1987 (LGOIMA), which clearly states that decisions on requests are made by the chief executive. There was no change to normal procedures.
 - (ii) Requests for information from candidates. Staff noted that researching information for use by a candidate could be perceived as council resources being used for benefit of an election candidate. Given that LGOIMA still applied in such situations and requests for information had to be met, responses to requests for information from candidates were published to the website so the information would be available to all candidates. Staff also considered it was useful for candidates and the electorate to have factual information rather than be misinformed.
 - (iii) Proactive media statements of fact. If a candidate continues to make public statements that are factually incorrect, there may be the need to correct that through the media, particularly if there are incorrect allegations about council operations. However such statements should be the exception - staff should not be involved in political debate.
- 5.3 Auckland Council considers there is no need for legislative change.

6 Disclosure of candidates or members with serious criminal convictions

- 6.1 Under the Local Government Act 2002, an elected member will lose their position if convicted of an offence punishable by a term of imprisonment of two years or more. However, there is no requirement to disclose such offences if standing for election – there is no criminal check undertaken.
- 6.2 One argument is that all candidates are subject to the ballot box and a candidate who has committed serious crime in the past is unlikely to be elected.

- 6.3 An alternative approach is to amend the Local Electoral Act 2001 to apply to candidates the provisions in the Local Government Act 2002 for sitting members. So that not only is a sitting member disqualified but a person is prevented from standing if they have had a criminal conviction of the same type of offence (unless their record has been wiped by the clean slate provisions). If this alternative approach is taken then a candidate would need to declare on their nomination form that they are not prevented from standing by this requirement.

Recommendation

- 6.4 Amend the Local Electoral Act 2001 to align with the Local Government Act 2002, schedule 7, clause 1, with the effect that a person is not eligible for election if they have been previously convicted of an offence punishable by a term of imprisonment of 2 years or more (unless their record has been wiped by the clean slate provisions).

7 Irregularities

- 7.1 The Committee's terms of reference include irregularities that could have compromised the fairness of the elections.
- 7.2 Auckland Council is not aware of any irregularities in the Auckland Council elections.

8 Inquiry into 2016 local elections

- 8.1 The Auckland Council made a number of requests of the Committee in its submission to the inquiry into the 2016 local elections and notes that the Committee's recommendations in its report support many of the council's recommendations.
- 8.2 The following comments address the feedback the Committee has requested in terms of its key recommendations arising from the 2016 inquiry.

9 Electoral Commission to be responsible for local elections

- 9.1 The options for the Electoral Commission ("Commission") being responsible for local elections range along a spectrum from the Commission being responsible for a few key aspects working collaboratively with local authorities, to the Commission being totally responsible. The Committee's recommendation is that the Commission should be responsible for running all aspects of local elections.

Centralisation vs decentralisation

- 9.2 Parliament devolves responsibilities to local government when it is more important for local communities to decide matters than it is to have national consistency. The notions of subsidiarity and localism are important to local government.

- 9.3 However, these considerations do not apply to the same extent to decision-making about elections. Local political decision-making around the running of elections should be minimised. Local politicians should not be too involved in making decisions about elections because they themselves may be candidates. It is considered best practice for local politicians to be at arms-length from the running of elections.
- 9.4 However, it is important that local community characteristics are reflected in the administration of local elections (for example translation into languages that are appropriate for a local community). A “one size fits all” needs careful consideration.

Efficiencies

- 9.5 There are efficiency benefits from centralising election administration:
- 9.6 Reduce or eliminate duplication among councils. For example, rather than each council’s web team developing web pages for candidates and voters there might be only one central web-based information portal for the whole country (as for parliamentary elections). Likewise, there might be just one branding for the whole country.
- 9.7 Provide a permanent team focussed on elections. Currently each council has to budget for local elections happening on a three-yearly cycle. For Auckland Council this has also meant engaging temporary additional staff for the elections who develop expertise in running elections then who leave after the election is over. Although the Commission also has to engage additional staff for each triennial election, it has a core team which is permanent.
- 9.8 Those who are responsible for the electoral roll would also be responsible for running local elections. Currently, local elections are run by councils who must use the electoral roll which is administered by the Commission. For the 2019 elections there was excellent collaboration between the council and the Commission. However, collaboration needs to be a conscious effort and making the Commission responsible for both the electoral roll and the local elections could create synergies. The Electoral Commission, as part of its responsibility for the electoral roll, undertakes awareness raising in the community to ensure people enrol and update their details. If the commission already has community engagement processes in place, it could use these to raise awareness for local elections as well.
- 9.9 Consistent development of legislation. Currently legislation for central and local elections is comprised in two separate statutes and regulations. This is not a problem in itself, but developments of the legislation in order to bring about improvements happens as the result of separate organisations making submissions regarding separate legislation. There have been occasions in the past where the Commission has achieved improvements in its legislation, but these do not flow through to local electoral legislation (one example being the ability to vote from overseas).

Issues

- 9.10 An issue related to local elections is the review of representation arrangements. For Parliamentary elections a Representation Commission undertakes a review of boundaries. It would be a significant undertaking for the Representation Commission to undertake the review for all local authorities. Even though incumbent members might be seen as having an interest in electoral boundaries, local councils are best placed to propose changes to boundaries due to their knowledge of communities of interest in their area. The representation review is a process where representation is decided by a council in conjunction with its community, and if the community appeals, the final determination is made by the Local Government Commission. The review should be retained as a community-based process led by the community's council. The discretion around establishing Māori wards should become part of the representation review (it should be a local consideration rather than decided centrally by a Representation Commission).
- 9.11 Another issue is the candidate nomination process. Currently candidates bring in their nominations physically to a council office for processing. For Parliamentary elections, individual nominations are lodged with electorate returning officers who are employed on a short-term basis for each Parliamentary election and who establish an electorate office for the election. (Alternatively party secretaries send nominations to the Commission in Wellington for processing.) Following an election the electorate office is closed. Whether the Commission retains returning officers to also cover local elections or appoints a council employee or an election service provider as returning officers just for local elections may be options. Another alternative is legislative change to allow nominations to be submitted electronically. This is noted as a matter of operational detail.
- 9.12 One feature of local elections is the candidate profile booklet. While some voters say this does not tell them much about candidates, it is better than nothing. Surveys show clearly that lack of information about candidates is a key deterrent for voters – voters do not have meaningful information with which to make voting decisions. Any move to centralise elections and amalgamate the legislation should retain candidate profile statements.
- 9.13 There are two providers of election services who have developed considerable expertise and resources for conducting local elections. Those resources and expertise should be recognised. The Commission may choose to use their services for any local elections for which it is responsible. A move to centralising the administration of local elections does not necessarily mean the services of these providers will no longer be required. This is noted as a matter of operational detail.
- 9.14 The Commission is funded out of Vote Justice (the current estimate is \$46 million). This is expressed as services purchased by the Minister of Justice. If the Commission provides additional services to the Minister for conducting local government elections there is a question of whether these additional services result in some form of levy on local government and, if so, how it is calculated. The fairest form of any levy might be one based on providing minimal core services so that those councils who do not require more value-added services are not charged for something they do not need. If the Commission provides only core services, some

councils might wish to supplement what the Commission provides with additional services (for example, council websites providing local information, additional participation campaigns).

- 9.15 Any centralised arrangement must recognise differences at the local level, particularly in terms of demographics. Branding, collateral, images and translations must be relevant to the local communities. The Commission should collaborate with local council staff over appropriateness.

Effect on the voter experience

- 9.16 A decision on centralising local elections should consider its effect on voters and voter turnout.
- 9.17 There is anecdotal evidence that some voters find the current system confusing. For example, the Commission receives calls from voters who did not know they should be contacting the council's local electoral officer.
- 9.18 A voter who changes residence and forgets to update the electoral roll through the Commission, will blame the council when they do not receive their voting documents. Voters sometimes do not understand that the electoral roll is not maintained by the council.
- 9.19 Candidates currently lodge their nominations with the council electoral officer. However, if there is a problem with the eligibility of nominees then that must be taken up instead with the Commission if the problem relates to the electoral roll.
- 9.20 Participation campaigns are currently conducted by the Commission and councils separately. The Commission conducts a campaign to ensure people are enrolled to vote. Councils conduct campaigns to encourage people to vote. The commission could use its campaigning for enrolment to also encourage people to vote in local elections.
- 9.21 It is intuitive that a simplification of the process from the voter's perspective might facilitate greater turnout, though there is no guarantee. There are no obvious aspects of moving to the commission that would be likely to work the other way – that is, that might lead to lower turnout.

Recommendation

- 9.22 Further investigate the Committee's recommendation for the Electoral Commission to conduct local elections.

10 Same electoral system (FPP or STV) in all elections

- 10.1 In its submission into the inquiry into the 2016 local elections the council noted the complexity created by holding the District Health Board elections in conjunction with the council elections.
- 10.2 The council advocated moving these elections to a different year, but the Committee, in its report, noted there are efficiencies in holding these elections

together. Instead, the Committee has recommended requiring all elections to use the same electoral system as a response to this complexity.

- 10.3 The council also notes that additional complexity is created by the council, district health boards and licensing trusts making different decisions about order of names on voting documents. This should also be standardised.

Recommendations

- 10.4 Amend legislation to the effect that all elections run in conjunction with the elections of a territorial authority use the same electoral system and the same order of names on voting documents.

11 Foreign interference

- 11.1 The council has noted the Committee's recommendations and supports them.

12 Disclosure of interests

- 12.1 The Committee's report notes inconsistencies between the requirements for Parliamentarians and for local authority members in terms of declaring interests and makes recommendations that Government should introduce legislation setting out requirements for local authority members.
- 12.2 The existing legislation that applies to local authority members is the Local Authorities (Members Interests) Act 1965. This has been noted for some years as needing a complete review. In particular, section 3 provides for a person to be ineligible to be an elected member if they have an interest in a contract with the local authority of over \$25,000 per annum. Most contracts of that amount are let by staff under delegated authority and members do not participate in those decisions yet their eligibility for office might be affected.
- 12.3 The Committee's report also notes that maintaining a register of interests is ad hoc – some councils include this in their code of conduct and others do not.

Recommendations

- 12.4 Review the Local Authorities (Members Interests) Act 1965.
- 12.5 Provide a consistent framework across all local authorities for registers of interests.

13 Probity

- 13.1 The Council notes that the Auditor-General is responsible for monitoring the use of public funds and public property and had published guidelines about communications and the use of council resources during the pre-election period but withdrew these guidelines during the 2019 pre-election period. There is now a lack of guidelines for providing consistent action by councils during this period.

Recommendation

- 13.2 Auditor-General to republish guidelines on the use of council resources during the pre-election period.

14 Māori wards

- 14.1 The Council notes the consideration of the Committee given to the petition of Andrew Judd and records its current resolved position in regard to Māori wards:

That the Governing Body:

- a) ... reiterate to government the position adopted by Council in 2015 supporting the need for legislative change to allow Auckland to determine the number of members on the Governing Body and subject to that, agree in principle to establish a Māori ward and request for a consistent policy regarding Māori representation in line with legislation governing the composition of Parliament.

15 Review of representation arrangements

- 15.1 As part of the election process, councils are required to conduct a review of representation arrangements at least every six years.
- 15.2 Every other council can review the number of its councillors but the number of councillors on the Auckland Council governing body is set at 20 in the Local Government (Auckland Council) Act 2009.
- 15.3 Problems relating to this came to light in the review of representation arrangements for the 2019 elections. A workable option to address the under-representation in the Waitemata and Gulf ward would have been to increase the number of councillors but this option was not available.
- 15.4 As noted above, this restriction also affects decisions around the creation of Māori wards.

Recommendation

- 15.5 Amend the Local Government (Auckland Council) Act 2009 to remove the specification that Auckland Council's governing body will comprise 20 members in addition to the mayor so that Auckland Council has the same discretion as any other council to review its membership.

16 Timing of polls for creation of a Māori ward or change of electoral system

- 16.1 The current provisions in the Local Electoral Act 2001 for the council to resolve to change the electoral system (for example from FPP to STV) or to establish a Māori ward, allow for a petition for a poll of the community to be conducted. The Local Electoral Act requires the chief executive to advise the electoral officer as soon as practicable once a valid petition is received. If notice is received by 21 February in

the year prior to the election, the electoral officer must conduct the poll within 89 days of receiving notice from the chief executive.

- 16.2 In the case of Auckland Council, conducting a standalone poll of over 1 million electors costs over \$1 million.
- 16.3 By contrast, the council has the discretion to initiate its own poll and may choose to hold a poll in conjunction with an election, which would lower the cost.

Recommendation

- 16.4 Amend the Local Electoral Act 2001 so that if a petition for a poll in respect of a resolution relating to Maori wards or change of electoral system is received by 21 February in the year prior to an election, a council has the discretion to conduct a poll in conjunction with the next triennial elections.

17 Conclusion

- 17.1 The Council looks forward to appearing before the committee to speak to its recommendations.
- 17.2 Some of the Auckland Council local boards asked for their comments to be forwarded in to the committee and these are attached.