

# Submission on the Justice Select Committee Inquiry into the 2019 local elections

Society of Local Government Managers – February 2020





## RECOMMENDATIONS

SOLGM recommends that:

1. central and local government jointly develop proposals for centralised delivery of some or all local electoral functions, and consider these proposals alongside the status quo
2. the administration of District Health Board elections be moved to the Electoral Commission. This recommendation would apply regardless of the conclusions on administration of other elections currently administered locally
3. the Justice Committee note SOLGM's support for a single voting system for local elections
4. the Justice Committee note the advantages and disadvantages of the first past the post and single transferable vote systems
5. the *Local Electoral Regulations* be amended to explicitly allow electoral officers to issue a replacement ordinary vote on request by those who have not already voted
6. the *Local Electoral Act* be amended to allow setting of campaign expenditure limits by regulation
7. *section 57 of the Local Electoral Act* remain in its current form
8. disclosures of interests and gifts be reviewed as part of a wider review of the code of conduct provisions of the *Local Government Act* and of the *Local Authorities (Members' Interests) Act*
9. the *Electoral Act* be amended to allow access to the unpublished roll for electoral officers and staff that have made the declaration under the *Local Electoral Act*
10. the Committee agree its recommendation 33 be amended to allow councils to determine whether a non-mayoral vacancy be filled by election or appointment of the next highest polling unsuccessful candidate for up to six months from announcement of the final result
11. the security agencies be provided the financial and other resources necessary to support local authorities in identifying and mitigating risks of undue foreign influence in the local democratic processes
12. the Justice Committee agree that declining citizen participation and engagement is an issue of equal concern for both central and local government
13. the Justice Committee agree that local democracy should form a compulsory part of the civics curriculum
14. the Office of the Auditor-General be invited to update the existing guidance on managing communications in local authorities, especially in the election period
15. the legislation for the creation of Māori wards and constituencies in local elections be aligned with that which applies to the creation of other wards and constituencies. This extends to the abolition of a poll and the extension of appellate rights

16. further consideration be given to an amendment to the *Local Electoral Act* that provides for a mandatory judicial recount before any tied result proceeds to decision by lot
17. the *Local Electoral Act* be amended to require local authorities to print the ballot paper using random ordering of candidate names.

## WHAT IS SOLGM?

The New Zealand Society of Local Government Managers (SOLGM) thanks the Justice Select Committee (the Committee) for the opportunity to submit on the *Inquiry into the 2019 Local Elections* (the inquiry).

SOLGM is a professional society of 873 local government chief executives, senior managers, and council staff.<sup>1</sup> We are an apolitical organisation that can provide a wealth of knowledge of the local government sector and of the technical, practical and managerial implications of legislation and policy.

Our vision is:

*professional local government management, leading staff and enabling communities to shape their future.*

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, to the less glamorous but equally important supporting activities such as the collection of rates.

### This submission

In the rest of this section we comment specifically on the role that the Society plays in the local electoral process. The remainder of the submission is divided into two parts. In Part One we respond to the recommendations that the Committee made in its recent report into the 2017 General Election and the 2016 Local Elections (the report). Part Two raises a number of other matters for the Committee's consideration.

The Committee has broadened its inquiry to include elections to energy trusts. These bodies make appointments to their boards based on the terms of their deed of trust and founding documents. While many trusts specify that their elections are conducted in accordance with the *Local Electoral Act*, this is a matter of convenience rather than a statutory requirement. We have no further matters to raise with the Committee on energy trusts.

### SOLGM's role in local elections

SOLGM makes a substantial contribution to the success of the local electoral process.

The *Local Electoral Act 2001 (LEA)* formed part of the last substantive (and integrated) review of the three canons of local government law, which gave rise to the *LEA*, the *Local Government Act 2002* and the *Local Government Rating Act 2002*. SOLGM led the development of a case for the review that ultimately resulted in the enactment of the *LEA*. The July 2000 SOLGM/LGNZ publication, *A New Legislative Framework for Local Government Elections*, was developed with members of SOLGM's Electoral Working Party 'holding the pen'.

SOLGM supports electoral officers in the transparent and efficient conduct of local elections. Each triennium SOLGM provides electoral officers with a revised and updated *Code of Good Practice* in local elections. The Code supports development of good practice relating to all facets of the local electoral process. It achieves this by identifying the key components of the local elections and polls process, linking in the relevant statutory references and supplementing this with recommended good practices supported by sample documents and references. It is prepared with the assistance of staff from the Local Government Commission and the Department of Internal Affairs.

<sup>1</sup> As at 15 February 2020.

The Code is the basis for the training that SOLGM provides electoral officers and other staff involved in local elections.

SOLGM also supports the efficient conduct of local elections through a series of joint procurement initiatives, and negotiating with providers of electoral services. These include joint procurement of:

- election insurance
- collateral for the enrolment campaign for the ratepayer franchise
- newspaper space to support the enrolment campaign for the ratepayer franchise
- competitive rates for the production and distribution of voting documents.

## PART 1: SOLGM RESPONSE TO THE COMMITTEE REPORT

### Centralised delivery of local elections

The report recommends that the Government consider giving responsibility for running all aspects of local elections to the Electoral Commission.

There is no single common international practice for the administration of local elections. Most Australian states have a state-level electoral commission that administers state and local elections. In Northern Ireland there is a single returning officer, who appoints the chief executives of local authorities as the deputy returning officer in each local authority. Elsewhere in the United Kingdom, local authorities appoint their own returning officers who administer all elections (including central government) to nationally set performance standards. Most local jurisdictions in the United States run their own elections – including local delivery of the federal elections. There is a mix of practice in Canada – in some provinces local authorities run their own elections, in others a provincial-level body is responsible.

SOLGM considers that there is enough of a case for centralising some or all local electoral functions that a more in-depth investigation of such a delivery model is warranted. Functions such as an investigative or ombudsman role, the conduct of promotion and working to strengthen civics education may well lend themselves well to centralisation.

A centralised agency may be better able to research, develop and implement new voting methods. A centralised agency is likely to have a greater level of internal capacity to undertake the many and varied tasks that come with a new voting method e.g. developing any technology, advising on the regulatory framework that accompanies the method, developing and administering public education about the new method and so on.

Similarly, a centralised agency would have the capacity to commission national level education and promotional campaigns for local elections. Additionally, the Electoral Commission would have its experiences in promoting and voter education in Parliamentary elections to draw on.

It is a fact that the local government sector's capacity to undertake national level initiatives is limited by the fact that membership of the national bodies such as SOLGM and LGNZ is voluntary. There is no compulsion to contribute to a promotional campaign or developing a new technology. It is sometimes argued that a centralised body will promote greater consistency in the interpretation and application of electoral law and regulations.

We are not as convinced by this argument as others. The two private providers of election services provide election services to about 70 of the 78 local authorities. SOLGM's *Code of Electoral Practice* also provides a set of templates, advice and interpretations that is seen as industry standard. That is to say that there is a degree of consistency already built into the existing arrangements. Often perceived inconsistencies in approach come down to small changes in factual circumstances that trigger different approaches at law.

Any move to a centralised model of delivery will need to address three key concerns.

The first is that centralising the delivery of local elections would effectively move elections to monopoly provision. Local government's experience with monopoly service provision by central government and its agencies is not encouraging. One of the drivers for the establishment of the present regime for performing council rating valuations was concerns at the charging practices of the then Crown-owned Valuation New Zealand.

We've recently seen reports that the New South Wales (NSW) Electoral Commission has advised that the cost of running local elections is to increase by 33 percent, with 10 local authorities being advised that their bill will double. NSW councils have been sufficiently concerned about cost recovery and charging that the NSW Independent Pricing and Regulatory Tribunal<sup>2</sup> is investigating.

Local government would need to be satisfied that there is sufficient equity, transparency and efficiency in what costs are recovered from local government, and how. There would also need to be an exceptional level of engagement with the sector in developing the approach to the administration of elections on the ground as well as activity such as a national advertising campaign.

A second and related concern lies in the Commission's ability to attract and retain the capability it would need to run local elections. On the face of it the Commission might well need to retain much of the capability it brings on to administer the Parliamentary elections on more or less a permanent basis.<sup>3</sup>

The Commission's existing regional infrastructure would need enhancement particularly if it were to be given a role to investigate alleged conduct issues during local elections. Similarly, it could be expected that the range of candidates and elections in play will be such that trying to deal with genuine queries won't be something that can be done at national level. The Committee has received advice from officials that at the 2019 local elections there were about 12 times as many positions up for election as in the 2017 general election, and about seven times as many candidates.

And thirdly, there are aspects of the election process where ongoing local government involvement and process might be required. For example, the administration of the ratepayer franchise requires access to the rating information database in each local authority and interaction with the out-of-district ratepayer that might be better handled locally. The issuance of special voting papers could not easily be handed nationally. For example, there are well over 130 combinations of voting documents in one local authority. Care would be needed to ensure that national administration of elections does not undermine any promotion or engagement activity undertaken locally. And most importantly of all, the representation review process should remain with local authorities – with the Local Government Commission acting as the appellate body.

## DHB elections

Regardless of the conclusions of the above review, it is past time that central government takes responsibility administering the election of district health board (DHB) elections. We also note that there is a legitimate question as to the appropriateness of the current governance arrangements given central government is the sole owner of most DHB assets, supplies the overwhelming majority of the funding and sets the standards.

Local authority conduct of DHB elections is no more than an historical convenience. There is no overwhelming policy or practice reason for the arrangement – though it does help local authorities meet the fixed costs of local elections. The Electoral Commission conducts elections for two different types of member of parliament, under two different electoral systems, and this year with referenda on euthanasia and cannabis reform added. The conduct of about 20 DHB elections on a single system sounds relatively simple by comparison.

<sup>2</sup> This body is, broadly speaking, the NSW equivalent of the Commerce Commission.

<sup>3</sup> One of the interesting scenarios we've pondered is how the Commission would or could cope in the case where a Parliamentary election is called or becomes necessary in the year that local elections are held, for example if a Government lost a vote of confidence or supply. While it would never impede a decision to call an election, the cost of the Commission hiring capacity short term would be considerable.

If the option of a separate DHB election does not appeal, there is always the option of holding the DHB elections in conjunction with the General Election. There are examples of jurisdictions that combine central and local elections. For example, some jurisdictions in the United States combine presidential, congressional, gubernatorial, state, and local elections for positions as varied as the mayor and county assessor (valuer).

## Recommendations

### Centralised delivery of local elections

1. That central and local government jointly develop proposals for centralised delivery of some or all of local electoral functions, and consider these proposals alongside the status quo.
2. That the administration of district health Board elections be moved to the Electoral Commission. This recommendation would apply regardless of the conclusions on administration of other elections currently administered locally.

## Voting systems

The Committee has recommended that central government either encourage or require a single voting system in local elections. The Committee didn't specify a preferred system. The current requirements that local authorities deliver DHB elections, and that election to DHBs is undertaken by single transferable vote (STV), is de facto a recommendation that all local elections be run under STV.

The different voting systems does have an impact on the level of informal voting in DHB elections. Data from the 2016 elections (the latest available at the time of writing) shows that informal voting in DHBs ranged from a low of 1.8 percent to as much as 5.2 percent. By comparison, informal voting in all local authority mayoral elections was less than 0.6 percent of turnout.

SOLGM agrees there is merit in exploring a single voting system for all local elections. But which one?

As a managerial organisation it is not for us to have a position as to which of first past the post (FPP) or STV is deemed to be the best system. Each has its advantages and disadvantages. We replicate, for the Committee's consideration, the advice that SOLGM commissioned from Professor Janine Hayward of the University of Otago and which appears in our *Code of Good Electoral Practice*.

### What are the advantages and disadvantages of each system?

No electoral system is perfect, and different people will have different views on what is 'fair'. Both FPP and STV have advantages and disadvantages.

The advantages of FPP relate to the simplicity of the process including the ways votes are cast, counted and announced.

The disadvantages of FPP relate to:

- disproportional election results, including the generally 'less representative' nature of FPP councils
- the obstacles to minority candidate election
- the number of wasted votes.

Overall, the advantages of STV, on the other hand, relate to the people who get elected using STV.<sup>4</sup> The system potentially achieves:

- broad proportionality (in multi-member wards/constituencies)
- majority outcomes in single-member elections
- more equitable minority representation
- a reduction in the number of wasted votes.

The disadvantages of STV relate to:

- the public are less familiar with the system and possibly find it harder to understand
- matters of process such as the way votes are cast and counted (for example perceived complexity may discourage some voters)
- the information conveyed in election results.

Deciding which electoral system is best for your community may come down to deciding which is more important: process or outcome. Unfortunately, neither electoral system can claim to achieve well in both.

<sup>4</sup> For further discussion, see Graham Bush, 'STV and local body elections – a mission probable?' in J. Drage (ed), *Empowering Communities? Representation and Participation in New Zealand's Local Government*, pp 45–64 (Wellington: Victoria University Press, 2002).

## More detailed advantages and disadvantages

FPP	STV
<p><b>FPP: casting votes</b> FPP is a straightforward system of voting.</p> <p>FPP is familiar to most people.</p> <p>'Tactical' voting is possible; votes can be used with a view to preventing a candidate from winning in certain circumstances.</p> <p><b>FPP: counting votes</b> FPP is a straightforward system for counting votes.</p> <p>Votes can be counted in different locations and then aggregated.</p> <p>Election results are usually announced soon after voting ends.</p> <p><b>FPP: election results</b> Official results show exactly how many people voted for which candidates.</p> <p>Results are easy to understand.</p> <p>A 'block' of like-minded voters can determine the election of multiple candidates in multi-member wards/ constituencies, without having a majority of the votes, thereby 'over-representing' themselves.</p> <p>The overall election results will not be proportional to voters' wishes and will not reflect the electoral wishes of the majority of voters, only the largest group of voters who may not be the majority.</p> <p>In single-member elections, the winner is unlikely to have the majority of votes, just the largest group of votes.</p> <p>There will be more 'wasted' votes (votes that do not contribute to the election of a candidate).</p>	<p><b>STV: casting votes</b> STV is a less straightforward system of voting.</p> <p>There is a need for more information for people to understand the STV ranking system of candidates.</p> <p>It is virtually impossible to cast a 'tactical' vote under STV. As a result, voters are encouraged to express their true preferences.</p> <p><b>STV: counting votes</b> STV vote counting requires a computer program (the STV calculator).</p> <p>Votes must be aggregated first and then counted in one location.</p> <p>Election results will usually take longer to produce.</p> <p><b>STV: election results</b> Official results will identify which candidates have been elected and which have not and in which order. They do not show how many votes candidates got overall, as all successful candidates will have the same proportion of the vote (the quota). This information, at stages of the count, can still be requested.</p> <p>Results can be easy to understand if presented appropriately.</p> <p>STV moderates 'block' voting as each voter casts only one single vote, even in multi-member wards/constituencies.</p> <p>The overall election results reflect the wishes of the majority of voters in proportion to their support for a variety of candidates.</p> <p>In single-member wards/constituencies, the winner will have the majority of votes (preferences).</p> <p>Every vote is as effective as possible (depending on the number of preferences indicated) meaning there are fewer 'wasted votes' and more votes will contribute to the election of a candidate than under FPP.</p>

## Recommendations

### Voting systems

3. That the Justice Committee note SOLGM's support for a single voting system for local elections.
4. That the Justice Committee note the above information on the advantages and disadvantages of the first past the post and single transferable vote systems.

## Voting methods

### An advance booth voting trial

The Committee has recommended that central government pilot a trial of advance booth voting. We support this in principle – of course local authorities can offer booth voting over more than one day at present.<sup>5</sup>

It is a more formal step on from those local authorities took in 2019 such as collection of votes in places such as libraries, taking special voting to a wider range of places.

Better empowering advance booth voting would be most effective if councils were able to issue a replacement ordinary vote. In effect this would mean that if an elector presents themselves at an advance polling place, the staff would be able to print off their paper (including the bar code and other features designed to support end to end assurance). The alternative at present is that the elector would either claim they lost or spoiled their paper (and be issued a special vote) or they would be turned away.

We do not intend that this be a device for allowing people to change their vote if they have "buyers remorse". A person who attempts to vote more than once would still be subject to the provisions of the *LEA*, including potential prosecution.

## Recommendation

### Replacement ordinary votes

5. That the *Local Electoral Regulations* be amended to explicitly allow electoral officers to issue a replacement ordinary vote on request by those who have not already voted.

## Voting in community venues

We strongly encourage local authorities to place collection boxes in places such as libraries, operate mobile collection stations etc. We temper this with advice about the need to ensure security, secrecy of the ballot and so on. To our knowledge no issues have been raised around security of these facilities at the most recent elections, or any other.

<sup>5</sup> See regulations 88 and 134 of the *Local Electoral Regulations 2001*.

We are aware of instances where candidates have challenged the placement of some facilities and whether that provided electors with equal opportunity. For example, one local authority announced an intention to place ballot boxes at the local University. Several candidates challenged the neutrality of such a decision.

## **Better accessibility for local elections**

### **Accessible formats**

SOLGM agrees that election information should be provided in accessible formats. Most local authorities have made significant strides in making their websites more generally accessible. We accept that there is still some potential to make candidate profile statements available in accessible formats. We are not convinced that accessibility is a concept that can be legislated for – accessibility is an ever-evolving concept.

### **Electoral Access Fund**

The Committee recommends that the Government develop a funding model to support disabled people with the disability-related costs of standing as a candidate in an election or seeking selection as a candidate.

This is based on the *Electoral Access Fund Bill* that establishes a fund for candidates seeking election to Parliament, with the fund being administered by the Electoral Commission.

SOLGM supports the recommendation in principle. We agree that candidates with disabilities will incur costs that no other candidate faces. The Member who sponsored the *Bill* on introduction gave examples such as “*New Zealand Sign Language interpreters at candidate debates, political information distributed in Braille, and coverage of special transport costs incurred by disabilities*”.<sup>6</sup>

While we would prefer that any extension of the scheme use a funding model that already exists, we accept that there may be differences in the local electoral framework that mean the same rules cannot apply. For example, candidates can stand for election to multiple positions e.g. a territorial candidate might stand for mayor, councillor and community board member, it's possible to stand for election to a council and a district health board etc.

### **Overseas voting for local elections**

We agree that the processes for overseas voting in general and local elections should align. Under the *Local Electoral Act* as it stands the voter has to know that they will be at a particular postal address during a particular window of time (in some parts of the world that window may be as narrow as 2-3 days even if the international postal system works to the optimum). The difference in processes between local and central elections is one of the larger frustrations that electors experience and communicate to electoral officers.

## **Improving information about voting in local elections**

### **Election advertising**

SOLGM supports the group of recommendations that promote alignment of advertising rules between the *Local Electoral Act* and the *Electoral Act*. Democracy flourishes where political discourse is encouraged – having different rules applying to central and local government creates an unnecessary barrier to such discourse.

<sup>6</sup> Swarbrick, *Electoral Access Fund Bill* – Speech at First Reading downloaded from [https://www.parliament.nz/en/pb/hansard-debates/rhr/com-bined/HansDeb\\_20180516\\_20180516\\_16](https://www.parliament.nz/en/pb/hansard-debates/rhr/com-bined/HansDeb_20180516_20180516_16)

We would also strongly support the annual indexing of expenditure limits. Even in a low inflation environment inflation still moves at 4-5 percent over the course of a triennium. We submit that the *Act* should be amended to allow for the setting of expenditure limits through regulation than by statute. Parliament's time ought not be diverted for mechanical amendments such as these.

### Recommendation

#### Campaign expenditure limits

6. That the *Local Electoral Act* be amended to allow setting of campaign expenditure limits by regulation.

### Candidate Affiliation

The Committee has recommended that electoral officers may require candidates to furnish evidence that any group or organisation they claim to represent or be affiliation actually exists. We consider that the existing *section 57* of the *Local Electoral Act* adequately regulates this situation.

It allows the electoral officer to require proof that the group or organisation exists and empowers the electoral officer to work with the candidate to agree on an alternative wording, or disallow an affiliation outright. It appears that the *Act* is quite permissive in regards what's accepted as proof. The alternative would be a specified list of types of evidence.

### Recommendation

#### Candidate affiliation

7. That *section 57* of the *Local Government Act* remain in its current form.

### Elected member interests

We generally support the Committee's conclusions about the disclosure of elected member interests. Local authorities and their elected members and staff continually wrestle with these issues as the legislation is far from complete or clear.

As they stand the code of conduct provisions of the *Local Government Act 2002* do not require the establishment of a register on members' interests. The council itself can vote to include or remove the provisions requiring disclosure of interests in a register. This is one of the most common questions SOLGM receives after each triennial election.

Not only is there no compulsion to have a register of interests, the sanction for not completing the required register is weak at best. The *Local Government Act* specifically says that a breach of a code of conduct is not an offence and leaves it to local authorities to investigate and enforce breaches of their code of conduct. The sanctions available where a breach can be established are limited – censure, removal from council committees, committee chair roles and so on. This tends to make code of conduct inquiries both highly politicised and limit their effectiveness.

The provisions of codes of conduct vary. For example, some are silent on requirements to disclose gifts and hospitality, some have limits as low as \$150, others are higher.

In short, an effective register of interests needs legislative compulsion and legislative sanctions. It may be that the *Local Authorities (Members' Interests) Act 1968 (LAMIA)* is more appropriate for such a requirement.

### **The Local Authorities (Members' Interests) Act**

The Committee correctly identifies *LAMIA* as part of the overall framework governing elected member interests. We submit that any review of provisions governing elected member interests and conduct that excludes *LAMIA* would be a job half-done.

*LAMIA* is complex, outdated and difficult to interpret and apply. It predates accrual accounting, the modern financial management provisions, requirements to have a code of conduct and the introduction of mandatory competitive tendering for NZTA funded road works and its acceptance elsewhere. It also predates the common practice that elected members declare their interests. Some core concepts, such as pecuniary interest, are not defined.

The *Act* establishes two key rules that govern the management of elected members' pecuniary interests (non-pecuniary interests are not included). These are the:

- discussing and voting rule and
- contracting rule.

The discussing and voting rule holds that elected members must not vote or take part in discussion of any matter where they have a pecuniary interest (other than one in common with the public). Breaching this requirement is a criminal offence and, on conviction, a member is removed from office. However, it is not always easy for elected members to determine whether their interests are pecuniary or whether they are in common with the public.<sup>7</sup>

The second of the key rules is the so-called contracting rule. There are a number of concerns with this provision. For example:

- disqualification is automatic, and there is no prosecution or formal declaration of the fact (unless the elected member acts while disqualified)
- it is not clear how long disqualification lasts
- it is unclear whether the *Act* applies to, or should apply to, council controlled organisations and
- the \$25,000 limit has not been amended since 1982. Adjusting for inflation since then means this limit now has little more than a third of the 'value' it did then. (It is even less certain given it is not clear whether this limit includes or excludes Goods and Services Tax).

We query whether this provision is needed at all. Having an interest in contracts with a local authority would create a conflict of interest for an elected member that might apply to a certain area, or areas, of the local authority's operations. But should the fact that Cr Smith owns a road contracting business that contracts with the local authority automatically rule them out from involvement in decisions around parks or libraries or water supply? It is also hard to conceive of a circumstance where an interest of this nature would not also be pecuniary.

<sup>7</sup> To give an example, an elected member discussing and voting on the general rate has an interest in common with all other owners of rateable property and would be able to discuss and vote under *LAMIA*. However, where a targeted rate is over a particularly small group of ratepayers an elected member may find themselves with a pecuniary interest.

## Recommendation

### Elected member interests

8. That disclosures of interests and gifts be reviewed as part of a wider review of the code of conduct provisions of the *Local Government Act* and of the *Local Authorities (Members' Interests) Act*

## Local election timeframes

Recommendation 28 would move the electoral timetable forward a week as per our recommendation to the last inquiry. The Committee rightly identifies the main implication as the adoption of the annual report for the financial year preceding the election year. We understand that 51 of the 78 local authorities adopted their annual plan before the election, most of the 27 others were smaller local authorities.

We also note that there is the option of moving school holidays back one week.

## Updating local election processes

### Transmission of nomination papers

We support recommendation 29 – that the *Act* be amended to allow the electronic receipt of nomination papers (i.e. nomination forms and candidate profile statements). This was one of the recommendations in our submission to the Committee's last inquiry.

In 2019 there were rural communities where it took a week or more from dispatch for postal deliveries to get to and from councils. Councils were advising candidates (and voters) to 'post early'.

### Proof of citizenship

We support recommendation 30 – that the *Act* be amended to allow electoral officers to require the production of proof that candidates are New Zealand citizens and that processes be aligned between the *Local Electoral Act* and the *Electoral Act*.

This was also one of the recommendations in our submission to the 2016 report. We noted at that time that one in four New Zealand residents were not born here and that we expect that this issue will not 'go away'. As we predicted the electoral officer in at least one local authority was challenged to cite the statutory provision that required candidates to furnish proof.

### Ratepayer roll

The Committee has picked up a recommendation from our own submission that ratepayer enrolment be made continuous.

There is a degree of public misconception, stoked by the media, that the ratepayer franchise somehow breaches the one person, one vote principle. Those who make these arguments commonly follow it with comments such as "no-one gets two votes in a general election". This is based on a misunderstanding of the nature of local governance – each local authority is a single jurisdiction and those on the ratepayer roll pay local tax (i.e. rates) in that jurisdiction.

A person may not exercise a vote on the ratepayer franchise and one on the general franchise in the same local authority. Denying a ratepayer elector the opportunity to vote is to deny the principle of “no taxation without representation”.

We agree that numbers on the franchise have dropped markedly over the last 30 years. We would argue that the requirement to reapply for ratepayer enrolment was one factor. The temporary disappearance of the franchise in the 1990s may have been another.

### **Checking Special Votes**

Once again, we recommended that local authorities be provided with access to the supplementary roll and the deletions file. The latter was suggested by the Electoral Commission itself.

We renew our objections to the stance that legislation takes with respect to access to the unpublished roll. By law, details of those on this roll cannot be provided to anyone outside the Electoral Commission. This includes local authority electoral officers and their staff.

We understand the personal safety concerns of those on the unpublished roll. We remind the Committee that electoral officers and staff make a declaration, which includes an undertaking not to disclose information received in this role unless authorised by the *LEA*. An intentional or reckless breach of this *Act* is an offence. We suspect that an electoral officer guilty of any breach, whether intentional or not, would also face disciplinary action, and quite probably the Chief Executive of the council would too.

### **By-elections**

The Committee recommends that the *Local Electoral Act* be amended to require that where non-mayoral vacancies arise in the 12 months following a triennial election, the vacancy be filled by the next highest polling candidate.

While we accept that conducting a by-election can be costly, but we do not support this proposed amendment in its current form. We suspect that this provision might raise as many public concerns as it quells. For example, an outgoing elected member who as little as a few days before might have been resoundingly rejected by the electorate might well find themselves back on council. It leaves unclear what would happen if the next highest polling candidate did not wish to take the position – would it then go to the second highest polling candidate. We submit that local authorities are best placed to make a judgement as to whether a further election should be called in the event vacancies arise in the immediate aftermath of a triennial election.

Our view is that allowing a 12-month window for these judgements is too long a period. In the course of a year new candidates may wish to stand for any vacancy – perhaps due to decisions that a council has taken in the previous 12 months. We suggest a period of six months from the announcement of the result covers most post-election contingencies in that elected members should understand the demands of the position, any post-election dynamics should have played out.

## Recommendations

### Updating local election processes

9. That the Committee agree that the *Electoral Act* be amended to allow access to the unpublished roll for electoral officers and staff that have made the declaration under the *Local Electoral Act*.
10. That the Committee agree its recommendation 33 be amended to allow councils to determine whether a non-mayoral vacancy be filled by election or appointment of the next highest polling unsuccessful candidate for up to six months from announcement of the final result.

### Foreign interference in local elections

SOLGM agrees that foreign interference, or the perception of foreign interference, is a risk in New Zealand politics at all levels.

Foreign interests might want to acquire influence over regulatory decisions in a particular council, such as the allocation of water rights or particular planning and consenting decisions. Equally foreign interests might want to intervene in decisions to undertake certain infrastructure investments and where there are awarded. More generally foreign influence might be sought as a means of compromising public trust in government.

To the best of our knowledge there has been no comprehensive assessment of the likely level and location of risks that undue foreign influence might be sought or achieved at local government level. The intelligence agencies might assist the sector to undertake such an assessment and provide the sector with guidance on how individual local authorities might undertake their own.

In its testimony to the Committee both intelligence agencies submitted they are not resourced to provide such support to local authorities. If the agencies are genuinely concerned about the levels of risk of foreign interference in local democracy, that is advice central government should be taking seriously in the next budget round.

For the most part we concur with the recommendations the Committee has made in this section of the report. That includes the Committee's recommendation that postal voting and voting in person remain the preferred voting methods in the foreseeable future.

## Recommendation

### Foreign influence

11. That the security agencies be provided the financial and other resources necessary to support local authorities in identifying and mitigating risks of undue foreign influence in the local democratic processes.

## PART 2: OTHER MATTERS

### Turnout

Overall, the 2019 local elections saw a small drop in turnout to 41.7%, down 0.3 from the last elections. The data is explained by lower turnout in Auckland and Wellington (which together account for more than a third of the electorate) which outweighed higher turnout in the provinces, thereby resulting in a lower overall turnout.

As usual voting in local elections was highest in rural councils with the median being 52% across 26 councils. The provincial council turnout is the next highest, with a median of 47%. Finally, the metro council median is 40%. As for previous elections Nelson remains the only metro area with turnout greater than 50%.

In 2014 the Inquiry into the 2013 Elections received advice from the Department that the causes of turnout are many and varied but can be classified into three general drivers:

- a lack of salience (perceived relevance in voting)
- a lack of information about candidates and issues and
- procedural blockages that might create barriers to registration voting.

Low turnout is used by some commentators as a stick to beat the sector with. We argue that turnout is but one measure – access to a fair and efficient process is the bedrock measure of success. However, most election research suggests that lower turnout begets even lower turnout in future elections.

A survey of the 2016 elections by Auckland Council<sup>8</sup> explored voter awareness. Prior to the 2016 election 75% of people intended to vote but turnout was only 38.5%. The survey revealed that reasons for not voting were divided into three main categories, effort, timing and apathy. For some, there was too much effort involved in finding out about candidates and policies and there were barriers to accessing information. Others lost track of time and missed the postal voting dates, or simply just forgot to vote. Still other people gave responses such as “I’m not interested in politics or politicians”, “I don’t think my vote will make a difference”, and “I can’t be bothered voting”, which all fell into the apathy category.

Voter turnout can be increased by employment of different mechanisms such as the ones used by the Electoral Commission in the 2017 general election. That is, strategies such as improving the ease by which people can vote or stand and better promotion of the event. This is supported further by ongoing research that Auckland Council is undertaking around behavioural insights and local elections from which the two key lessons are to make voting easy and make voting social. Technical and procedural matters that have already been changed for the general election to increase participation should also be incorporated into local election legislation. These include overseas voting, special votes, more accessible voting place locations and compliance with campaign rules.

We submit that citizen engagement is a matter of equal concern for both local and central government, and we need to work together on shared problems such as accessibility, review of outdated processes, and inculcating civic values in citizens.

<sup>8</sup> Awareness of and attitudes towards voting in the 2016 Auckland Council elections <http://knowledgeauckland.org.nz/publication/?mid=1657>

## Recommendation

### Citizen participation

12. That the Justice Committee agree that declining citizen participation and engagement is an issue of equal concern for both central and local government.

### Civics education

One of the more disappointing aspects of post-election research is that there are those in the non-voting population who do not consider local government relevant to them, or do not consider voting would make a difference in the way their local authority is run.

In our submissions to previous inquiries we have spoken of the need to inculcate an understanding of the institution of local government and its role in New Zealand's constitutional arrangements at an early age. The obvious place to do this is through the civics education curriculum.

In its response to the 2013 Inquiry into Local Elections the Government undertook to "work with LGNZ (sic), SOLGM and other local council organisations to encourage the provision of experiential learning opportunities for schools".<sup>9</sup> There has been no progress on these matters in any meaningful way. Indeed, we feel that there has been some loss of momentum in that:

- New Zealand chose not to participate in the 2016 International Civics and Citizenship Education Study (in fairness we note that none of the other English-speaking jurisdictions did so)
- the cross-department Growing Active Citizens group appears to have gone into abeyance
- we can find no evidence that augmentation of the civics curriculum was even considered in the most recent review of the curriculum. This appears to have been a missed opportunity.

We are aware that the Scandinavian countries make experiential learning a key component of their programmes. It's also the rationale for the Kids Voting programme that the Electoral Commission oversees at parliamentary level (and some local authorities also support at local level). The American Centre for Civic Education runs a programme called 'We, The People' where high-school age children debate issues of relevance and discuss constitution related issues. As of the time of writing, central government and its agencies had not approached SOLGM or LGNZ in regards these matters.

LGNZ and some local authorities devoted time and energy to producing resources to enable incorporation of a local government component into civics education. It is reliant on the willingness of the teachers to adopt these for use in a topic that doesn't form a mandatory part of the civic-related aspects of the curriculum. We renew the recommendation that we made in 2017.

## Recommendation

### Civics education

13. That the Justice Committee agree that local democracy should form a compulsory part of the civics curriculum.

<sup>9</sup> New Zealand Government (2015), *Government Response to Justice and Electoral Committee Report on Inquiry into the 2013 Local Elections*, page 3.

## Release of information

The Committee asked for comment regarding “*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*”. We comment on the general principles rather than commenting on particular decisions to release or withhold information during the 2019 elections,

The principles that govern the actions of council staff when making decisions to release information are:

- the normal business of council continues during the election period, this includes adherence to the statutory responsibilities of the council - this principle includes the obligations to prepare accountability documents (such as the annual report), the release of information under the *Local Government Official Information and Meetings Act* and so on
- council staff have an obligation under their employee codes of conduct to undertake their duties in a politically neutral manner, and in accordance with council policies and practices, and any lawful instructions from the chief executive
- any communications during the election period must be scrupulous in their adherence to the principles for managing public communications set out by the Auditor-General – particularly relevant in the election is the principle that communications must not promote, nor be perceived to promote the re-election prospects of a sitting member.

These principles are generally known and accepted throughout the sector. They apply at all times and are deceptively simple. Applying them to particular factual circumstances can be challenging, particularly during the period when political sensitivities and media scrutiny are at their greatest.

The Auditor-General’s publication is a useful general resource for those whose roles involve communication with the public. In addition to the above it provides guidance on subjects such as the use of council resources in the election period. The guide pre-dates the era of social media but many of the principles are still sound.

We understand that the Auditor-General intends to withdraw the guide from publication now that the election period is over. We understand that the Office is concerned that it has no particular expertise in communications and that its increasingly unable to render opinions on these matters.

We would be concerned if this occurred – the Office is able to exercise a degree of moral suasion that sector guidance simply would not have. The judgements that the Office makes are not around the effectiveness of a communication, or even whether it makes for good communications practice, but (to use a shorthand term) around the probity of expenditures e.g. communications strayed across the line into promoting the affairs of an elected member.

### Recommendation

#### Communications in the pre-election period

14. That the Office of the Auditor-General be invited to update the existing guidance on managing communications in local authorities, especially in the election period.

## Māori wards and constituencies

As a managerial organisation it is not our normal practice to comment on representation issues. However, this particular matter relates to the process through which the choice to have a separate Māori ward/constituency is made.

This is a matter for local choice based on an informed consideration of the needs and preferences of the community, especially iwi and hāpu. In some communities, particularly those where the relationships are strong, Māori may see no need for dedicated representation or even see such a move as a retrograde step. A separate ward or constituency is but one means for ensuring Māori perspectives are incorporated into the decision-making process.

As the legislation currently stands, a council decision to establish a Māori ward or constituency may be overturned by referendum. The statutory trigger for such a referendum is a poll of at least five percent of electors on the electoral roll in the local authority.

There is no such trigger for polls with regard to other decisions around wards and constituencies. The only other representation decision that may be overturned by poll is the decision on the voting system.

Of course, most representation review decisions may be appealed to the Local Government Commission. However, we are advised that is not the case with the decision to establish a separate Māori ward or constituency and currently no jurisdiction exists. The Commission or its successor needs to be provided with the authority to consider appeals and objections related to Māori wards/constituencies, whether the appeal concerns a proposal to establish such wards and constituencies or the lack of any such proposal.

The poll provision whether consciously or otherwise, impose a higher procedural standard on one particular representation arrangement than applies to others. There is no solid policy rationale for the difference in approach. We consider it potentially inconsistent with the Crown's obligations under the Treaty of Waitangi. The debate at local level becomes divisive (the petition of Andrew Judd highlights this) and can subsume or distract attention from the other choices' communities need to make.

### Recommendation

#### Māori wards and constituencies

15. That the legislation for the creation of Māori wards and constituencies in local elections be aligned with that which applies to the creation of other wards and constituencies. This includes the abolition of a poll and the extension of appellate rights.

## Tied elections

There were a number of extremely close elections in 2019. There was some public concern at the resolution of the tied election in Whakatane District Council where the candidate declared elected after the decision by lot was unseated after a judicial recount. The fact is any result can be overturned up until the last opportunity for review has passed. The same principle applies in Parliamentary elections where candidates can (and have) been declared unseated after an electoral petition (in one case 364 days after the election).<sup>10</sup>

We consider that information for candidates around post-election processes could be enhanced to clarify both what steps are available and how close results are managed. We will consider this in the next review of the SOLGM *Code of Good Practice*.

There is merit in investigating whether a mandatory judicial recount should be undertaken prior to any decision by lot in a tied election. A judicial recount would provide an independent result with authority from the court and any further appeal to the results would be precluded.

### Recommendation

#### Tied elections

16. That further consideration be given to an amendment to the *Local Electoral Act* that provides for a mandatory judicial recount before any tied result proceeds to decision by lot.

## Order of candidate names

There is evidence from overseas that the order in which candidates appear on a ballot paper can influence the final result – admittedly little of this is from local elections. The legislation allows local authorities the option of resolving whether candidate names be in alphabetical order, quasi-random order or fully random order.

The decision is one for the elected members. The Justice Committee may wish to reflect on the appropriateness of those who stand to benefit from a decision being permitted to make it. With modern printing methods there is very little additional cost in arranging to randomise the list of candidate names on the ballot. We do not propose to extend this to the candidate profile booklets – the voter is less likely to pick through a randomised set of 150-word statements.

### Recommendation

#### Order of candidate names

17. That the *Local Electoral Act* be amended to require local authorities to print the ballot paper using random ordering of candidate names.

<sup>10</sup> Two examples spring readily to mind of Members of Parliament declared elected in this way – the Rt Hon Winston Peters (Hunua, 1978 declared in 1979) and the Hon Wyatt Creech (Wairarapa, 1987 declared in August 1988).



Professional excellence in local government

New Zealand Society of Local Government Managers (SOLGM)

Level 9, 85 The Terrace  
Wellington

PO Box 10373  
Wellington 6143

Phone 04 978 1280  
info@solgm.org.nz • www.solgm.org.nz