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A New Legislative Framework for Local Government Elections

*A Policy Position Statement
by*

*Local Government New Zealand and
New Zealand Society of Local Government Managers*

March 2000



local leadership, national voice...

Local Government New Zealand

Local Government New Zealand provides policy, research and advocacy services to local government in New Zealand. All city, district and regional councils in New Zealand are members. Our mission is to promote the national interests of local government.

We work to the following guiding principles:

- independent **local** government complements and balances central government in a healthy democracy
- difference and diversity in local government is a value and a strength
- independence of funding is the key to local government autonomy and community choice
- caring for and developing **communities** is a core value of local government
- local government commits to being fully representative of its communities in order to best lead, govern and manage
- local government asserts the right to influence its own destiny and in return accepts accountability for efficient and effective governance

Society of Local Government Managers (SOLGM)

The Society's membership comprises some 545 chief and senior executives from local authorities throughout New Zealand.

Its Vision is:

Quality professional management by the Society's members producing better local government

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1. INTRODUCTION

The processes by which local government members are elected lie at the heart of the relationship between local authorities and the communities they serve, which is the basis of local government. Elections provide a forum for communicating and debating community priorities and values and, perhaps more importantly, they represent the ultimate accountability for existing councillors.

This document sets out the local government sector's proposals for changes to the legislation governing local authority elections. It has been prepared:

- to promote discussion and debate with other organisations with an interest in local government; and
- as the basis of an approach to central government for legislative reform.

Most of the current legislation governing local authority elections is now nearly 25 years old and does not meet the present or future needs of either local authorities or their communities. As an example, changes in technology have introduced a wider range of potential electoral processes that may be cheaper or more appropriate than the systems currently permitted.

The need for fundamental change to the Local Elections and Polls Act 1976 has been recognised by the sector for more than a decade. The need for a major review has also been recognised by Parliamentary Select Committees dealing with amendments and proposals in this area. The Internal Affairs and Local Government Select Committee, in relation to its Inquiry into the Early Processing of Voting Papers at Local Authority Elections in 1999, recommended in its report to Parliament:

“That the Government give consideration to a review of the Local Elections and Polls Act 1976 to:

- *take account of our recommended adjustments to the early processing option*
- *modernise the Act in the light of current and emerging practices*
- *and for this review to be completed in time for amending legislation to be in place before the process commences for the next Local Authority elections (ie before March 2001) ”*

The Prime Minister, the Rt Hon Helen Clark, as reported in the NZ Herald following the Forum between Central and Local Government on 7 March, signalled the review of the Local Elections and Polls Act before the next local authority elections and commented on the restricted and out dated nature of the Act.

In the spirit of partnership with central Government, local government has willingly accepted the responsibility of undertaking this review to strengthen local democracy and make electoral processes more flexible and effective.

The proposals outlined in this document have been developed by a joint working party of *Local Government New Zealand* and the Society for Local Government Managers (SOLGM). Representatives of the Department of Internal Affairs also contributed. The Internal Affairs and Local Government Select Committee Report “. . . supported the working party established by SOLGM in its efforts to *draft* new legislation that will ensure the local election process used by Local Government will remain relevant and practical well into the new millennium.” The working party undertook considerable investigative and analytical work concerning possible future directions and shapes for local authority electoral arrangements and procedures. That work included extensive consultation *within the* local government sector, including a one-day “Electoral Way Forward” Forum for elected members and officers, and consideration of submissions on a discussion document.

It must be emphasised that there is a diversity of views and experiences within the local government sector on many electoral issues, but this document represents a draft policy position which, as far as is possible, reflects the views of the sector as a whole.

Local Government New Zealand and SOLGM now seek the views of other interested parties, on the proposals outlined in this document. We want to know whether there are other issues or points we should consider, and whether other stakeholders support both the general thrust of the proposed reforms and the specific changes outlined. Once we have received and analysed this feedback it is intended that a final local government sector position paper be produced, together with draft legislation reflecting the proposed changes. This final position paper will include the results of our canvassing of other stakeholders and may contain changes as a result of that input. If significant changes are proposed we will also undertake a further round of consultation within the local government sector.

Local Government New Zealand and SOLGM will present the sector’s final recommendations to Government in May of this year. It is hoped that the quality and robustness of the analysis, consultation and drafting reflected in those documents will facilitate their adoption by the Government and the smooth passage through Parliament of a new Local Government Electoral Act. The sector hopes to have changes in place in time for the next local government elections in October 2001. To achieve this, legislation would need to be passed by March 2001, prior to preparations for the elections.

2. UNDERPINNING PRINCIPLES OF NEW LOCAL GOVERNMENT ELECTORAL FRAMEWORK

A robust local government electoral legislative framework must cover a diversity of practices and contexts, and be able to endure through technological and procedural change. To do this it must be firmly based on a foundation of principles. Identifying and seeking commitment to specific principles tends to generate intense debate, but this debate is healthy and it is critical it occurs before legislative change. Unless the underpinning principles are debated, understood and generally supported by major stakeholders there are likely to be difficulties with the practical interpretation or implementation of statutory requirements.

The principles proposed as the basis for a local government electoral framework are:

Every election of one or more members of a local authority will be underpinned and conducted in accordance with the following principles:

- (a) Representative arrangements must be fair to all persons.***
- (b) Every qualified person must have reasonable and equal opportunity to:***
 - Cast an informed vote in the election of their representative(s)***
 - Nominate one or more candidates to be elected***
 - Accept nomination as a candidate to be elected without unnecessary impediment or obstacle***
- (c) Every person entitled to vote must have reasonable opportunity to exercise his/her vote in secret and free of immediate pressure or influence.***
- (d) The process for every election must maintain confidentiality of the individual vote and be open, transparent, certain and capable of subsequent audit.***
- (e) There must be accessible, impartial and authoritative procedures for the prompt and certain resolution of disputes concerning the conduct or result of an election.***
- (f) For every election held, there must be a result.***
- (g) Electoral systems must be those that best meet the needs of local communities.***
- (h) There must be freedom for each local authority to choose the voting methodology to be used in the election.***

3. THE LOCAL GOVERNMENT ELECTORAL ACT FRAMEWORK

The local government sector proposes that all legislation relating to local authority election and polls processes be consolidated within a single, new Local Government Electoral Act supported by regulations and codes of practice. This would include matters currently dealt with in the Local Elections and Polls Act 1976 and relevant provisions of the Local Government Act 1974, e.g. those covering the review of local authority membership and basis of election.

A major objective of the proposed new legislative framework is to combine longevity and consistency with the flexibility to accommodate changes to local authority electoral practices. Such changes may arise from future changes in the role and nature of local government, the social and economic environment in which local authorities exist, and particularly the technology by which communication and interaction between individuals and organisations can take place (e.g. the internet).

In order to achieve this objective, a three tiered approach to the legislative electoral framework is proposed.

3.1 *The Act*

The new Local Government Electoral Act would provide the “rigid” framework of principles and “core” provisions such as statements of electoral rights, offences, and dispute resolution procedures. While this would be drafted on a modular basis, to enable amendment without detracting from internal coherence or consistency, the Act is envisaged as providing a stable and certain code to cover local elections well into the future. Its provisions would be equally applicable to any electoral system that may be deemed appropriate for local government at some future date, and to any of a range of means of casting and counting votes.

3.2 *The Regulations*

A second tier of legislation would take the form of regulations covering the operation of different electoral systems and different voting methodologies. Regulations can be more easily extended and amended, and thereby provide flexibility to accommodate diversity and evolution in electoral systems and voting methodology while remaining consistent with the Act. It is not envisaged that regulations will dictate procedures in detail. Rather, they will set out key parameters and steps, together with the performance standards or objectives to be achieved by detailed processes.

The following topics and procedures are examples of the matters that might be covered by regulations:

- Notice of elections
- Nomination of candidates, including deposits, forfeiture and refund
- Withdrawal, incapacity or death of candidates
- Electoral systems
- Voting methodologies
- Advertising and campaigning
- Electoral rolls
- Special voting
- Hours of and duration of polling
- Early processing of voting papers
- Counting of votes
- Declaration of results

3.3 *Codes of Good Practice*

To accompany the implementation of the Local Elections and Polls (Processing of Voting Papers before Close of Voting) Amendment Act 1998, SOLGM (at the request of the Select Committee) produced a Code of Practice to guide Returning Officers. This Code operated very successfully. It is therefore proposed that detailed guides to ‘good practice’ in meeting the requirements of the Act and regulations will be set out in codes developed by the local government sector itself. Compliance with these

codes will not be mandatory, thus allowing innovation and diversity in meeting legal requirements. The codes will, however, provide guidance on one or more means of satisfying those requirements.

4. **SCOPE OF LEGISLATIVE FRAMEWORK**

It is proposed that the new legislative framework covers all matters relating to the elected membership of local authorities. This would include the matters currently dealt with in Part IVA (Membership, Wards and Constituencies) of the Local Government Act. It would also include provisions dealing with the membership and election of community boards in sections 10 1 ZQ and 10 1 ZR of that Act.

There are a number of reasons for including these provisions within the same legislative framework as those that deal more directly with elections. These can be summarised as two broad arguments:

- (a) The first is a practical one – the proposal would provide a single point of reference on all matters relating to the election of local authority members, to the advantage of members, candidates, officials, electors and the public generally. As noted earlier, the legislative framework has a special significance and role in electoral matters, which increases the importance of its accessibility beyond that of most other statutory law.
- (b) The second reason is related, but it is much more important. All legislation relating to the elected membership of local authorities must be built on, and derived from, the same basic set of democratic principles. The coherence and interdependence of this relationship can be better assured and expressed if all such matters can be dealt with together.

5. **STATEMENT OF POLICY**

5.1 *Membership and Representation*

As mentioned, it is proposed that the review of membership and basis of election process currently included in Part IVA of the Local Government Act be included in the new Local Government Electoral Act. The following outlines the key policy proposals on these issues, and identifies changes from the status quo.

5.1.1 Electoral Term

No change is proposed to the current 3 year electoral term or that all local authority elections be held on a common election day.

5.1.2 Size of Councils

The specification of arbitrary maximum and minimum numbers of council members (e.g. at present no council can have less than 6 members, and regional councils cannot exceed 14 while city/district councils cannot exceed 30) is inappropriate and inflexible. It is proposed that, instead of these prescriptions, criteria relating to overall size be added to the matters to be considered when membership and representation are reviewed.

5.1.3 Wards and Constituencies

Wards will continue to be discretionary, and it is proposed to extend this to regional constituencies as well. Again these should be matters for local discretion, subject to consideration of appropriate criteria.

It is also proposed that the third option of a mix of ward/constituency representation and councillors elected at large should be reintroduced to extend flexibility.

5.1.4 Qualifications of Electors

No change is proposed to the current entitlements to vote in a local authority election enjoyed by:

- Parliamentary electors who live within the local authority district (residential franchise); and
- Parliamentary electors who live outside the local authority district who either are ratepayers of the district or are nominated by corporate ratepayers of the district (ratepayer franchise).

5.1.5 Qualifications of Candidates/Restrictions on Candidacy (including joint candidacy)

It is proposed that the current requirement that local authority candidates be New Zealand citizens be reviewed. While the desirability of consistency with parliamentary elections is acknowledged, it is also felt that the importance of a commitment to New Zealand through citizenship is weaker at local government level. Local electors, rather than Parliament, should determine whether citizenship is necessary to elected membership.

It is proposed that the grand-parenting provision, which preserved the entitlements of certain non-citizens when the citizenship requirement was introduced in 1982, should be abolished whether or not the citizenship requirement itself is retained. If that requirement is retained, this may disqualify a number of existing councillors from re-election unless they obtain citizenship.

It is proposed to abolish all restrictions on multiple candidacies, such as that which precludes a regional council candidate standing for any territorial authority or any community board within that region. Such restrictions are inconsistent with the principle of allowing electors to choose their representatives.

However, it is proposed that a person cannot serve in more than one elected position, and that a person who is successful in more than one candidacy will be required to choose between them. Where successful candidates withdraw in favour of another **office**, the next popular candidate would be elected.

5.1.6 Review of Membershin and Basis of Election

It is proposed that the process for this be amended by replacing the first two stages (publication of council proposal, and hearing and consideration of objections) by the special consultative procedures under Section 716A of the Local Government Act 1974. This is the process required for the preparation and adoption of annual plans, long-term financial strategies and other policies, and requires the publication of a proposal and the receipt and hearing of public submissions on it prior to finalisation. This will **standardise** councils' procedures, and make public participation in these stages part of an evolutionary consultative process rather than a quasi-judicial adversarial contest.

It is proposed to retain the current right of appeal to the Local Government Commission against the outcomes of the special consultative process.

It is proposed that the review process should be extended to formally include consideration of the constitution, abolition, boundaries and membership of community boards. These issues are fundamental to democratic representation within each district and should be considered integrally and based on the same principles. Formally including community boards within the review process will also ensure public input into these decisions, which is not guaranteed under current law.

In accordance with the principle of equal representation, it is proposed to reintroduce maximum tolerances (eg previously + or – 10 percent) for variations between the population represented by each councillor in different wards and constituencies.

The existing criteria for the review of membership and boundaries are “fair” and “effective” representation of communities of interest within the district. It is proposed to add to these that councils (and the Local Government Commission) be required to have regard to other matters such as:

- the electoral system to be used;
- the effective and efficient operation of the council;

- the effective separation of regulatory and service delivery functions; and
- the costs of elected membership,

in determining membership numbers, representation arrangements and the boundaries of wards, constituencies and communities.

Finally, it is proposed that a review of membership, wards/constituencies and communities be required-for every second election, rather than for every election as at present. Reviews could still be undertaken after three years if the local authority considered this appropriate, in light of changed circumstances such as dramatic population changes or a change in the electoral system chosen by the community.

5.1.7 Maori Representation

Fair and effective representation of all significant communities of interest within a district must be the overriding objective of representative local democracy. However the special status of Maori as Tangata Whenua and Treaty Partner generates an obligation on Parliament to ensure that Maori are effectively represented in local government.

A range of approaches, such as different ward/constituency boundaries or the adoption of the single transferable vote system may successfully fulfil this obligation in some districts. In others, non-electoral arrangements such as the appointment of **iwi/hapu** representatives to council committees, the constitution of Maori standing committees, and agreement on effective and sincere consultation protocols may be successful. Nevertheless, the option of separate Maori representation (elected by Maori electors within the district), as proposed by Environment Bay of Plenty Regional Council, is endorsed as one that should be made available to councils and communities as a further tool which can be used alongside, or instead of, those described above.

5.2 *Electoral System*

It is **recognised** that the differing representation needs and preferences of different communities may require more than alterations to the number, shape and boundaries of electoral subdivisions of a city, district or region. It is therefore proposed that the legislative framework include scope for different electoral systems to be adopted by different communities.

It is proposed that the Act itself should not stipulate or assume any particular electoral system but should operate at a level equally applicable to any such system. The Act should, however, provide for a process whereby local councils and communities can choose between electoral systems mandated by, and operating in accordance with, regulations made under the Act.

At this time, only two electoral systems have been identified as viable options for local authority elections in New Zealand. These are:

- the current “First Past the Post” (FPP) system (operating on both single and multi-member elections),
- a Single Transferable Vote (STV) system (operating in multi-member elections and as preferential voting in single elections).

It is **recognised**, however, that other options or refinements may be developed or advocated in the future.

FPP and STV require different layout of voting papers, a different set of voting instructions and, particularly, very different procedures for the counting of votes. There will also need to be a process to ensure that where local choice is exercised by constituent territorial authorities and the regional council which emanate in different electoral systems within the region, the elections are not jeopardised through complexity. For example, to avoid voter confusion and potential increased informal votes, the regulations will need to require separate rather than combined voting papers and provide clear instructions to electors on how to vote under each system.

It is proposed that separate sets of regulations covering the conduct of elections under each of these systems would be promulgated. Additional regulations for other options may be added in the future as required.

Choices between electoral systems are intrinsically linked with the issues addressed in the review of membership ward/constituency boundaries etc., and have the common objective of effective and fair representation of communities of interest within the local authority district. Councils should be able to choose between the two electoral systems on behalf of their communities, but there should be opportunity for community objections/veto when councils get it wrong. One option is for both electoral system and representation issues to be addressed together as part of the (amended) review process. The **other** is for the choice of electoral system to be a separate process prior to the review of membership wards/constituencies etc.

Whichever approach is favoured, it is clear that there is insufficient time for new provisions to provide for either a choice of electoral systems or amended review procedures to be put in place in time for the 2001 local authority elections. These aspects of the new framework would therefore apply in respect of the 2004 elections. In other words, FPP would operate everywhere in 2001 and for the elections in 2004, subject to community objection/veto, councils would be able to choose between FPP and STV.

Community choices between electoral systems should be made on an informed basis. Authoritative and objective educational material on the two electoral systems would need to be developed before communities make their choices in 2003.

5.3 *Returning Officers*

It is proposed that, to avoid conflicts of interest, local authorities be strongly discouraged **from** appointing their chief executive as returning officer. This should not be prohibited, however, because some small councils may have no viable alternative to this. No elected member, candidate or close relative of a candidate in any election should be eligible for appointment as returning officer.

The provisions relating to the appointment of regional council returning officers should be the same as for territorial authorities, although the duties of regional council returning **officers** should continue to be limited to accepting nominations and collating/announcing results.

Returning officers should have responsibility for all administrative decisions concerning the election. However councils should retain responsibility for policy decisions reflecting community preferences, including representation issues, electoral systems and the voting methodologies to be used at the election. Council decisions in respect of the fundamental issues of representation and electoral systems should be subject to community objection or veto.

5.4 *Voting Methodology*

Voting methods are subject to changes in technology and the social environment. Postal voting was introduced cautiously on an experimental basis in the 1960's, has become universal for local authority elections and is now used for national referenda. However interactive telephone systems are now becoming widely used for banking transactions, while other forms of electronic networks (ATM's and **Lotto** machines) are also becoming part of everyday life. All of these systems could potentially be used to conduct elections, as of course could the Internet. Casting a vote by such means is already optional in some overseas countries.

It is therefore important that any enduring legislative framework establish overriding principles to govern the use of a wide range of communication technologies. It should also provide a process for the evaluation and mandating of new voting methods as they arise, and **refrain** from prescription at a level of detail that unnecessarily precludes or restricts the adoption of future technologies.

It is proposed that councils, on behalf of their communities, have the flexibility to choose from a range of voting methodologies specific regulations covering their use. Those choices would be made taking into account specified criteria including familiarity, acceptability, and accessibility for voters, promoting high levels of participation and ensuring that those uncomfortable with or unable to access new technology are catered for.

5.5 *Administration of Elections*

In general terms, provisions relating to the administration of elections would be organised within the legislative framework in terms of the principles adopted. Only high level principles, together with special provisions, such as those conferring electoral rights and those establishing electoral offences, would be included within the Act itself. Administrative provisions dependent upon electoral systems and/or particular voting methodologies would be included in regulations. Even these requirements, however, would be stated in terms of the performance standards or objectives to be achieved, rather than dictate in detail the procedure to be followed.

Apart from the reordering and rewording indicated above, the administrative content of the legislative framework is not envisaged as differing dramatically from the current Local Elections and Polls Act. However the following specific changes are proposed:

5.5.1 Candidate Deposit

The existing candidate deposit of \$100 is seen as a desirable compromise between affordability and effective disincentive to frivolous candidacy. However it is felt that candidates who withdraw or retire should forfeit their deposit rather than having it returned. This is felt to be a small impost that may go some way towards discouraging frivolous or tactical withdrawals.

5.5.2 Candidate Election Expenses¹

While the practical difficulties of designing an electoral framework that is universally both fair and effective are **recognised**, the principle of equality of opportunity for candidates requires some provision to limit the opportunity for elections to be influenced by extravagant campaign expenditure by candidates with access to large funds.

While provision for campaign expenditure limits should be included in the Act, the administrative implementation of the principle through regulations should enable a flexible approach targeted to those elections and situations where the problem is identified.

5.5.3 Circulation of Candidate Information

It is proposed that provision be made for the distribution by returning officers of an “official” profile of each candidate to electors as part of the electoral process (e.g. in the case of postal voting papers this could accompany the voting papers).

¹ A thorough analysis of issues and options relating to this issue is presented in the 1996 Department of Internal Affairs publication “**Campaign Expenditure in Local Elections**” ISBN 0-478-092 18-0, ISSN 1171-1523

Candidate profiles would need to be subject to strict guidelines in terms of subject matter and the inclusion of potentially offensive or defamatory statements. These guidelines would need to be enforced by returning officers, with some independent and authoritative means of resolving disputes.

5.5.4 Postal Voting Period

It is proposed that the time between the delivery of postal voting papers to electors and the deadline for their receipt by the returning officer be extended by another week, to three weeks. This will significantly reduce the number of electors who are unable to cast normal votes because of absence throughout the voting period.

5.5.5 Special Votes

Special votes should be able to be cast immediately after public notice of nominations is given, to maximise opportunities to vote.

5.5.6 Early Processing of Voting Papers

The Select Committee Inquiry into the Early Processing of Voting Papers at Local Authority Elections recommended in it's report to Parliament:

“1. The Local Elections and Polls Act 1976 be amended to allow Local Authorities the option of using early processing of voting papers for the two-week voting period, but that it should be left to those authorities to decide how much of the two-week period they wish to use.”

It is proposed that this recommendation should be modified to apply to the whole of the three-week postal voting period now proposed.

The relevance, and need for constraints on early processing to forms of voting other than postal voting will need to be considered on a case by case basis.

5.5.7 Offences

It is proposed that the anachronistic wording and penalties of current **offence** provisions be replaced by provisions defining corrupt and illegal electoral practices, paralleling the equivalent provisions in the Electoral Act 1993.

Penalties should be increased to a level where they provide effective deterrents, and should include the possibility of placement on the Corrupt Practices list under the Electoral Act (with consequent disqualification from membership, candidacy and voting) where an **offence** warrants this.

6. NEXT STEPS

SOLGM and *Local Government New Zealand* seek the views of other interested organisations on the proposals outlined in this paper. The local government sector has set out the major changes it believes are needed. We now want to know whether others support these views with a direct interest in local government, and to gain the benefit of other perspectives.

We welcome feedback on any issue relating to local government elections, but in particular on the following:

- Whether your organisation supports the general thrust of the proposed reforms outlined in this document.
- Whether your organisation supports the guiding principles set out in this document.
- Which specific proposed changes your organisation particularly endorses or opposes and why.
- Whether, in your view, there are other issues that should be considered or reforms we should put forward.

Your views will help us finalise our proposals to Government.

Submissions should be made in writing, no later **than 28 April 2000** to:

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