

# **Local Electoral Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill amends the Local Electoral Act 2001 and the Local Electoral Regulations 2001 to implement the Government's decisions on amendments to the legislation.

The purpose of the Bill is to improve provisions for the conduct of local elections and strengthen the integrity and efficiency of the local electoral system.

The Local Electoral Act 2001 and the Local Electoral Regulations 2001 provide the legislative framework for the triennial elections of members of territorial authorities (district and city councils), regional councils, local boards, community boards, district health boards, and licensing trusts.

The decisions implemented by the Bill were made after the Government considered the recommendations for legislative amendments of the Justice and Electoral Committee's 2011 report on its inquiry into the conduct of the 2010 local authority elections and the Local Government Commission's 2008 statutory review of the Local Electoral Act 2001. Both those reports found the legislative framework for local elections is generally sound and meets its purpose. However, both recommended technical and procedural amendments. The amendments in the Bill reflect those recommendations.

### Regulatory impact statement

The Department of Internal Affairs produced a regulatory impact statement on 9 August 2011 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of the regulatory impact statement can be found at—

- [http://www.dia.govt.nz/diawebsite.nsf/wpg\\_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument](http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument)
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* states the Bill's title.

*Clause 2* specifies the Bill's commencement date.

*Clause 3* provides that the Bill amends the Local Electoral Act 2001.

## Part 1

### Amendments to principal Act

*Clause 4* amends section 5(1) by inserting a new definition and by changing the definition of nomination day to be 7 days earlier.

*Clause 5* inserts *new sections 19JA and 19JB*. The new sections let a territorial authority make minor alterations to the boundaries of wards, communities, or subdivisions of communities, and let a regional council make minor alterations to the boundaries of constituencies, in certain situations. The requirements for an alteration include that there have been changes to the boundaries of allotments and that the alterations are required to improve the effective representation of communities of interest affected by those changes. The proposed boundary alterations must be referred to the Local Government Commission (the **Commission**), which must determine whether to uphold them.

*Clause 6* amends section 19K to require a resolution under section 19H, 19I, or 19J that affects the next triennial general election of a territorial authority, regional council, or community board to be passed no earlier than 1 March of the year before the year of the election.

*Clause 7* amends section 19V(3) by adding 2 more situations in which wards and subdivisions of a community may be defined, and membership distributed between them, in a way that does not comply with the fair representation requirement of section 19V(2). The situations are that compliance would limit effective representation of communities of interest either by dividing a community of interest between wards or subdivisions or by uniting within a ward or subdivision 2 or more communities of interest with few commonalities of interest. A territorial authority must now, like a regional council, refer to the Commission a decision not to comply with section 19V(2).

*Clause 8* amends section 19Y to add requirements for the public notice of the basis for election at the next triennial general election of a territorial authority, regional council, or community board. The notice must specify the communities of interest considered by the territorial authority or regional council and specify the ratio of population to members for each ward, constituency, or subdivision, and the reasons for the determination of that number of members, and of those wards, constituencies, or subdivisions.

*Clause 9* amends section 19ZI so that the Commission must also issue guidelines for territorial authorities or regional councils to take into account in making determinations under *new sections 19JA and 19JB*.

*Clause 10* amends section 55 so that a candidate's nomination must not be accepted unless the electoral officer receives the nomination paper, the consent and certification, and the deposit all together.

*Clause 11* amends section 59 consequentially on the replacement of provision for retirement with provision for cancellation of nomination.

*Clause 12* amends section 61(2) to require that, if a candidate profile statement is provided, it must be provided together with the nomination paper and the other things required for nomination. Also, the candidate profile statement must now specify the candidate's principal place of residence in terms of the position to which the candidate seeks election and, if the candidate is seeking election to more than 1 position, must specify each position and state that the candidate is seeking to be elected to the positions.

*Clause 13* amends the heading above section 69 consequentially on the replacement of provision for retirement with provision for cancellation of nomination.

*Clause 14* replaces section 69 with *new sections 69 and 69A* and so replaces provision for retirement after the close of nominations with provision for cancellation of nomination after the close of nominations. Under *new section 69*, an application for cancellation of a nomination may be made to the electoral officer if the candidate becomes incapacitated after the close of nominations but before the close of voting. The application must be accompanied by a certificate signed by a medical practitioner. “Incapacitated” means that a candidate, because he or she is suffering from a serious illness or has sustained a serious injury, would be unlikely to be capable of performing the functions and duties of office if elected to the office. *New section 69A* provides for the electoral officer to process an application and to determine whether to cancel the candidate’s nomination.

*Clauses 15 and 16* amend sections 71 and 72 (respectively) consequentially on the replacement of provision for retirement with provision for cancellation of nomination.

*Clause 17* inserts *new section 73A* to add a power to adjourn electoral processes, by Order in Council, in certain situations. The order may specify a later date for certain dates (such as nomination day or polling day) in respect of a triennial general election of members of 1 or more local authorities and community boards. Each date may be deferred by up to 6 weeks. Before recommending the making of an Order in Council, the Minister of Local Government must be satisfied that the order is necessary to ensure that the adverse effects of a local or national emergency do not deny electors a reasonable opportunity to cast a valid vote, nominate a candidate, or accept nomination as a candidate in relation to the election. The Minister must also have consulted every local authority and electoral officer that will be affected.

*Clauses 18 and 19* amend sections 75(2) and 76(2) (respectively) to require voting documents to contain a warning describing certain offences that a person may commit in relation to a voting document or a related document.

*Clause 20* repeals section 79 to remove provision for local authorities to determine by resolution that voting documents are to be processed during the voting period of an election or poll.

*Clause 21* amends section 80 to provide that the electoral officer may, at his or her discretion, process voting documents received before the close of voting for an election or poll.

*Clause 22* amends section 115 so that a candidate at a triennial general election who is declared to be elected comes into office on the day after the day on which the official result of the election is declared.

## **Part 2**

### **Amendments to regulations**

*Clause 23* provides that *clause 24* amends the Local Electoral Regulations 2001.

*Clause 24* amends the Local Electoral Regulations 2001. The amendments change the dates by which, or dates during which, certain qualifications entitle an elector to be included on the electoral roll to be 7 days earlier, aligning them with the change to the definition of nomination day in section 5(1) of the principal Act. The amendments also let a local authority publish or display candidate profile statements at any time after the close of nominations.

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*Hon Rodney Hide*

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Local Electoral Amendment Act **2011**.
- 2 Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**  
This Act amends the Local Electoral Act 2001.

**Part 1**  
**Amendments to principal Act** 10

- 4 Interpretation**
- (1) Section 5(1) is amended by inserting the following definition in its appropriate alphabetical order:  
“**allotment** has the meaning given by section 218(2) of the Resource Management Act 1991”. 15



- (2) The definition of **nomination day** in section 5(1) is amended by omitting “50th” and substituting “57th”.

**5 New sections 19JA and 19JB inserted**

The following sections are inserted after section 19J:

- “19JA Minor alterations to boundaries by territorial authority** 5
- “(1) A territorial authority may, in accordance with this section, determine by resolution new proposed boundaries of wards, communities, or subdivisions of communities of the district of the territorial authority.
- “(2) The territorial authority must be satisfied that,— 10
- “(a) since the existing boundaries of the wards, communities, or subdivisions of communities took effect as the basis for election at the last triennial general election, there have been changes at or near those boundaries to the boundaries of 1 or more allotments; and 15
- “(b) the proposed boundaries of the wards, communities, or subdivisions constitute only minor alterations to the existing boundaries; and
- “(c) the minor alterations will maintain the effective representation of communities of interest affected by the changes to the boundaries of the allotments; and 20
- “(d) so far as is practicable, the proposed boundaries of the wards, communities, or subdivisions coincide with the boundaries of allotments; and
- “(e) so far as is practicable, ward boundaries coincide with community boundaries (if applicable). 25
- “(3) Every meeting at which the territorial authority deliberates on the proposals contained in the resolution must be open to the public, except as provided by Part 7 of the Local Government Official Information and Meetings Act 1987. 30
- “(4) The territorial authority must refer the resolution to the Commission together with the information concerning the communities of interest and population of the district or community, and the proposed wards, communities, or subdivisions, that is held by the territorial authority and is necessary for the purposes of **subsection (6)**. 35

- “(5) In the year of a triennial general election, the territorial authority must refer the resolution and information to the Commission no later than 15 January.
- “(6) On receiving the reference, the Commission must—
- “(a) consider the resolution and information forwarded to it; 5
  - and
  - “(b) determine whether to uphold the proposed boundaries of the wards, communities, or subdivisions.
- “(7) For the purposes of making its determination, the Commission may make any enquiries that it considers appropriate. 10
- “(8) The Commission may determine to uphold the proposed boundaries only if it is satisfied of the matters specified in **subsection (2)**.
- “(9) The Commission must make its determination under **subsection (6)(b)** before 11 April in the year of the next triennial general election. 15
- “(10) Section 19S applies to the Commission’s determination as if it were made under section 19R(1)(b), and section 19Y(3) to (6) apply with any necessary modifications.
- “(11) A territorial authority must not use this section if the territorial authority— 20
- “(a) is required to make a resolution under section 19H before the next triennial general election; or
  - “(b) has, since the last triennial general election, made a resolution under section 19H; or 25
  - “(c) has, since the last triennial general election, already made a resolution under this section that was upheld by the Commission under **subsection (6)(b)**.
- “19JB Minor alterations to boundaries by regional council**
- “(1) A regional council may, in accordance with this section, determine by resolution new proposed boundaries of constituencies of the region of the regional council. 30
- “(2) The regional council must be satisfied that,—
- “(a) since the existing boundaries of the constituencies took effect as the basis for election at the last triennial general election, there have been changes at or near those 35

- boundaries to the boundaries of 1 or more allotments;  
and
- “(b) the proposed boundaries of the constituencies constitute only minor alterations to the existing boundaries; and
- “(c) the minor alterations will maintain the effective representation of communities of interest affected by the changes to the boundaries of the allotments; and 5
- “(d) so far as is practicable, the proposed boundaries of the constituencies coincide with the boundaries of allotments; and 10
- “(e) so far as is practicable, constituency boundaries coincide with the boundaries of 1 or more territorial authority districts or the boundaries of wards.
- “(3) Every meeting at which the regional council deliberates on the proposals contained in the resolution must be open to the public, except as provided by Part 7 of the Local Government Official Information and Meetings Act 1987. 15
- “(4) The regional council must refer the resolution to the Commission together with the information concerning the communities of interest and population of the region, and the proposed constituencies, that is held by the regional council and is necessary for the purposes of **subsection (6)**. 20
- “(5) In the year of a triennial general election, the regional council must refer the resolution and information to the Commission no later than 15 January. 25
- “(6) On receiving the reference, the Commission must—
- “(a) consider the resolution and information forwarded to it; and
- “(b) determine whether to uphold the proposed boundaries of the constituencies. 30
- “(7) For the purposes of making its determination, the Commission may make any enquiries that it considers appropriate.
- “(8) The Commission may determine to uphold the proposed boundaries only if it is satisfied of the matters specified in **subsection (2)**. 35
- “(9) The Commission must make its determination under **subsection (6)(b)** before 11 April in the year of the next triennial general election.

- “(10) Section 19S applies to the Commission’s determination as if it were made under section 19R(1)(b), and section 19Y(3) to (6) apply with any necessary modifications.
- “(11) A regional council must not use this section if the regional council— 5
- “(a) is required to make a resolution under section 19I before the next triennial general election; or
  - “(b) has, since the last triennial general election, made a resolution under section 19I; or
  - “(c) has, since the last triennial general election, already 10 made a resolution under this section that was upheld by the Commission under **subsection (6)(b)**.”
- 6 Requirements for resolution**
- Section 19K is amended by inserting the following subsection before subsection (1): 15
- “(1AA) A resolution under section 19H, 19I, or 19J that affects the next triennial general election of members of a territorial authority, regional council, or community board must be passed no earlier than 1 March of the year before the year of the election.” 20
- 7 Requirement for fair representation and other factors in determination of membership for wards, constituencies, and subdivisions**
- (1) Section 19V(3)(a) is repealed and the following paragraph substituted: 25
- “(a) if the territorial authority or the Commission considers that 1 or more of the following apply, wards and subdivisions of a community may be defined and membership distributed between them in a way that does not comply with subsection (2): 30
    - “(i) non-compliance with subsection (2) is required for effective representation of communities of interest within island communities or isolated communities situated within the district of the territorial authority; or 35
    - “(ii) compliance with subsection (2) would limit effective representation of communities of inter-

est by dividing a community of interest between wards or subdivisions; or

“(iii) compliance with subsection (2) would limit effective representation of communities of interest by uniting within a ward or subdivision 2 or more communities of interest with few commonalities of interest.”. 5

(2) Section 19V(4) is amended by—

(a) inserting “territorial authority or” before “regional council”; and 10

(b) omitting “(3)(b)” and substituting “(3)”.

(3) Section 19V(5) is amended by inserting “territorial authority or” before “regional council”.

(4) Section 19V(6)(a) is amended by inserting “territorial authority or” before “regional council”. 15

## 8 When determinations take effect

Section 19Y is amended by inserting the following subsection after subsection (1):

“(1A) The public notice of the basis for election must—

“(a) specify the communities of interest considered by the territorial authority (as required by sections 19T and 19V) or regional council (as required by sections 19U and 19V); and 20

“(b) specify the ratio of population to members for each ward, constituency, or subdivision, and the reasons for the determination of that number of members, and of those wards, constituencies, or subdivisions, in terms of section 19V(2) and, if applicable, section 19V(3).” 25

## 9 Guidelines in relation to reviews of representation

(1) The heading to section 19ZI is amended by adding “**or minor alterations to boundaries**”. 30

(2) Section 19ZI(1) is amended by omitting “19J” and substituting “**19JB**”.

**10 Nomination of candidates**

- (1) Section 55(2)(e) is repealed and the following paragraphs are substituted:

“(e) the electoral officer receives the deposit prescribed for the applicable class of elections; and 5

“(f) the electoral officer receives the following together:

“(i) the nomination paper required by subsection (1):

“(ii) the consent and certification required by paragraph (a):

“(iii) the deposit required by **paragraph (e)**.” 10

- (2) Section 55(3) is repealed and the following subsection substituted:

“(3) The consent and certification required by subsection (2)(a) may be given in a manner other than in writing that is approved by the electoral officer, if the person concerned is outside New Zealand.” 15

**11 Forfeiture of deposit and refund of deposit**

Section 59(2)(a)(i) is repealed and the following subparagraph substituted:

“(i) withdraws or has his or her nomination cancelled under **section 69A**; or” 20

**12 Candidate profile statements**

- (1) Section 61(2)(b) is repealed and the following paragraph substituted:

“(b) must be provided to the electoral officer together with the nomination paper and other things referred to in **section 55(2)(f)**; and” 25

- (2) Section 61(2) is amended by inserting the following paragraphs after paragraph (c):

“(ca) must specify whether the candidate’s principal place of residence is in the local government area or subdivision for which the candidate seeks election (in that the candidate is qualified as a residential elector for that local government area or subdivision); and 30

- “(cb) if the candidate is seeking election to more than 1 position, must specify each position and state that the candidate is seeking to be elected to the positions; and”.
- (3) Section 61 is amended by inserting the following subsection after subsection (2): 5
- “(2A) The information required by **subsection (2)(ca) and (cb)** does not count for the purposes of the word limit under subsection (2)(a).”
- 13 New heading above section 69 substituted** 10
- The heading above section 69 is repealed and the following heading substituted:
- “Death, incapacity, or invalid or cancelled nominations of candidates”.*
- 14 New sections 69 and 69A substituted** 15
- Section 69 is repealed and the following sections are substituted:
- “69 Application for cancellation of nomination if candidate incapacitated after close of nominations**
- “(1) An application may be made for the cancellation of the nomination of a candidate if the candidate becomes incapacitated after the close of nominations but before the close of voting. 20
- “(2) The application must be made to the electoral officer by—
- “(a) the 2 electors who nominated the candidate; or
- “(b) the candidate’s agent, if 1 or both electors are unavailable or unable to act for any reason. 25
- “(3) The application must be made on a form provided by the electoral officer, and must be witnessed by a Justice of the Peace or a solicitor.
- “(4) The application must be accompanied by a certificate signed by a medical practitioner that certifies— 30
- “(a) as to the candidate’s condition; and
- “(b) that, in the practitioner’s opinion, the candidate is incapacitated.
- “(5) The application must be submitted to the electoral officer—
- “(a) as soon as practicable after the candidate becomes incapacitated; and 35

“(b) before the close of voting.

“(6) The application may be submitted by hand, post, fax, or electronic transmission.

“(7) In this section,—

“**incapacitated** means that a candidate, because he or she is suffering from a serious illness or has sustained a serious injury, would be unlikely to be capable of performing the functions and duties of office if elected to the office 5

“**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine. 10

“**69A How application for cancellation of nomination dealt with**

“(1) On receiving an application under **section 69**, the electoral officer must promptly determine whether the candidate became incapacitated (as defined by **section 69(7)**) after the close of nominations but before the close of voting. 15

“(2) For the purposes of making the determination, the electoral officer may make any inquiries, and seek any assistance (including expert medical assistance), that the electoral officer considers necessary. 20

“(3) If, before the close of voting, the electoral officer determines that the candidate became incapacitated as described in **subsection (1)**, the electoral officer must cancel the candidate’s nomination. 25

“(4) If the electoral officer has not made a determination before the close of voting, the application is to be treated as having been declined.

“(5) As soon as practicable after making a determination, the electoral officer must inform the applicant of the determination.” 30

**15 Retirement, death, incapacity, or invalid nomination of candidate**

(1) Section 71 is amended by omitting the heading and substituting the following heading: “**Death, incapacity, or invalid or cancelled nomination of candidate**”. 35



- (2) Section 71(1)(a) is repealed and the following paragraph substituted:  
 “(a) the electoral officer has cancelled under **section 69A** a candidate’s nomination in any election; or”.
- (3) Section 71(2) is amended by omitting “retirement, death, incapacity, or the invalid nomination” and substituting “death, incapacity, or invalid or cancelled nomination”. 5
- (4) Section 71(3) and (4) are amended by omitting “retirement, death, incapacity, or invalid nomination” and substituting in each case “death, incapacity, or invalid or cancelled nomination”. 10
- (5) Section 71(5) and (6) are amended by omitting “retired, deceased, or incapacitated candidate, or for a candidate whose nomination is invalid” and substituting in each case “deceased or incapacitated candidate, or for a candidate whose nomination is invalid or cancelled”. 15
- 16 If election becomes unnecessary**  
 Section 72(1) is amended by omitting “retirement, death, incapacity, or invalid nomination” and substituting “death, incapacity, or invalid or cancelled nomination”. 20
- 17 New section 73A inserted**  
 The following section is inserted after section 73:
- “73A Adjournment of electoral processes**
- “(1) The Governor-General may, by Order in Council made in accordance with this section, specify a later date for 1 or more of the following in respect of a triennial general election of members of 1 or more local authorities and community boards: 25
- “(a) the date by which, or dates during which, a certain qualification entitles an elector to be included on the electoral roll: 30
- “(b) the nomination day:
- “(c) the polling day:
- “(d) the date by which anything else may or must be done under this Act or regulations made under this Act.
- “(2) The Order in Council must be made in the year in which the triennial general election is to be held. 35

- “(3) A date specified by the Order in Council must be no more than 6 weeks after the date that would otherwise have applied.
- “(4) A date may be specified by the Order in Council only if the order commences on or before the date that would otherwise have applied. 5
- “(5) The Order in Council must be made on the recommendation of the Minister.
- “(6) Before recommending the making of the Order in Council, the Minister—
- “(a) must be satisfied, on reasonable grounds, that the order is necessary to ensure that the adverse effects of an emergency (whether local or national) or of anything referred to in section 73(1)(a) to (d) do not deny electors a reasonable opportunity to cast a valid vote, nominate a candidate, or accept nomination as a candidate in relation to the election; and 10 15
- “(b) must have consulted every local authority and electoral officer that will be affected.
- “(7) Upon the commencement of an Order in Council made under this section,— 20
- “(a) a date specified in the order has effect in relation to the triennial general election of members of the 1 or more local authorities and community boards to which the order applies; and
- “(b) this Act and any regulations made under this Act apply to the election with any necessary modifications. 25
- “(8) The electoral officer must, as soon as practicable, give public notice of every change of date made by the Order in Council, and may give any other notice that the electoral officer considers desirable.” 30
- 18 What voting documents for election must contain**
- Section 75(2) is amended by adding “; and” and also by adding the following paragraph:
- “(g) a warning describing the offences that a person may commit under sections 123(1)(c) and 124(b).” 35

- 19 What voting documents for polls must contain**  
 Section 76(2) is amended by adding “; and” and also by adding the following paragraph:  
 “(e) a warning describing the offences that a person may commit under sections 123(1)(c) and 124(b).” 5
- 20 Section 79 repealed**  
 Section 79 is repealed.
- 21 Processing before close of voting**  
 Section 80(1) is repealed and the following subsection substituted: 10  
 “(1) The electoral officer may, at his or her discretion, process in the prescribed manner any voting documents received before the close of voting for any election or poll.”
- 22 When members come into office**  
 Section 115(1) and (2) are repealed and the following subsection is substituted: 15  
 “(1) Candidates at a triennial general election who are declared to be elected come into office on the day after the day on which the official result of the election is declared by public notice under section 86.” 20

## Part 2

### Amendments to regulations

- 23 Regulations amended**  
 Section 24 amends the Local Electoral Regulations 2001.
- 24 Amendments to Local Electoral Regulations 2001** 25
- (1) Regulation 10(1) is amended by omitting “7 July” and substituting “30 June”.
- (2) Regulation 10(2) is amended by—  
 (a) omitting “2 March” and substituting “23 February”; and  
 (b) omitting “6 July” and substituting “29 June”. 30
- (3) Regulation 10(3) and (4) are amended by omitting “50th” and substituting in each case “57th”.

- (4) Regulation 21 is amended by omitting “50th” and substituting “57th”.
- (5) Regulation 29(2) is amended by omitting “during the voting period” and substituting “at any time after the close of nominations”.

5