

Local Electoral Matters Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Local Electoral Matters Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend two Acts to provide more flexibility for local government elections to adapt to changing circumstances.

The bill proposes amending the Local Electoral Act 2001 to allow partial trials of new voting methods in local elections. It would also amend the Electoral Act 1993 to:

- allow local authorities to access date of birth information from the database of registered electors
- clarify that researchers could be supplied with date of birth information and age group information for the purpose of analysing voter participation in local elections.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Consultation requirement for trialling new voting methods

We recommend inserting clause 5A to amend section 37 of the Local Electoral Act regarding consultation. Our amendment would ensure that the requirement for consultation would also apply to the trials of new voting methods (including trials for a subset of electors) that this bill seeks to enable.

Local election processes often involve voting for multiple bodies. For example, the Wellington City Council's triennial election processes must also include elections for representatives on the Capital and Coast District Health Board and the Wellington Regional Council. In such an election, the Wellington City Council must (under current law, and through this bill) consult with those other bodies about which voting methods are to be used. The bill as introduced does not clearly extend this consultation process to the trials of new voting methods it proposes. We do not consider this to be the intent of the bill, and consider that such consultation should take place.

Our recommendation would insert a reference to new section 36(4) (proposed in clause 5 of the bill) into section 37(1) of the Local Electoral Act which sets out the consultation requirements for local elections.

If an election is compromised

Contingency mechanisms for recasting votes

We recommend inserting clause 5B to insert new section 73B in the Local Electoral Act. This would enable an elector to recast their vote if a voting method became inoperable or unreliable during an election.

As introduced, the bill does not provide a contingency mechanism to cover a problem with an online voting system that meant electors had to recast their vote using postal papers or a special vote.

We consider that, in such a scenario, the electoral officer should be able to decide that the voting system has been compromised, and that votes already cast must therefore be abandoned to allow a recast vote to be counted. Our amendment would avoid provisions in the Local Electoral Act which stipulate that, if someone votes twice, neither vote is to be counted.

For electors to recast their votes, they need to be notified that the electoral officer has made such a decision. Our amendment would require the electoral officer to give public notice, and to take any other avenues considered practical to ensure electors have the opportunity to cast their vote. In addition, it would require the electoral officer to take all reasonable steps to identify and notify each elector whose vote has been disregarded.

Our recommendation would insert section 73B into the Local Electoral Act. The new section sets out what would constitute reasonable grounds to abandon an election and what would happen with a vote that had already been cast. Proposed section 73B(4) sets out that, if the electoral period has less than 14 days remaining, the electoral officer must extend the election period to 14 days to allow electors time to recast their vote. New sections 73B(5) and (6) set out the notification requirements described above.

Application by electoral officer for inquiry into election or poll

We recommend inserting clause 5E to provide a mechanism for local elections or polls to be re-run if there was a serious failure of the voting method.

As introduced, the bill does not contain sufficient mechanisms to respond to a serious failing in the election process. Our amendment would allow for the electoral officer to apply to the District Court, after the voting period is complete, seeking a judgement that the election may be voided and re-run. While the proposed mechanism would apply to all local elections, we consider it to be particularly relevant to trials of new voting methods and the use of digital technology this bill could facilitate.

The following are the significant changes in new clause 5E that would differ from the existing District Court inquiry provisions:

- An inquiry could be requested by the electoral officer if they had reasonable grounds to believe that an irregularity had occurred. The application would need to be made no later than 21 days after the close of voting. At present, only a candidate or electors can petition for an inquiry under section 93 of the Local Electoral Act.
- An application for such an inquiry would need to be made before final results of the election were announced. If an application for an inquiry was made before preliminary results were announced, the electoral officer must not announce those results, unless the Court directs otherwise.
- The inquiry by the Court must relate to the integrity of the election and not the election result.
- If the inquiry resulted in a judgment declaring the election or poll void, the District Court Judge could order that a new election or poll be conducted. This provision would not be constrained by section 102(2) of the Local Electoral Act.

Our recommendation would insert sections 102A to 102I after section 102 of the Local Electoral Act which relates to current provisions that allow for an election or poll to be re-run.

Access to information about Māori descent

We recommend extending clause 11 of the bill to allow voter participation researchers to access lists of voters of Māori descent.

As introduced, clause 11 would enable the Electoral Commission to provide a list of voters in a particular age group for the purpose of research into voter participation. However, unlike sections 112(1)(a) and (b) of the Electoral Act, the bill does not provide that a list of voters of Māori descent could be requested for voter participation research. Clause 11 applies for an election held under the Electoral Act or the Local Electoral Act.

Currently, a person is required to confirm that they are of Māori descent to be on the Māori electoral roll. This data could provide useful information about the participation of people of Māori descent in elections. We therefore recommend that it be made accessible for the same research purposes as age group information.

Our recommendation would insert new section 112(1)(c)(i) and (ii) into the section of the Electoral Act which provides for the supply of information about age and Māori descent.

Supply of date of birth information to local authorities

We recommend amending clause 12 to clarify the circumstances in which date of birth information could be provided to local authorities.

As introduced, clause 12 provides that date of birth information may be requested from the Electoral Commission when a voting method “requires” it. We consider this provision unclear. For example, it is unclear whether it would be sufficient grounds for the request if the date of birth information was to be used to verify a voter’s enrolment.

We do not consider that this clause adequately protects the private information of electors. We believe the intent of the bill is to provide date of birth information only if the local authority is using a voting method that explicitly requires this information.

Our recommendation would delete clauses 12(1) and (3) and substitute new clause 12(3) which clearly sets out the circumstances in which electors’ date of birth information must be provided to local authorities.

New Zealand National Party view

New Zealand National Party members of the committee support the bill and agree that it provides useful additional tools for improving participation in local elections. But they are also cautious of the proposals to introduce internet voting into local or central government elections.

National members are concerned about maintaining the integrity of voting and counting in elections. They note that the National Academies of Sciences, Engineering, and Medicine concluded, in a recent report, that human-readable paper ballots must be maintained to guarantee the security and verifiability of the vote.¹

National members believe there is an opportunity to use the internet to send voting papers from overseas and from remote locations such as fishing vessels and Department of Conservation islands. However, these methods should still require a paper ballot to be generated and we should be cautious about using the internet to vote generally until widely known security issues are resolved.

The final decision on proceeding with an internet voting trial in 2019, following the passage of this bill, rests with councils and government. National members note the debacle that occurred in March over the 2018 Census and urge that decision makers

¹ National Academies of Sciences, Engineering, and Medicine, *Securing the Vote: Protecting American Democracy*, published in September 2018. A copy of the text is available through the Parliamentary Library.

proceed only if they are 100 percent sure of the methodology, technology, and security.

Any trial also needs options for people who are less familiar with the internet to vote with a paper ballot so as not to disenfranchise groups like older New Zealanders.

Appendix

Committee process

The Local Electoral Matters Bill was referred to the committee on 9 May 2018. The closing date for submissions was 22 June 2018. We received and considered 27 submissions from interested groups and individuals. We heard oral evidence from 10 submitters.

On 6 November 2018 the committee invited all original submitters on the bill to provide supplementary submissions to the committee on a specific policy issue that arose during our consideration of the bill. We received seven supplementary submissions.

We received advice from the Department of Internal Affairs.

Committee membership

Raymond Huo (Chairperson)

Ginny Anderson

Hon Maggie Barry

Chris Bishop

Hon Mark Mitchell

Greg O'Connor

Hon Dr Nick Smith

Dr Duncan Webb

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Nanaia Mahuta

Local Electoral Matters Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Local Electoral Matters Act **2018**.

2 Commencement

This Act comes into force on the day after the date of Royal assent. 5

Part 1

Amendments to Local Electoral Act 2001

3 Amendments to Local Electoral Act 2001

This Part amends the Local Electoral Act 2001.

4 Section 5 amended (Interpretation) 10

In section 5(1), definition of **voting method**, paragraph (d), after “combination of”, insert “or choice between”.

5 Section 36 amended (Voting method for elections and polls)

After section 36(3), insert:

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|---------------------------------------|--|-----------|
| (4) Subsection (5) applies if— | | 15 |
| (a) | regulations authorise the use of a voting method, for the purpose of conducting a trial of that method, by a specified class of elector in any specified class of election or poll or in any specified election or poll; and | |
| (b) | the local authority adopts that voting method <u>for the specified class by resolution in accordance with those regulations.</u> | 20 |

- (5) The voting method to be used by the specified class of elector in the election or poll must be the method adopted by resolution under **subsection (4)**.
- (6) If, under **subsection (5)**, any election or poll of 1 or more territorial authorities in which a voting method is to be used by a specified class of elector is to be conducted in conjunction with 1 or more other elections or polls, that voting method is to be used by the specified class of elector in each of the elections or polls. 5
- (7) If **subsection (5) or (6)** (or both) apply to an election or a poll, the voting method or methods to be used for other electors in the election or poll must be determined in accordance with subsections (1) to (3). 10

5A Section 37 amended (Consultation)

In section 37(1), after “section 36(1)”, insert “or **(4)**”.

5B New section 73B inserted (Electoral officer may abandon voting method)

After section 73A, insert:

73B Electoral officer may abandon voting method 15

- (1) The electoral officer may abandon a voting method if, at any time during the voting period, the electoral officer has reasonable grounds to consider that the method has failed or been compromised.
- (2) Without limiting **subsection (1)**, a voting method fails or is compromised if— 20
- (a) a system or facility used for the method fails or malfunctions with the effect that some or all of the votes cast using the method are destroyed or otherwise irretrievable;
- (b) a system or facility used for the method has been manipulated with the effect that it is not possible for the electoral officer to be satisfied, for some or all of the votes cast using the method, that the votes are recorded accurately. 25
- (3) If the voting method involves a combination of or choice between methods, the decision to abandon a method applies only to (and affects only votes cast using) the method that has failed or been compromised. 30
- (4) If the electoral officer abandons a voting method,—
- (a) any votes cast using the method must be disregarded (including for the purpose of section 83(2)); and
- (b) an elector whose vote is disregarded may vote again— 35
- (i) using another method of voting (if **subsection (3)** applies); or
- (ii) by casting a special vote; and

- (c) if the public notice under **subsection (5)(a)** is given less than 14 days before the close of voting, the electoral officer must adjourn the close of voting to the date that is 14 days after the public notice is given.
- (5) The electoral officer must, as soon as is reasonably practicable,—
- (a) give public notice that the method has been abandoned and of the matters described in **subsection (4)**; and 5
- (b) if it is possible to identify electors whose votes have been disregarded, take all reasonable steps to notify those electors that the method has been abandoned and of the matters described in **subsection (4)**.
- (6) The electoral officer may give any other notice that the electoral officer considers desirable. 10

5C Section 89 amended (Electoral records)

- (1) In section 89(3), after “subsection (2)” insert “or **section 102C**”.
- (2) In section 89(3)(a)(ii), after “for a recount”, insert “or an inquiry”.
- (3) In section 89(4), after “subsection (2)” insert “or **section 102C**”. 15
- (4) In section 89(4)(a)(b), after “in accordance with” insert “**section 102G(2)(b)** or”.
- (5) In section 89(5), after “In this section”, insert “and in **section 102C**”.

5D Cross-heading above section 93 amended

In the cross-heading above section 93, replace “*Inquiry*” with “*Petition for inquiry*”. 20

5E New sections 102A to 102I and cross-headings inserted

After section 102, insert:

Application by electoral officer for inquiry into election or poll

- 102A Application by electoral officer for inquiry** 25
- (1) An electoral officer who has reasonable grounds to believe that an irregularity of the type described in **section 102G(1)(a)** has occurred in relation to an election or poll for which the electoral officer is responsible may apply to the District Court for an inquiry into the election or poll.
- (2) The application may be made jointly with 1 or more electoral officers responsible for affected elections or polls. 30
- (3) The application must—
- (a) be filed after the close of voting and before the official results are declared, but in any case not more than 21 days after the close of voting; and 35

- (b) be served on the electoral officer responsible for any affected election or poll that is not a subject of the application; and
- (c) be heard and determined by a District Court Judge.
- (4) For the purposes of this section, an election or poll is **affected** if the outcome of the election or poll is to be determined (to any extent) by votes cast in any election or poll conducted in conjunction with an election or poll described in **subsection (1)**. 5
- Compare: 2001 No 35 s 93
- 102B Preliminary or official results not to be announced or declared**
- (1) After an application for an inquiry has been made in respect of an election or poll, the electoral officer must not, despite sections 85 and 86,— 10
- (a) make any announcement (or any further announcement) of the preliminary results of the election or poll; or
- (b) declare the official result of the election or poll.
- (2) **Subsection (1)** applies subject to **section 102G(2)** and to any order of the District Court. 15
- 102C Deposit of electoral records**
- (1) As soon as practicable after an application for an inquiry has been made,—
- (a) the electoral officer must secure all voting documents and specified materials in the prescribed manner; and 20
- (b) the voting documents and materials must be deposited with the District Court.
- (2) See section 89.
- 102D Notice of application**
- (1) As soon as practicable after an application for an inquiry has been made, the electoral officer must— 25
- (a) give public notice of the application; and
- (b) if the application concerns an election, give written notice of the application to each candidate.
- (2) The notice must specify the elections and polls in respect of which the application is made and state the grounds for the application. 30
- (3) If the application for an inquiry is made jointly, the electoral officers may give public notice under this section jointly.
- 102E Who may be respondent**
- (1) A notice of an intention to oppose an application for an inquiry may be filed by— 35

- (a) any candidate or any 10 electors, if the application concerns an election;
or
- (b) any 10 electors, if the application concerns a poll.
- (2) A person who files a notice under **subsection (1)** is a respondent to the application.

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Compare: 2001 No 35 s 95

102F Time for holding inquiry

An inquiry must be commenced within 14 days after the filing of an application for an inquiry, and not less than 7 days' public notice must be given of the time and place at which the inquiry will be held.

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Compare: 2001 No 35 s 96

102G Result of inquiry

- (1) The District Court Judge conducting the inquiry must determine whether—
 - (a) an irregularity occurred that has—
 - (i) materially affected the result of the election or poll (which may include, for example, an irregularity resulting in an insufficient number of votes being capable of being counted or relied upon for there to be confidence in any result); or
 - (ii) directly or indirectly severely undermined public confidence in the integrity of the election or the validity of the results (or both);
 - and
 - (b) as a result of the irregularity, the election or poll is void.
- (2) If the District Court Judge determines that the election or poll is not void,—
 - (a) the electoral officer must, as soon as practicable after the determination,—
 - (i) give public notice of the determination; and
 - (ii) subject to any direction of the Judge, take any other steps necessary to complete the electoral officer's functions in relation to the election or poll in accordance with this Act:
 - (b) if the electoral officer requires the voting documents and materials deposited with the District Court under **section 102C(1)** for the purpose of **paragraph (a)(ii)**, the voting documents and materials must be provided to the electoral officer.
- (3) A determination under this section that an election or poll is not void does not preclude, or determine an inquiry on, a petition under section 93.

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102H Provisions that apply to inquiry

The following provisions apply to the inquiry:

- (a) section 97 (which relates to the powers of the District Court Judge conducting the inquiry):
- (b) section 99 (which provides that elections or polls must not be declared void on the ground of certain irregularities):
- (c) section 100(1)(a), (2), and (3) (which relates to the costs of an inquiry).

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102I New election or poll if election or poll declared void

- (1) Section 102 (which provides for a new election or poll to be held or taken if an election or poll is declared void) applies to the inquiry, subject to the modifications described in **subsections (2) and (3)**.
- (2) If an election or poll is declared void as a result of an irregularity in the operation of a voting method, the District Court Judge may order that the new election or poll be conducted—
 - (a) using a different voting method; or
 - (b) using the same method, subject to specified modifications.
- (3) A District Court Judge who makes an order under **subsection (2)** may also, if the Judge considers it necessary, postpone the date by which the new election or poll must be held or taken beyond the date provided for in section 102(2).

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Compare: 2001 No 35 s 102

Order to be final

6 Section 139 amended (Regulations)

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In section 139(1)(c), after “or any specified election or poll”, insert “(or, for the purpose of conducting a trial of a voting method, by a specified class of elector or by all electors in any specified class of election or poll or in any specified election or poll)”.

7 Section 141 amended (Voting methods)

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In section 141, insert as subsections (2) and (3):

- (2) Regulations made under section 139(1)(c) may specify a class of elector by reference to—
 - (a) a local government area or subdivision in which the specified class of electors is eligible to vote; or
 - (b) any other characteristic that makes a voting method suitable for the specified class of electors (for example, in relation to an electronic method of voting, the members of the specified class may reside overseas or in remote locations, or have a relevant disability).
- (3) If regulations made under section 139(1)(c) ~~authorise the use of a voting method that requires prescribe~~ as part of a voting method the use of electors’ date of birth information,—

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- (a) the regulations must also prescribe—
- (i) measures to prevent unauthorised access to, or use of, electors' date of birth information; and
 - (ii) the manner in which documents or records containing electors' date of birth information must be secured after the completion of the count (in accordance with section 89(1));
- (b) any document or record containing an elector's date of birth must be treated as specified material for the purpose of section 89(5).

8 Section 142 amended (Electoral rolls)

In section 142, insert as subsection (2):

- (2) Despite subsection (1) and section 139(1)(f), regulations made under section 139(1)(f) must not provide for any electoral roll to include an elector's date of birth.

9 Consequential amendment to Local Electoral Regulations 2001

- (1) This section amends the Local Electoral Regulations 2001.
- (2) After regulation 11(2), insert:
- (2A) Despite subclause (2)(a)(iii), the electoral roll must not include any elector's date of birth.

Part 2

Amendments to Electoral Act 1993

10 Amendments to Electoral Act 1993

This Part amends the Electoral Act 1993.

11 Section 112 amended (Supply of information on age and Maori descent)

- (1) In section 112(1)(b)(ii), after “descent”, insert “; or”.
- (2) After section 112(1)(b), insert:
- (c) without limiting paragraph (a), for the purposes of research by that person that relates to elector participation in an election, a by-election, or a poll conducted under this Act or the Local Electoral Act 2001, ~~a list of electors in a particular age group as defined in section 114(9).—~~
 - (i) a list of electors in a particular age group as defined in section 114(9); or
 - (ii) a list of electors of Māori descent.
- (3) In section 112(3)(f), replace “;—” with “; or”.
- (4) After section 112(3)(f), insert:
- (g) 1 or more named local board areas;—

- 12 Section 113 amended (Supply of computer-compiled lists and electronic storage media to local authorities)**
- (1) After section 113(10)(a), insert:
- (aa) the elector's date of birth:
- (2) After section 113(10)(f)(iv), insert: 5
- (iva) local board area; or
- (3) After section 113(10), insert:
- (11) ~~However, the Electoral Commission must not supply electors' date of birth information except under subsection (1) and may supply that information only if regulations made under section 139(1)(f) of the Local Electoral Act 2001 authorise a voting method that requires the use of electors' date of birth information to be used for the election, by-election, or poll.~~ 10
- (3) After section 113(10), insert:
- (11) However, if a local authority has resolved to adopt, for an election, a by-election, or a poll, a voting method to which section 141(3) of the Local Electoral Act 2001 applies,— 15
- (a) the electoral official of the local authority is also entitled to obtain the elector's date of birth under subsection (1); and
- (b) for that purpose, subsections (1) to (5) apply as if the date of birth of an elector described in subsection (10) were also specified information. 20

Legislative history

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