

LOCAL ELECTIONS (SINGLE TRANSFERABLE VOTE OPTION) BILL

EXPLANATORY NOTE

THIS Bill establishes an optional alternative voting procedure to the first past the post system provided by the Local Elections and Polls Act 1976. It enables the single transferable vote (STV) system to be used for elections of members of local authorities. The Bill provides for the use of STV to be optional, by resolution of a local authority, but also makes provision for electors in a local government area to raise an electoral petition requiring the local authority to hold a binding poll on the question of whether or not STV should be adopted. A simple majority in favour of the proposal will be sufficient to have STV introduced for the following general election of members of the local authority.

Essential Features of STV

STV is a system of proportional representation whereby electors choose their prospective representatives from a number of candidates. To be elected, candidates must, in most instances, obtain a particular quota of votes, being the minimum number of votes which, if attained by as many candidates as there are places to be filled, leaves slightly less than that quota of votes that are ineffective. This is the Droop Quota, being the total valid vote, divided by one more than the number of places to be filled, plus one vote. If five members of a local authority are elected together, therefore, and if each of five candidates obtains a quota of one more than one-sixth of the votes, then slightly less than one-sixth of the votes are unused.

Each elector has a single vote which is transferable according to preferences expressed by the elector, to enable the surpluses of candidates who exceed the quota, and the votes of candidates with no possibility of election, to be transferred to other, continuing candidates until the required number of representatives is elected. While each elector has a single vote, therefore, the voting system provides for a variety of several representatives to be elected together to the same body to enable different viewpoints and opinions to be reflected in proportions very close to those expressed by the electors.

STV has been chosen as the form of proportional representation rather than MMP because MMP is a political party-based system that discriminates against independents, who have an important role, and often predominate, in local authority elections.

No. 96—1

Voting

Under the STV system, electors will elect several members at a time from multi-member electoral districts known as local government areas (as now) or, when such areas are subdivided, as electoral areas. The vote will be preferential with electors indicating preferences for one or more candidates. To facilitate the sequential ordering of the electors' first and subsequent choices, the space for marking preferences has been placed on the left-hand side of the voting paper so that it is as close as possible to the names of the candidates. The same format is used for elections to fill a single vacancy where STV reduces to the preferential vote, as it does also for mayoral elections. As the government intends eventually to apply postal voting to all local government elections, any local body elections under the STV system would be carried out by postal vote.

Extraordinary Vacancies

Extraordinary vacancies will normally be filled by a recount of all the votes cast at the election at which the vacating member was elected. To enable recounts to be carried out when required, it will be necessary to retain the voting papers until after the following general election of members of the local authority. By-elections, which take some time to fill a vacancy and are expensive, will only be necessary when extraordinary vacancies cannot be filled by a recount of votes because none of the candidates at the previous election consent to being considered to fill the vacancy. By-elections must always be held in respect of Mayoral vacancies.

Electoral Areas or Wards

To ensure a balance of representation between groups or viewpoints contesting the election is achieved, there is a consequential amendment to the Local Government Act 1974 to provide that each electoral area, popularly known as a "ward", shall contain not less than 3 members. The only exception is, as is already provided in the Local Government Act 1974, to allow for separate island wards, such as the Hauraki Gulf Islands ward of Auckland City, which may retain only 1 or 2 members. This STV system can operate as an at-large system, but it is more convenient for voters if local authorities adopt a ward system of 3, 4, 5 or 6 member electoral areas.

Background Resource Materials

- Local Elections and Polls Act 1953 (New Zealand): Part V, repealed in 1966
 - Election Rules of the Electoral Reform Society of Great Britain and Ireland Limited (1973)
 - Local Government Act 1974 (New Zealand)
 - Local Elections and Polls Act 1976 (New Zealand) (the principal Act)
 - Local Elections (Northern Ireland) Order 1985 (S.I. 1985/454)
 - Single Transferable Vote Regulations 1990 (Church of England)
 - Local Government Act 1993 (Tasmania)
 - Senate Bill 1993 (New Zealand) (formerly Parts XI to XVI of, and the Fourth Schedule to, the Electoral Reform Bill 1992)
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Richard Northey

**LOCAL ELECTIONS (SINGLE TRANSFERABLE VOTE
OPTION)**

ANALYSIS

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A BILL INTITULED

**An Act to establish an optional alternative voting
procedure to that provided by the Local Elections and
Polls Act 1976**

5 BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Local Elections (Single Transferable Vote Option) Act 1995, and shall be read together with and deemed part of the Local Elections and Polls Act 1976* (hereinafter referred to
10 as the principal Act).

(2) This Act shall come into force on the day after the date on which it receives the Royal assent.

2. Interpretation—In this Act, unless the context otherwise requires,—

15 “Close of voting”, in relation to any election, means the hour of 12 noon on the date of the election:

*R.S. Vol. 28, p. 683
1992, No. 105, s. 56 (2); 1993, No. 23, s. 32; 1993, No. 87, ss. 2, 274–281; 1994,
No. 145

“Election” has the same meaning as in section 2 of the principal Act:

“Electoral area” means a subdivision of a local government area for electoral purposes:

“Eligible elector”, in relation to an electoral petition, means an elector whose name appears on the roll of electors of a local authority that is in force on the date on which the signatures to the petition are checked by the principal administrative officer: 5

“Local authority” has the same meaning as in section 2 of the principal Act: 10

“Local government area” has the same meaning as in section 2 of the principal Act:

“Mark” means a figure, a word written in the English or Maori language, or a mark such as “√” or “X”. 15

3. Elections to be held under this Act—(1) Section 3 of the principal Act is hereby amended by adding the words “or by the Local Elections (Single Transferable Vote Option) Act 1995, as the case may be”.

(2) Any local authority may by resolution adopt the provisions of this Act with respect to all elections of a member or members of that local authority. 20

(3) Such resolution shall follow the appropriate processes provided in sections 101H to 101M of the Local Government Act 1974. 25

(4) All elections held under this Act shall be conducted by postal vote and the provisions of Part III of the principal Act shall apply except where amended by this Act.

(5) Except as provided by this Act, the provisions of the principal Act relating to the election of a member or members of a local authority shall apply to elections held under this Act. 30

4. Form of voting papers—(1) Notwithstanding anything in section 25 (1) of the principal Act, the voting papers to be used at any election held under this Act shall be in the form in the **First Schedule** to this Act. 35

(2) The list of candidates shall be arranged either in one continuous column or in 2 or more columns in such manner as, in the opinion of the Returning Officer, is best for marking and counting.

5. Method of voting—(1) Each elector shall have a single transferable vote, being a vote which is— 40

(a) Capable of being given so as to indicate the elector's preference for the candidates in order; and

(b) Capable of being transferred to the next choice—

5 (i) When the vote is not required to give a prior choice the necessary quota of votes; or

(ii) When, owing to the deficiency in the number of votes given for a prior choice, that choice is excluded from the list of candidates.

10 (2) The elector, on receiving the voting papers forwarded by the Returning Officer, shall alone and secretly on each voting paper exercise his or her vote—

(a) By placing on the voting paper the figure “1” opposite the name of the candidate for whom he or she votes and in addition, if he or she wishes, by placing the figure “2” opposite the name of the candidate of his or her second choice, the figure “3” opposite the name of the candidate of his or her third choice and so on in the order of his or her preference; and

15 20 (b) In accordance with the instructions on the voting paper and in accordance with any additional instructions that the Returning Officer may consider it advisable to give to the elector.

Cf. Local Elections (Northern Ireland) Order 1985, r. 34 (8)

25 **6. Procedure after close of voting**—(1) The procedure to be undertaken after the close of voting pursuant to section 77 of the principal Act shall commence as from 12 noon on the date of the election.

(2) There shall be a separate count in respect of each electoral area in the local government area.

30 (3) Nothing in subsection (1) of this section shall require the Returning Officer to commence counting the votes for all the electoral areas in any local government area at the same time.

35 Cf. Local Elections (Northern Ireland) Order 1985, r. 43 (2), (3)

7. Informal voting papers—Any voting paper—

(a) Which does not bear the official mark; or

40 (b) On which the figure “1” standing alone is not placed so as to indicate a first preference for some candidate; or

(c) On which the figure “1” standing alone indicating a first preference is set opposite the name of more than one candidate; or

(d) On which anything (other than the consecutive number) is printed or marked by which the elector can be identified; or

(e) Which is unmarked or void for uncertainty— shall be set aside as informal and not counted: 5

Provided that no voting paper shall be set aside as informal and not counted by reason only of carrying the words “one”, “two”, “three” (and so on) or any other mark instead of a figure if, in the opinion of the Returning Officer, the word or mark clearly indicates a preference or preferences. 10

Cf. Local Elections (Northern Ireland) Order 1985, r. 46 (1)

8. Counting of votes—(1) The counting of votes in elections held under this Act shall be in accordance with the procedures set out in the **Second Schedule** to this Act. 15

(2) The Returning Officer may, if he or she wishes, use computer technology to facilitate the counting of votes pursuant to **subsection (1)** of this section or the recounting of voting papers pursuant to **section 12 (1)** of this Act.

(3) Where computer technology is used pursuant to **subsection (2)** of this section, the procedures set out in the **Second and Third Schedules** to this Act shall be performed on the computer records, created by reference to the voting papers, instead of, or as well as, on the voting papers themselves. 20

(4) Computer records created pursuant to this section shall pertain solely to the pattern of preferences indicated by the electors as a whole and shall not include any information prejudicial to the secrecy of the ballot. 25

(5) The validity of any election held under this Act shall not be questioned on the ground that computer technology was used to facilitate the counting of votes or the recounting of voting papers pursuant to **subsection (2)** of this section. 30

(6) The retention and disposal of all computer tapes, disks or diskettes containing information derived from the voting papers used in elections held under this Act, shall be in accordance with the provisions of section 45 (1) of the principal Act and **section 11** of this Act. 35

9. Declaration of result—(1) Notwithstanding anything in section 42(5) of the principal Act, in a contested election, when the result of the election has been ascertained in respect of a local government area or an electoral area in a local government area, the Returning Officer shall forthwith— 40

- (a) Declare to be elected the candidates who are deemed to be elected in accordance with the relevant provisions of the **Second Schedule** to this Act; and
- 5 (b) Give public notice of—
- (i) The names of the candidates declared to be elected; and
- (ii) The number of first preference votes for each candidate, whether elected or not; and
- 10 (iii) Any transfer of votes; and
- (iv) The total number of votes for each candidate at each stage of the count at which such transfer took place; and
- (v) The order in which candidates were elected.
- (2) In an uncontested election, the provisions of section 18 of
- 15 the principal Act shall apply.

Cf. Local Elections (Northern Ireland) Order 1985, r. 56

10. Forfeiture of deposit—(1) If the total number of votes received by any unsuccessful candidate is less than one-fourth of the total number of votes received by the successful

20 candidate with the fewest votes of the candidates elected, the deposit of the unsuccessful candidate shall be forfeited and paid into the general fund or account of the local authority.

(2) Nothing in **subsection (1)** of this section applies to, or shall be affected by the result of, any subsequent recount of voting

25 papers carried out pursuant to **section 12 (1)** of this Act.

(3) For the purposes of this section, the expression “total number of votes received” means,—

(a) In relation to any unsuccessful candidate, the total number of votes, including first preference votes and

30 transferred votes, credited to such candidate at the stage of the count at which he or she is excluded from the election; and

(b) In relation to the successful candidate with the fewest votes of the candidates elected, the total number of

35 votes, including first preference votes and transferred votes, credited to the candidate at the completion of the last stage of the count.

Cf. Senate Bill 1993 (New Zealand), cl. 314 (3)

11. Disposal of voting papers, etc.—(1) Notwithstanding

40 anything to the contrary in section 45 (2) of the principal Act, the Registrar of the District Court shall keep the packets containing used voting papers and other papers, and computer tapes, disks or diskettes used in connection with elections held

under this Act, as specified in paragraph (a) of section 45 (1) of the principal Act and **section 8 (6)** of this Act, until the close of the next general election of members of the local authority.

(2) The Registrar shall not open the said packets or permit them to be opened except for the purpose of filling an extraordinary vacancy or on the order of some Court of competent jurisdiction. 5

(3) At the end of the period of retention specified in **subsection (1)** of this section, the Registrar shall effectively destroy the said packets or otherwise dispose of them as he or she thinks fit, unless arrangements for their disposal have otherwise been prescribed by regulations made under this Act. 10

12. Extraordinary vacancies—(1) Where a local authority has been notified pursuant to section 51 (1) of the principal Act that an extraordinary vacancy has occurred in the office of a member elected under this Act, the local authority shall fill such vacancy by a recount of the voting papers in accordance with the procedures set out in the **Third Schedule** to this Act: 15

Provided that where any such vacancy occurs within 4 months before the date fixed for the next triennial general election, the local authority may by resolution determine that the vacancy shall not be filled. 20

(2) The principal administrative officer shall notify, within 7 days of the date on which the local authority was notified that a vacancy had occurred, that a recount of voting papers to fill the vacancy is to take place by— 25

(a) Notice in writing sent or delivered to each eligible candidate; and

(b) An advertisement subsequently published in a daily newspaper circulating in the relevant local government area. 30

(3) An eligible candidate who wishes to be included in a recount must consent in writing to the principal administrative officer by 12 noon on the 8th day after the date of an advertisement referred to in **subsection (2) (b)** of this section. 35

(4) The term of office of a member elected by means of a recount shall be pursuant to sections 6 and 7 of the principal Act.

Cf. Local Government Act 1993 (Tasmania), s. 307 (4), (5), (6) 40

13. By-elections—(1) A by-election to fill an extraordinary vacancy shall be held if—

(a) It is not possible to carry out a recount of votes; or

(b) When vacancies remain unfilled pursuant to section 19 of the principal Act:

5 Provided that, in cases where **paragraph (a)** of this subsection applies, if the vacancy has occurred within 6 months before the date fixed for the next triennial general election, the local authority may by resolution determine that the vacancy shall not be filled.

(2) A by-election shall be held in accordance with this Act as if it were an election.

10 Cf. Local Government Act 1993 (Tasmania), s. 308 (1), (3)

14. Electoral petition—(1) Any elector of a local authority may promote an electoral petition requesting that electors be polled on the question of whether or not that local authority shall conduct its elections in accordance with this Act.

15 (2) Where the principal administrative officer of the local authority receives an electoral petition pursuant to **subsection (1)** of this section, he or she shall, within 14 days after the date on which he or she receives the petition, determine either—

(a) That the electoral petition is correct; or

20 (b) That the electoral petition has lapsed and return that petition to the promoter of the petition.

(3) In determining whether or not an electoral petition is correct pursuant to **subsection (2)** of this section, the principal administrative officer shall be satisfied that the petition has
25 been signed by not less than 5 percent of the eligible electors of the local authority.

(4) An elector may sign an electoral petition pursuant to **subsection (1)** of this section and be counted as an eligible elector of the local authority only if he or she meets the terms of
30 section 51 (13) of the principal Act.

(5) Every person who signs an electoral petition pursuant to **subsection (1)** of this section shall clearly state, against the signature, the person's name and address with sufficient
35 particularity to enable the person to be identified as an elector of the local authority.

15. Poll of electors—(1) A local authority shall direct the Returning Officer to conduct a poll of electors within 15 months from the date the principal administrative officer determines an electoral petition to be correct pursuant to
40 **section 14 (2)** of this Act.

(2) Such a poll must be held at least 15 months prior to the date on which a triennial general election of the local authority

is to be held and the plurality vote shall then determine the voting system to apply for that election.

(3) Notwithstanding anything to the contrary in section 121 (3) of the principal Act, the result of any poll conducted pursuant to this section, shall be binding on the local authority for a period of 6 years. 5

16. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Applying with or without modifications, for the purposes of this Act, provisions dealing with the conduct of elections held under this Act: 10
- (b) Prescribing forms for the purposes of this Act:
- (c) Prescribing the time at which, and the manner in which, special voters may vote: 15
- (d) Prescribing conditions upon or subject to which special voters may vote:
- (e) Prescribing different methods of voting for different classes of special voters:
- (f) Prescribing arrangements and conditions for the disposal of used voting papers and other papers and computer tapes, disks or diskettes used in connection with elections held under this Act: 20
- (g) Prescribing penalties for offences against regulations made under this Act, not exceeding a fine of \$100: 25
- (h) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Cf. Senate Bill 1993 (New Zealand), cl. 400; Local Elections and Polls Act 1976 (New Zealand), s. 123 30

17. Amendment to Local Government Act 1974—Section 101L of the Local Government Act 1974 (as substituted by section 9 (1) of the Local Government Amendment Act 1991) is hereby amended by inserting, after subsection (4), the following subsection: 35

“(4A) Subject to subsection (3) of this section and except as provided in subsection (4) of this section, the number of members to be elected by the electors of any electoral area pursuant to the Local Elections (Single Transferable Vote Option) Act 1995 shall be not less than $\frac{3}{2}$.” 40

SCHEDULES

FIRST SCHEDULE

Section 4 (1)

FORM OF VOTING PAPER AT AN ELECTION

Directions to Voter

(Read carefully before voting)

1. You have ONE vote.
 - (a) Exercise your vote by entering—
 - (i) The figure “1” opposite the name of the candidate you most desire to see elected—
and, if you so wish—
 - (ii) The figure “2” opposite your second preference:
 - (iii) The figure “3” opposite your third preference:
 - (iv) The figure “4” opposite your fourth preference—and so on until you are indifferent.
 - (b) The sequence of your preferences is crucial.
 - (c) To make sure your vote has the maximum chance of counting towards the election result, you are advised to continue numbering the candidates in order of your preference until you are indifferent as between the remaining candidates whom you have not marked.
 - (d) A later preference is considered only if an earlier preference has a surplus above the quota required for election; or is excluded because of insufficient support.
 - (e) Under no circumstances can a later preference count against an earlier preference.
 - (f) The voting paper will be set aside as informal if the figure “1” is placed opposite more than one name.
 - (g) Do **NOT** vote with a “√”.
2. After voting, fold the voting paper and seal it in the enclosed envelope addressed to the Returning Officer.
3. Post or deliver the envelope to the Returning Officer or any Deputy Returning Officer.
4. The voting paper must be in the hands of the Returning Officer before 12 noon on [*date of election*].
5. If you spoil this voting paper, you may return it to the officer who issued it and apply for a replacement voting paper.

FIRST SCHEDULE—*continued*

FORM OF VOTING PAPER AT AN ELECTION—*continued*

[Name of local government area]

[Name of electoral area] (if local government area is subdivided)

Election of Mayor (or of Members, or as the case may be)

MARK ORDER OF PREFERENCE IN SPACE BELOW	CANDIDATES
	ARNOLD, Kristeena LABOUR
	BABBINGTON, Santaana ALLIANCE
	CAPSTEEN, Timothy INDEPENDENT
	CHOTE, Jill INDEPENDENT
	CHRISTENSEN, Christopher CITIZENS AND RATEPAYERS
	COOPER, Geoffrey ALLIANCE
	HATCH, Keith INDEPENDENT
	HEPI, Koro LABOUR
	HIGGINSON, Florence PROGRESSIVE COMMUNITY
	INCHAM, Mary INDEPENDENT
	NIGHTINGALE, Kenneth LABOUR
	O'SULLIVAN, Samantha PROGRESSIVE COMMUNITY
	PHILLIPS, Joshua CITIZENS AND RATEPAYERS
	RANGI, Henare PROGRESSIVE COMMUNITY
	RATAHI, David INDEPENDENT
	SEARANKE, John ALLIANCE
	SMITH, Jane CITIZENS AND RATEPAYERS

NOTES*

1. Notes 1 and 2 in relation to Form 6 in the First Schedule to the principal Act apply to this Schedule.

2. When the election is to fill a single vacancy, the *Directions to Voter*, No. 1(d) is excluded.

*Not to be printed as part of the form.

SECOND SCHEDULE

Section 8

COUNTING OF VOTES

PART A

General

1. Interpretation—In this Schedule, unless the context otherwise requires,—

“Absolute majority of votes”, in relation to a candidate, is a number of votes which is equal to or greater than one-half of the total number of voting papers, other than non-transferable and informal voting papers, on which electors have recorded their votes for the candidate:

“Continuing candidate” means any candidate not deemed to be elected and not excluded:

“Count” means all the operations involved in the counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of excluded candidates:

“Deemed to be elected” means deemed to be elected for the purpose of the counting of the votes but without prejudice to the declaration of the result of the election:

“Non-transferable vote” means a voting paper—

(a) On which no second or subsequent preference is recorded for a continuing candidate; or

(b) Which is excluded by the Returning Officer under **clause 8 (4)** of this Schedule:

“Preference” includes the following:

(a) “First preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference:

(b) “Next available preference” means a preference which is the second or, as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored):

(c) A “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on:

“Quota” means the number calculated in accordance with **clause 6** of this Schedule:

“Stage of the count” means—

(a) The determination of the first preference vote for each candidate; or

(b) The transfer of a surplus of a candidate deemed to be elected; or

(c) The exclusion of one or more candidates at any given time:

“Surplus” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in this Schedule to the transfer of the surplus means the transfer (at a transfer value) of all transferable papers from the candidate who has the surplus:

“Transferable paper” means a voting paper on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate:

SECOND SCHEDULE—*continued*COUNTING OF VOTES—*continued*PART A—*continued*

“Transferred vote” means a vote derived from a voting paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred:

“Transfer value” means the value of a transferred vote calculated in accordance with **subclause (4)** or **subclause (7)** of **clause 7** of this Schedule, as the case may be.

Cf. Local Government Act 1993 (Tasmania), Schedule 7, cl. 1; Local Elections (Northern Ireland) Order 1985, r. 42

PART B

Elections to Fill a Single Vacancy

2. First preferences—(1) The Returning Officer shall examine the voting papers and sort them into parcels according to the first preference recorded for each candidate, setting aside any that are informal.

(2) The Returning Officer shall count the voting papers in each such parcel and credit each candidate with a number of votes equal to the number of papers, not set aside as informal, on which a first preference has been recorded for that candidate.

(3) The candidate who obtains an absolute majority of votes shall be elected.

3. Second and subsequent preferences—(1) If no candidate has an absolute majority of votes, the Returning Officer shall exclude together the two or more candidates with the least number of votes if the total vote of such two or more candidates is less than the number of votes credited to the next lowest candidate; otherwise the Returning Officer shall exclude the candidate having the least number of votes.

(2) The voting papers of the excluded candidates shall be transferred to whichever of the continuing candidates is marked by that voter as his or her next available preference, and the votes so transferred shall be added to the votes of those candidates.

(3) Any voting paper on which no further preference is marked shall be set aside as non-transferable and the total of such papers shall be recorded.

(4) The process specified in **subclauses (1), (2), and (3)** of this clause shall be repeated until one candidate has an absolute majority of votes and that candidate shall then be declared elected.

4. Returning Officer to decide exclusion and election—(1) If, when a candidate has to be excluded, 2 or more candidates each have the same number of votes and are lowest, the candidate with the least number of votes at the earliest stage of the count at which the candidates in question had an unequal number of votes, shall be excluded.

(2) If 2 or more candidates are still equal and lowest, the Returning Officer shall decide which candidate is to be excluded by the drawing or casting of lots.

(3) If there is a tie on election, the Returning Officer shall declare elected the candidate who had a greater number of votes at the earliest stage at which the tied candidates had an unequal number of votes.

(4) Where the number of votes credited to 2 candidates who are tied on election were equal at all stages of the count, the Returning Officer shall

SECOND SCHEDULE—*continued*

COUNTING OF VOTES—*continued*

PART B—*continued*

decide which candidate shall be declared elected by the drawing or casting of lots.

PART C

Elections to Fill More Than One Vacancy

5. First stage—(1) The Returning Officer shall sort the voting papers into parcels according to the candidates for whom first preference votes are given.

(2) The Returning Officer shall then count the number of first preference votes given on voting papers for each candidate and shall record those numbers.

(3) The Returning Officer shall also ascertain and record the number of valid voting papers.

6. The quota—(1) The Returning Officer shall divide the number of valid voting papers by a number exceeding by one the number of members to be elected.

(2) Where the quotient obtained under **subclause (1)** of this clause is 100 or more, that number shall be increased by one (any fraction being disregarded).

(3) Where the quotient obtained under **subclause (1)** of this clause is less than 100, the division shall be continued to two decimal places and the number so obtained shall be increased by 0.01 (any remainder being disregarded).

(4) The number calculated in accordance with **subclauses (1)** and **(2)** or **subclauses (1)** and **(3)** of this clause shall be the number of votes sufficient to secure the election of a candidate (in this Schedule referred to as the quota).

(5) At any stage of the count a candidate whose total vote equals or exceeds the quota shall be deemed to be elected.

7. Transfer of votes—(1) Where the number of first preference votes for any candidate exceeds the quota, the Returning Officer shall sort all the voting papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped—

(a) According to the next available preference given on those papers for any continuing candidate; or

(b) Where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The Returning Officer shall count the number of voting papers in each parcel referred to in **subclause (1)** of this clause.

(3) The Returning Officer shall, in accordance with this clause and **clause 8** of this Schedule, transfer each sub-parcel of voting papers referred to in **paragraph (a)** of **subclause (1)** of this clause to the candidate for whom the next available preference is given on those papers.

(4) The vote on each voting paper transferred under **subclause (3)** of this clause shall be at a value (the transfer value) which—

(a) Reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and

(b) Is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the voting

SECOND SCHEDULE—*continued*

COUNTING OF VOTES—*continued*

PART C—*continued*

papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder, if any).

(5) Where, at the end of any stage of the count involving the transfer of voting papers, the number of votes for any candidate exceeds the quota, the Returning Officer shall sort the voting papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped—

(a) According to the next available preference given on those papers for any continuing candidate; or

(b) Where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The Returning Officer shall, in accordance with this clause and **clause 8** of this Schedule, transfer each sub-parcel of voting papers referred to in **paragraph (a)** of **subclause (5)** of this clause to the candidate for whom the next available preference is given on those papers.

(7) The vote on each voting paper transferred under **subclause (6)** of this clause shall be at—

(a) A transfer value calculated as set out in **paragraph (b)** of **subclause (4)** of this clause; or

(b) At the value at which that vote was received by the candidate from whom it is now being transferred,—

whichever is the less.

(8) Each transfer of a surplus constitutes a stage of the count.

(9) Subject to **subclause (10)** of this clause, the Returning Officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are—

(a) Less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote; or

(b) Less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

8. Supplementary provisions on transfer—(1) If, at any stage of the count, 2 or more candidates have surpluses,—

(a) The transferable papers of the candidate with the largest surplus shall be transferred first; but

(b) Where those surpluses are equal,—

(i) The transferable papers of the candidate who had the highest recorded votes at the earliest preceding stage at which they had an unequal number of votes shall be transferred first; or

(ii) Where the recorded votes of those candidates were equal at all stages of the count, the Returning Officer shall decide which candidate's transferable papers shall be transferred first by the drawing or casting of lots.

SECOND SCHEDULE—*continued*

COUNTING OF VOTES—*continued*

PART C—*continued*

(2) The Returning Officer shall, on each transfer of transferable papers under **clause 7** of this Schedule,—

- (a) Record the total transfer value of the votes transferred to each candidate; and
- (b) Add that value to the previous total of votes recorded for each candidate and record the new total; and
- (c) Record as non-transferable votes the difference between the surplus and the total transfer value of transferred votes and add that difference to the previously recorded total of non-transferable votes; and
- (d) Compare—
 - (i) The total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes,—
with—
 - (ii) The recorded total of valid first preference votes.

(3) All voting papers transferred under **clause 7** or **clause 9** of this Schedule shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a voting paper is so marked that it is unclear to the Returning Officer at any stage of the count under **clause 7** or **clause 9** of this Schedule for which candidate the next preference is recorded, the Returning Officer shall treat any vote on that voting paper as a non-transferable vote; and votes on a voting paper shall be so treated where, for example, the names of 2 or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the Returning Officer, the same order of preference is indicated or the numerical sequence is broken.

9. Exclusion of candidates—(1) If—

- (a) All transferable papers which under the provisions of **clause 7** of this Schedule (including that clause as applied by **subclause (11)** of this clause) and this clause are required to be transferred, have been transferred; and
- (b) Subject to **clause 10** of this Schedule one or more vacancies remain to be filled,—

the Returning Officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where **subclause (12)** of this clause applies, the candidates with the then lowest votes).

(2) The Returning Officer shall sort all the voting papers on which first preference votes are given for the candidate or candidates excluded under **subclause (1)** of this clause into two sub-parcels so that they are grouped as—

- (a) Voting papers on which a next available preference is given; and
- (b) Voting papers on which no such preference is given (thereby including voting papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

(3) The Returning Officer shall, in accordance with this clause and **clause 8** of this Schedule, transfer each sub-parcel of voting papers referred to in

SECOND SCHEDULE—*continued*

COUNTING OF VOTES—*continued*

PART C—*continued*

paragraph (a) of subclause (2) of this clause to the candidate for whom the next available preference is given on those papers.

(4) The exclusion of a candidate, or of 2 or more candidates together, constitutes a further stage of the count.

(5) If, subject to clause 10 of this Schedule, one or more vacancies still remain to be filled, the Returning Officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under subclause (1) of this clause into sub-parcels according to their transfer value.

(6) The Returning Officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).

(7) The vote on each transferable paper transferred under subclause (6) of this clause shall be at the value at which that vote was received by the candidate excluded under subclause (1) of this clause.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the transfer of the voting papers in the sub-parcel of voting papers with the highest transfer value has been completed, the Returning Officer shall proceed to transfer in the same way the sub-parcel of voting papers with the next highest value and so on until each sub-parcel of a candidate excluded under subclause (1) of this clause has been dealt with.

(10) The Returning Officer shall, after each stage of the count completed under this clause,—

(a) Record—

(i) The total value of votes; or

(ii) The total transfer value of votes—
transferred to each candidate; and

(b) Add that total to the previous total of votes recorded for each candidate and record the new total; and

(c) Record the value of non-transferable votes and add that value to the previous total of non-transferable votes; and

(d) Compare—

(i) The total number of votes then recorded for each candidate, together with the total number of non-transferable votes,—
with—

(ii) The recorded total of valid first preference votes.

(11) If, after a transfer of votes under any provision of this clause, a candidate has a surplus, that surplus shall be dealt with in accordance with subclauses (5) to (10) of clause 7 and clause 8 of this Schedule.

(12) Where the total of the votes of the 2 or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the Returning Officer shall in one operation exclude such 2 or more candidates.

(13) If, where a candidate has to be excluded under this clause, 2 or more candidates each have the same number of votes and are lowest—

(a) Regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an

SECOND SCHEDULE—*continued*

COUNTING OF VOTES—*continued*

PART C—*continued*

unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded; and

- (b) Where the number of votes credited to those candidates was equal at all stages, the Returning Officer shall decide which candidate is to be excluded by the drawing or casting of lots.

10. Filling of last vacancies—(1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

(2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to another or other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

(3) Where the last vacancies can be filled under this clause, no further transfer of votes shall be made.

11. Recount—(1) At any stage of the count the Returning Officer may, if he or she thinks fit, recount voting papers either once or more often if he or she is not satisfied as to the accuracy of any stage.

(2) On completion of the last stage of the count any candidate or his or her scrutineer then present may, before the declaration of the result of the election, request that a recount be undertaken of the votes cast at the election.

(3) If a request is made under **subclause (2)** of this clause, a recount shall be carried out at the discretion of the Returning Officer.

(4) Nothing in this clause shall require the Returning Officer to recount the same parcel or sub-parcel more than once.

(5) Where, as a result of a recount an error is discovered, the Returning Officer shall, where necessary, amend any results that have previously been announced.

12. Order of election of candidates—(1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected, shall be the order in which their respective surpluses were transferred, or would have been transferred but for **clause 7(10)** of this Schedule.

(2) A candidate credited with a number of votes equal to and not greater than the quota shall, for the purposes of this clause, be regarded as having had the smallest surplus at the stage of the count at which such candidate obtained the quota.

(3) Where the surpluses of 2 or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

(4) Where the number of votes credited to 2 or more candidates were equal at all stages of the count, the Returning Officer shall decide which candidate shall be deemed to have been elected first by the drawing or casting of lots.

(5) The order in which 2 or more candidates are deemed to be elected pursuant to **clause 10** of this Schedule shall be determined by reference to the

SECOND SCHEDULE—*continued*COUNTING OF VOTES—*continued*PART C—*continued*

descending order of the total number of votes credited to such candidates and, where necessary, in accordance with the principles pertaining to the ordering of candidates laid down in **subclauses (3) and (4)** of this clause.

13. Decisions of Returning Officer—The decision of the Returning Officer, whether expressed or implied, on any question which arises in relation to the exclusion of any candidate under **clause 9** of this Schedule or to any voting paper or transfer of votes shall be final, but may be subject to judicial review pursuant to section 43 or section 103 of the principal Act.

Cf. Local Elections (Northern Ireland) Order 1985, rs. 47–55; Senate Bill 1993 (New Zealand), cl. 352

Section 12(1)

THIRD SCHEDULE

RECOUNT TO FILL AN EXTRAORDINARY VACANCY

PART A

General

1. Interpretation—In this Schedule, unless the context otherwise requires,—

“Consenting candidate” means a candidate not elected at the relevant election who consents to be included in a recount for a vacancy:

“Consent period” means the period within which written consent is required under **section 12(3)** of this Act:

“Relevant election” means the election last held to fill the office of the vacating member:

“Vacating member” means a member who is vacating the office to which he or she was elected at the relevant election.

Cf. Local Government Act 1993 (Tasmania), Schedule 8, cl. 1

PART B

Original Election for More Than One Member

2. One consenting candidate—If there is only one consenting candidate, the Returning Officer shall declare the candidate elected pursuant to section 18 of the principal Act.

3. More than one consenting candidate—If there are 2 or more consenting candidates, the Returning Officer shall, within 7 days after the end of the consent period, ascertain in accordance with this Schedule which consenting candidate shall be deemed to be elected:

Provided that where, either during or subsequent to the consent period, but before a recount is carried out pursuant to **this Part** of this Schedule, the Returning Officer receives notice of a further extraordinary vacancy in an elective office, he or she shall countermand the notice previously given in respect of the original vacancy and the procedures set out in **section 12(2) and (3)** of this Act shall be repeated.

4. Recounting of voting papers—(1) The Returning Officer shall recount all the voting papers counted at the relevant election in accordance

THIRD SCHEDULE—*continued*

RECOUNT TO FILL AN EXTRAORDINARY VACANCY—*continued*

PART B—*continued*

with the provisions of **Part C** of the **Second Schedule** to this Act, as if to fill all vacancies originally filled.

(2) All voting papers indicating preferences for the vacating member or members, and for those candidates who were excluded at the relevant election and who are not consenting candidates in respect of a recount pursuant to **this Part** of this Schedule, shall be transferred to and counted for the remaining members elected at the relevant election and for the consenting candidates first or next in the order of the electors' respective preferences.

(3) Subject to the requirement that no continuing candidate elected at the relevant election shall be excluded, the Returning Officer shall continue to recount the voting papers until the vacancy or vacancies are filled.

5. Declaration of result—The Returning Officer shall declare the result of a recount pursuant to this Schedule in accordance with **section 9** of this Act.

Cf. Local Government Act 1993 (Tasmania), Schedule 8, cl. 3; Single Transferable Vote Regulations 1990 (Church of England), r. 22 (2)

PART C

Original (Excluding Mayoral) Election for a Single Member

6. Recounting of voting papers—(1) The Returning Officer shall recount all the voting papers counted at the relevant election in accordance with the provisions of **Part B** of the **Second Schedule** to this Act.

(2) In the recounting, the votes cast for the vacating member shall be counted as votes cast for the consenting candidate shown as the elector's next preference on the voting papers.

Cf. Local Government Act 1993 (Tasmania), Schedule 8, cl. 10