

**Submission of the Society of Local Government
Managers
on the
Justice and Electoral Inquiry into the 2016 Local
Elections**

Note to the Draft Submission

The **draft** submission that follows has been approved by the members of SOLGM's Democracy and Governance Support Working Party and the associated Electoral Subcommittee as the basis for consultation with the sector. This draft submission proposes:

1. an initial set of recommendations to the Committee and
2. a set of issues that SOLGM is considering submitting on but where we are undertaking further work to identify the procedural and practical implications. For example, two recommendations that fall into this category are making enrolment on the ratepayer franchise continuous and moving the election date forward a week.

The proposals in this document are open for feedback. They are not, and may never be, SOLGM policy. While there are several discussion questions scattered throughout the document, we welcome thoughts on any matters raised in the document or (and just as important) matters that aren't in the document that you consider should be.

The only proviso is that SOLGM is a managerial member organisation and as such regards it as inappropriate for it to comment on governance matters. For example, SOLGM will not be submitting for or against the proposals in Andrew Judd's petition on Māori wards and constituencies because we view this as primarily a governance matter.

Comments on this draft submission should be sent to:

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by **5.00pm** on **2 May 2017**.

Recommendations

SOLGM recommends that the Committee:

1. agree that declining citizen participation and engagement is an issue of equal concern for both central and local government
2. agree that that two spheres of government should work together to address declining citizen participation and engagement
3. agree that there should be a national communications and engagement campaign designed to build awareness of local elections and understanding of how to vote
4. agree that the campaign should be part funded by central government
5. agree that local democracy should form a compulsory part of the civics curriculum
6. agree that Local Electoral Act be amended to provide local authorities with a mandate to take action that will improve participation in local elections
7. agree that the Local Electoral Act be amended to allow local authorities access to statistical information from the electoral rolls that would support any actions taken to promote participation
8. agree that the definition of advertisement in the Local Electoral Act be amended to include advertisements in any medium. This reflects the practice with Parliamentary elections
9. agree that all local authorities be permitted to use annual plan estimates for the financial year preceding the election date in their pre-election reports
10. agree that section 139 of the Local Electoral Act be urgently clarified to better empower the making of regulations that would allow local authorities to offer online voting to geographic or demographic subsets of electors
11. agree that the Government's policy and security requirements for online voting be reviewed against international best practice
12. agree that double notification of access information be removed the Government's policy and security requirements
13. note that SOLGM is considering means for safeguarding privacy of details for those on the unpublished roll while allowing electoral officers access to this information
14. agree in principle that electoral officer be given access to the unpublished roll
15. agree that the Electoral Act be amended to require supply of a supplementary roll before polling day
16. agree that local authorities should be provided with access to the deletions file
17. note that the Committee's report on its inquiry into the 2013 local elections recommended that enrolment on the ratepayer franchise be made continuous

18. note SOLGM's agreement in principle with this, and that SOLGM is considering how continuous enrolment could be given effect
19. agree that the law around transmissions of nomination forms be clarified to allow for transmission by electronic mail
20. agree that the law be amended to allow for electronic transmission of special votes to and from voters who will be overseas during the election period
21. agree that the law be amended to remove the requirement for candidates to pay a deposit at local elections
22. agree that the law be amended to clarify whether a matai name may be used on voting documents
23. agree that random ordering of candidate names appear on the ballot papers be made mandatory and that this would not extend to candidate profile booklets
24. agree that the Local Government Act be amended to require local authorities to give public notices on their council's website until the opportunity of review of appeal has lapsed and
25. agree that the SOLGM is investigating the practicalities of moving the election calendar forward by one week.

Questions for Discussion

1. What steps did your local authority take around promotion of the election in your area?
2. Would your council be likely to contribute to a national campaign to encourage voting in your local election?
3. Should any mandate to take action to improve participation sit with the local authorities, the electoral officers, both or neither? Why?
4. The submission calls for the pre-election report to be enhanced rather than removed. Would your local authority agree with this? Why or why not?
5. Aside from double notification of access information, are there other aspects of the policy and security requirements for online voting that you consider SOLGM should specifically submit on. If so, what and why?
6. Would your local authority support removal of the electoral deposit as condition of candidacy at local elections?
7. Do you see any issues in moving the election campaign forward by one week?
8. Are there any other matters that you consider SOLGM should submit on?

Introduction

The New Zealand Society of Local Government Managers (SOLGM) thanks the Justice and Electoral Select Committee (the Committee) for the opportunity to submit on its inquiry into the 2016 local elections (the inquiry).

We note that the Committee has set a relatively long timeframe for submissions to the inquiry. SOLGM sees both advantages and disadvantages in a timeframe of this nature. The disadvantage is that the recommendations that the Committee makes of a legislative or regulatory nature are unlikely to be enacted in time for the 2019 elections, including those that enjoy substantial cross party support. There are some matters that are urgent, especially those that would better enable a trial of online voting.

However the longer than usual timeframe provides submitters with a longer period to develop better researched proposals that reflect all the policy, practical and technical issues involved in running an election. SOLGM intends to put this time to good use.

The submission in front of you represents the first of two documents that we will provide you with. This document provides an overview of the matters that we will be considering between now and 31 December 2017, and signals direction for change where we will undertake further research and policy development.

Who are we?

SOLGM is a professional society of around local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical and managerial implications of legislation.

Our vision is:

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

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

Although we work closely and constructively with Local Government New Zealand, we are an independent body with a very different role.

SOLGM's Role in Local Elections

Although SOLGM has no statutory role in the local electoral process, we are a key player nevertheless.

The Local Electoral Act 2001 (LEA) formed part of the last substantive (and integrated) review of the three canons of local government law, which gave rise to the LEA, the Local Government Act 2002 and the Local Government Rating Act 2002. What is not often remembered is that it was SOLGM that led the development of a case for the review that led to the enactment of the LEA. The July 2000 SOLGM/LGNZ publication *A New Legislative Framework for Local Government Elections*, was developed with members of SOLGM's Electoral Working Party 'holding the pen'.

SOLGM supports electoral officers in the transparent and efficient conduct of local elections. Each triennium SOLGM provides electoral officers with a revised and updated *Code of Good Practice* in local elections. The Code supports development of good practice relating to all facets of the local electoral process. It achieves this by identifying the key components of the local elections and polls process, linking in the relevant statutory references and supplementing this with recommended good practices supported by sample documents, forms, references, etc where appropriate. It is prepared with the assistance of staff from the Local Government Commission and the Department of Internal Affairs. The table of contents for the Code can be found in Appendix A – this provides the Committee with an indication of the comprehensive nature of the Code.

The Code provides the basis for the training that SOLGM provides electoral officers and other staff involved in local elections (and the 2015 training had the highest level of registrations for ten years). We attach a copy of the programme for the training as Appendix B.

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

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

Structure of the submission

Our submission is in three parts. The first discusses election communications and promotion issues including joining up the work of the agencies involved in local election communications, civics, and the role of social media. The second substantive section deals with issues that arose in preparation for the (aborted) trial of online voting and how this might be progressed in future. And finally, section three covers other technical and procedural issues that we would like to draw to the Committee's attention.

Engagement and Election Communications

This section considers the question of engagement and participation in the democratic process, with a particular reference to local government affairs. We discuss strategies for increasing the level of participation in local democracy. This section discusses issues that relate to election communications at national and local level, and some that relate to communications by candidates and by members of the public.

SOLGM's monitoring of the post-election media coverage of local elections tends to suggest that there wasn't the degree of post-election commentary about the level of turnout in local elections.

Turnout in the 2016 local elections was approximately 42 percent, a marginal increase on the 41.4 percent recorded in 2013.¹ It appears the turnout can be attributed to an increase in the level of turnout in some metropolitan centres – most notably Wellington and Auckland. Preliminary figures suggest that turnout rose in 29 territorial authorities, declined in 37 and remained at 2013 levels in one local authority.

The Committee should also note that turnout in Parliamentary elections has also declined below historic levels. In the period between 1946 and the advent of MMP turnout in Parliamentary elections fell below 85 percent twice², in only one MMP election has turnout been at that level (and that was the first MMP election).

There is much debate around whether turnout is an effective measure of the health of a system of democracy. Some argue that it is access to a fair and efficient process that is the true measure, while others suggest that lower turnout reduces the effective mandate of the governing body. Regardless, most election research suggests that lower turnout begets even lower turnout in future elections. It is therefore concerning that turnout exceeded 50 percent in only one of the eleven metropolitan local authorities (Nelson), despite seven of the eleven reporting increases in turnout.

¹ The figure quoted here is total turnout, that is the total number of people who voted in a local election as a percentage of the number enrolled. Average turnout, that is to say the average of the turnout in the 67 territorial authority elections actually declined.

² Turnout fell below 85 percent at the 1975 election (82.5 percent) and 1978 election (officially 69 percent though the Commission considers this was due to an abnormally large number of outdated and duplicate entries). Source: Electoral Commission, General Elections 1853-2014: Dates and Turnout, downloaded from www.elections.org.nz/events/past.../general-elections-1853-2014-dates-and-turnout

A survey undertaken after the 2013 local elections revealed that one in five of the non-voters considered that voting would make no difference to them and one in seven considered local government is not relevant to them. When coupled with the estimated million eligible voters that did not vote in the 2014 general election, it is apparent that a significant proportion of voters have 'disengaged' from government.

Of course, a citizen who is engaged in civic society does more than vote once every three years. They inform themselves about local and national issues. They engage in the political process through formal means (such as submitting on a bill or on an annual plan) and informal means (for example by participating a legitimate protest). An engaged citizen also involves themselves in community activity – for example by participating in voluntary work.

Recent experiences overseas (e.g. the US Primaries and Presidential Elections, the so-called 'Brexit' vote, the rise of Syriza in Greece, the failure of Italy's constitutional reforms etc) suggest some lack of trust or faith that existing institutions and 'players' are able to resolve current issues. This lack of trust or faith may be manifesting itself in New Zealand, for example Auckland Council's June 2016 Baseline Citizen Monitor noted that 17 percent of those surveyed indicated they trusted the council to make the right decisions.³

We submit that citizen engagement is, or should be, a matter of equal concern for both central and local government, and we need to work together.

Recommendation

That the Committee

- 1. agree that declining citizen participation and engagement is an issue of equal concern for both central and local government and**
- 2. agree that the Committee recommend that central and local government work together to address declining citizen participation and engagement.**

Communications and Promotion

Communications activity is not well coordinated, with several national bodies involved in communications around different aspects of the election. For example:

³ Auckland Council (2016), *Measuring Auckland Council's Trust and Reputation – Baseline Results Survey July 2016*, page 12. Downloaded from <http://www.aucklandcouncil.govt.nz/EN/AboutCouncil/HowCouncilWorks/PerformanceAndTransparency/Documents/citizeninsightsmonitorbaselinesummaryjune2016.pdf>

1. LGNZ ran the Vote 2016 campaign that engaged communities on the key issues in their area, encouraged people to stand for election to local bodies and encouraged people to vote
2. the Electoral Commission conducts a campaign that encourages people enrol as residential electors
3. SOLGM coordinates a similar campaign for ratepayer electors and developed branding around 'Your Vote, Your Community'
4. the Ministry of Health conducts a campaign to encourage people to stand for election to DHBs
5. some local authorities ran their own campaigns (we refer to one great example later in this submission).

One of the consequences of this lack of coordination amongst the agencies was that there was no consistent 'look' or branding associated with the entire set of communications activity, and some duplication of communications effort. This is not to say that the work done was poor or ineffective⁴, but that it didn't align well. Some aspect of the communications programme may have created voter confusion – for example the Vote 2016 campaign used a 'tick' as a visual symbol which had the potential to confuse electors involved in an STV election. There is also some suggestion that the look of some of the collateral is in need of a refresh – including our own.

We submit that there needs to be a single coordinated national campaign that incorporates all of these important activities. LGNZ and SOLGM are aware that all of these agencies need to better coordinate our activities and, at the time of writing are contacting these agencies to propose the establishment of a Local Elections Coordinating Committee. SOLGM's position, based on our experiences in 2016, is that the above need to present a single face to the public, including a single set of messages, and a coherent programme of activity. This is more important than what might loosely be referred to as the 'sovereignty' of individual agencies and individual decision-makers.

Of course, such a campaign should be non-partisan and focus on awareness and on the act of voting. This is no different from the pre-election communications activity that the Electoral Commission currently undertakes. The complexity of local elections is such that any communications campaign will have a strong educative element – for example two voting systems, a wider range of 'issues' etc.

⁴ Some commentators might be tempted to use the increase in turnout as a yardstick with which to measure the success of the communications activity. This would be a partial measure of success at best. We don't know, and cannot easily assess what the 'counterfactual situation' was – that is to say how many people voted who may not have but for the awareness that the communications activity might have promoted.

We further submit that central government should play a role in assisting to fund the campaign. A well designed campaign could align with the work the Commissions does at central government level and serve as an investment in building citizen awareness and promoting participation at central government.

But more practically, central government has 'skin in the game' in local elections, as we elect seven of the eleven members of each District Health Board at local elections. The New Zealand Public Health and Disability Act establishes that these bodies are Crown entities, a fact further reinforced by the appointment of up to four Crown representatives on these bodies. We also note that the level of informal voting in DHB elections is generally far higher than is the case in other local elections (in some areas up to one in ten DHB votes is informal), it appears some voter education is needed.

Recommendations

That the Committee:

- 3. agree that there should be a national communications and engagement campaign designed to build awareness of local elections and understanding of how to vote**
- 4. agree that the campaign should be part funded by central government.**

Discussion Questions

What steps did your local authority take around promotion of the election in your area?

Would your council be likely to contribute to a national campaign to encourage voting in your local elections?

Civics Education

One means for overcoming the lack of salience in local elections (with an obvious consequential effect for central government) is to inculcate an understanding of institution of local government and its role in New Zealand's constitutional arrangements at an early age. The obvious place to do this is through the civics

education curriculum (while there is no specific subject called 'civics' in the curriculum, the Ministry of Education advises that civics is woven into the social sciences, health and physical education, technology, and arts curricula).

We are unaware of any research that specifically considers the impact of civics education on participation in local affairs. Studies at 'national' level generally do find a statistically significant impact. For example, Saha and Print (2009) found Australian students who took a course in civics or government were 10 percent more likely to vote in Federal elections, Bachner (2010) found American students were between three and six percent more likely to vote in Federal elections.

Another interesting note from the research is that by and large there is a higher degree of awareness and understanding of national level politics than local politics and international politics.⁵

LGNZ also historically devoted time and energy to producing resources to enable incorporation of a local government component into civics education. Other local authorities, most notably Auckland, have developed resources for use in their own areas. However local government/governance is not a mandatory part of the civic-related aspects of the curriculum.

In its response to the 2013 Inquiry into Local Elections the Government undertook to "*work with LGNZ (sic), SOLGM and other local council organisations to encourage the provision of experiential learning opportunities for schools.*"⁶ We are aware that the Scandinavian countries make experiential learning a key component of their programmes. It's also the rationale for the Kids Voting programme that the Electoral Commission oversees at parliamentary level (and some local authorities also support at local level).^{7, 8} As of the time of writing, central government and its agencies had not approached SOLGM in regards these matters.

One of the initiatives that LGNZ and SOLGM are considering for the Elections Coordinating Committee is to take a fresh look at the resources available on local government and how we might approach central government regarding the civics curriculum. We would welcome the input of those in central government with a background in democracy and elections, and those with expertise in primary and

⁵ Refer to the 2008 International Civic and Citizenship Education Study (ICCS). Note a new ICCS study commenced in 2016, if findings are available before the close of submissions we will incorporate these in our next submission.

⁶ New Zealand Government (2015), *Government Response to Justice and Electoral Committee Report on Inquiry into the 2015 Local Elections*, page 3.

⁷ We understand that 99 schools (in 22 of 67 territorial authorities) participated in Kids Voting at the 2016 local elections. Approximately 19,000 students had the opportunity to participate.

⁸ We are advised that the Kids Voting programme was first introduced into New Zealand in 2001, by Auckland Council, was run nationally for all local government in 2007 (by LGNZ).

secondary level education. This is an investment in the country's future, and a support to elections for central government agencies, so some contribution to the cost of developing these resources appears more than reasonable.

Recommendation

- 5. That the Committee agree that local democracy should form a compulsory part of the civics curriculum.**

Mandate to Improve Participation

During the Committee's previous inquiry it noted that the LEA sets the framework through which voters participate in local elections. The LEA does not directly recognise that participation is desirable. Section 4C(a) of the Electoral Act 1993 makes facilitation of participation in a parliamentary democracy one of the core objectives of the Electoral Commission. The Committee recommended an equivalent provision be added to the LEA.

SOLGM is aware that some local authorities and electoral officers cite the lack of a legislative mandate as a justification for not undertaking activities such as better promotion of the election period.

Yet others have undertaken quite extensive activity in this area. For example, the Christchurch City Council developed CELECT, an online application that was designed to provide residents with customised relevant information about candidates standing in their area, when and how to vote and the like.⁹ The Auckland Council developed a communications and engagement campaign around the theme of 'love where you live' which included:

- an elections awareness programme
- community engagement aimed at youth and diverse communities through the so-called 'Love Bus' campaign and Kids Voting (including offering this programme fully online)

⁹ The Committee may wish to view a short video on CELECT, which can be viewed at <https://youtu.be/GIjAJQj0vmg> (CELECT has been entered in Council/Community Relations Category of the 2017 McGredy Winder SOLGM Local Government Excellence Awards).

- improving accessibility – ‘going to the people’ through online tools, the location of ballot boxes and assisted voting for the visually impaired.¹⁰

During 2016 the Department of Internal Affairs engaged with us around the content of a proposed Local Government Regulatory Systems Bill. Cabinet’s decisions about the content of this Bill are in the public domain and include a proposal to empower local authorities to take steps to improve participation.¹¹ We support this proposal.

One of the key aspects of the proposal is that this proposal places the mandate on local authorities as opposed to the electoral officer and their staff. While the electoral officer is responsible for developing and implementing the overall plan for each local election; he or she must do so within the budget that the local authority sets. Placing the mandate on the electoral officer leaves them with a mandate and only a limited means of ensuring they can carry the mandate out.

Recommendation

- 6. That the Justice and Electoral Committee agree that Local Electoral Act be amended to provide local authorities with a mandate to take action that will improve participation in local elections**

Discussion Question

Should any mandate to take action to improve participation sit with the local authorities, the electoral officers, both or neither? Why?

Access to Electoral Data for Promotional Activity

This may seem like a mechanical rather than a communications matter. Having access to statistical data associated with the electoral roll, such as age groups of electors, would be helpful when planning election awareness campaigns. Currently

¹⁰ The Committee may wish to view a short video on the Auckland Council Election Campaign which can be viewed at <https://www.youtube.com/watch?v=DqnNrPYUYpo>. (The Auckland Council Election Campaign has been entered in the Council/Community Relations Category of the 2017 McGredy Winder SOLGM Local Government Excellence Awards).

¹¹ The Cabinet paper is online and can be found at [https://www.dia.govt.nz/diawebsite.nsf/Files/Local-Government-Regulatory-Systems-Bill/\\$file/Cabinet-Paper-Local-Government-Regulatory-Systems-Bill-WORD.docx](https://www.dia.govt.nz/diawebsite.nsf/Files/Local-Government-Regulatory-Systems-Bill/$file/Cabinet-Paper-Local-Government-Regulatory-Systems-Bill-WORD.docx)

the Electoral Act only allows this information to be supplied for research into scientific or health matters. This is not a request for unit level data about individual electors.

Recommendation

- 7. That the Justice and Electoral Committee agree that Local Electoral Act be amended to allow local authorities access to statistical information from the electoral rolls to support any actions taken to promote participation.**

Social Media and Elections

When the LEA was enacted in 2001 social media sites such as Facebook and Twitter did not exist, or were very much in their infancy.

Social media began to filter into the communications and campaigning strategies and techniques of candidates in 2013 and grew apace in 2016. With it has also come the use of social media by electors with views on particular issues or candidates. With it, predictably, has come a raft of issues around the applicability of the regulatory settings to social media. This is particularly true of the provisions around election advertising.

During 2016 SOLGM was asked to provide legal advice as to whether advertisements or communications that appear to be to procure the election of candidate would fall within section 113, LEA.

Our advisors concluded that a communication that appears on the internet probably falls outside the scope of section 113 but that the legislative provisions could be a great deal clearer. They based this conclusion on the fact that section 113(1) provides a list of places where advertisements cannot be published without authorisation including:

"... any newspaper, periodical, notice, poster, pamphlet, handbill, billboard, or card, or broadcast or permit to be broadcast over any radio or television station, any advertisement..."

Campaigning online is something that is likely to continue to increase in the coming elections, both in terms of its quantity and its sophistication. It is an offence for candidates (or persons acting on behalf of a candidate) to publish an advertisement without the proper authorisation. That being the case there should be far greater certainty in the treatment of internet based communications.

We have looked at the equivalent provisions in the Electoral Act 1993. As we understand it, Parliament has expressly included internet-based advertisements that apply to Parliamentary elections. Section 3A of the Electoral Act states that an electoral advertisement is an 'advertisement ***in any medium***...', which would extend to the Internet or online media.

Recommendation

- 8. That the Committee agree that the definition of advertisement in the Local Electoral Act be amended to include advertisements in any medium. This reflects the practice with Parliamentary elections.**

Pre-election Reports

In 2010 Parliament added a new requirement to the planning and reporting requirements of the Local Government Act 2002. The so-called pre-election report (PER) is a document that was intended to put the financial stewardship of the outgoing local authority, and its key spending issues 'front and centre' in the election debates. The document contains:

- historic financial statements (that is to say that the pre-election reports released in 2019 will contain historic financial information for the 2016/17 and 2017/18 financial years). This data comes from annual reports
- an estimated financial outturn for the financial year preceding election year (that is the pre-election reports released in 2019 will have an estimated outturn for the 2018/19 financial year)^{12, 13}
- a report on the local authority's performance against the financial limits and target set in its financial strategy
- forecast financial information for the three years following election year. This information comes from the local authority's long-term plan.¹⁴ A 2019 PER will contain forecast financial information for the 2020/21, 2021/22 and 2022/23 financial years

¹² Local authorities with a usually resident population of 20,000 or less have the option of substituting information from their annual plan. SOLGM's guide on PER recommends that local authorities that have this option make use of it.

¹³ The local authority financial year ends on 30 June. With the due date for PER being two weeks before nomination day (i.e. usually at the end of July), there is no opportunity for local authorities to prepare actual information and get this audited.

¹⁴ Strangely, there is no requirement to include information for election year in a PER. Almost all local authorities did include this information however.

- information about the major projects planned for the three years following election year. This information comes from the local authority's long-term plan.

For the most part, the document draws together information that already exists into a single document. Few local authorities have identified significant issues with the production of PER in 2016 (or in 2013), with few indicating that the requirement created significant additional costs for the local authority. The biggest concern that most express is around the requirement to include an unaudited estimate of the financial out-turn for the year prior to election year, especially as the actual outturn will be included in annual reports that are generally released in the weeks after local elections. Numbers can change significantly, if for example an asset value changes significantly, meaning there is the potential for misuse of information.

This Committee's last inquiry recommended that the Government 'encourage' SOLGM to amend our Code of Good Practice around the design of PER. In fact our guidance on PER sits as a separate stand-alone resource. When DIA raised this with SOLGM it found that we already had such a review of our guidance on PER underway, we were happy to incorporate their recommendations into our revised guidance. The revised guidance was made available in March 2016, with the relevant webpage also referring users to the three councils which DIA have cited as the better examples.¹⁵

SOLGM is unconvinced that PER have achieved their purpose. Where the media cover these documents at all, the reporting tends to largely replicate the content of local authority media releases.¹⁶ There has been no substantial increase in the number of candidates choosing to stand, or in turnout. Issues such as the major projects will have been signalled and been the subject of community engagement during the LTP process, or will already be well-known in the community. Requirements to report on financial stewardship have now been incorporated elsewhere in the local accountability framework through the Local Government Financial Reporting and Prudence Regulations 2014.¹⁷

The PER does have benefits as a single 'source of truth' which local authorities can use as source material for their own information campaigns (including responding to

¹⁵ Central Hawkes Bay District, Dunedin City and Greater Wellington Regional Council. In the interests of disclosure we should note that the author of the SOLGM guidance had, while in previous employment, worked on DIA's review of the 2013 PER.

¹⁶ In two cycles of PER we are aware of only one instance where the media report went much beyond the council's media release. In that instance the media reported a Chief Executive's statement that the incoming council would need to have fewer priorities, have fewer meetings and make more decisions.

¹⁷ These regulations require local authorities to report their planned and actual performance against a set of parameters and benchmarks of fiscal prudence. Among other things this includes a report on compliance with the limits on rates and debt in the local authority's financial strategy.

any factual inaccuracies that come up during the campaign). The PER serves a kind of 'quick reference guide' to key financial and non-financial information that an elector who intends to cast an informed vote could use.

SOLGM does not consider the PER to be a particularly onerous or costly requirement, but a slight streamlining of the requirement to allow all local authorities to use the annual plan forecasts for the year preceding election year would reduce the cost still further. These numbers are used the basis for setting rates so should be reliable.

Recommendation

- 9. That the Committee agree that all local authorities be permitted to use annual plan estimates for the financial year preceding the election date in their pre-election reports**

Question for Discussion

Essentially the above is a call for PER to be improved rather than removed from the legislation. Would your local authority agree with this? Why or why not?

Online Voting

Introduction

*"Simply put, the Internet is not secure and the concept of '100 percent secure' does not exist. This means that no system can ever be secure – it can only be secure enough."*¹⁸

SOLGM has long supported the introduction of online voting. Online voting is a means for making democracy more accessible to voters with high needs such as the visually-impaired. Online voting may be a tool for better enabling Kiwis overseas to vote. And online voting is one means for engaging younger voters over time. We acknowledge that international experience generally suggests it takes 2-3 electoral cycles before a noticeable effect on turnout occurs.¹⁹

Diminishing mail volumes may mean that it becomes increasingly difficult to conduct elections via the postal system. Already postal deliveries to residential addresses are made every other day rather than daily. In some rural areas of New Zealand local authorities advised electors to allow a week for return of both nomination forms and voting documents.

We are aware that there has been some suggestion that returning to booth voting might create a sense of occasion and enhance turnout. That contention is unsupported by the historic evidence. Long-term turnout in booth voting elections was declining even before postal voting became an option, in the only booth election since 1989 not much more than one voter in four actually voted.²⁰

SOLGM and the sector as a whole was disappointed with last year's decision not to proceed with a trial of online voting. The eight councils and two providers invested significant time and resources into system development and into meeting the substantial and complex policy and security requirements that central government set. As one provider noted:

"The introduction process appears overly complex with varying layers of assurance / reporting / checking / documentation / protocols / specifications / procedures / plans /

¹⁸ Online Voting Working Party (2014), *Online Voting in New Zealand – Feasibility and Options for Local Elections*, page 36.

¹⁹ Estonia is often held up as the 'poster child' for online voting – it experienced an increase in turnout from 46 percent to 61 percent over three successive elections to different offices.

²⁰ Hutt City Council was the last local authority to use booth voting in 1992.

testing / audits / certification / accreditation required." (the Committee may wish to note that these are all words used in the actual document).²¹

The decision to decline the request was made without consultation with SOLGM, and without sharing the findings and recommendations with the eight trial councils.²² We were 'advised' of the decision by an official the day before the announcement.

Many of those involved to date remain committed to pursuing a trial of online voting in 2019. This work that the eight councils and two providers have done will stand the sector in good stead. Lessons have been learned around the technical implementation of online voting, and in all honesty around the need to take the community with us (including the technical and academic community).

Another important lesson from the last attempt is that the sector as a whole needs to approach the trial as a coordinated collective. While SOLGM and LGNZ worked together to assist with development of the policy and security framework, neither of our organisations considered that it had a mandate from the sector as a whole to invest sector funded time and resource into development of the system.

More than a few local authorities expressed some surprise that central government was not assisting with the funding and development given some of its agencies run elections as part of local elections (DHBs) and that ultimately electors will demand an online voting option at Parliamentary elections. At SOLGM's post-election debrief, we were surprised to learn that the Electoral Commission has no current intentions to look at online voting (though we understand that the Department of Internal Affairs does).

In its communications with the sector the Government has referred to a need for the sector to make incremental and demonstrable progress towards meeting the conditions necessary to establish a trial. In our view such an approach would require a staged process that would include referenda, 'mock' elections and small scale testing in a politically binding context, with the appropriate evaluation at each stage. Figure One shows how the Online Working Group saw the process operating.²³

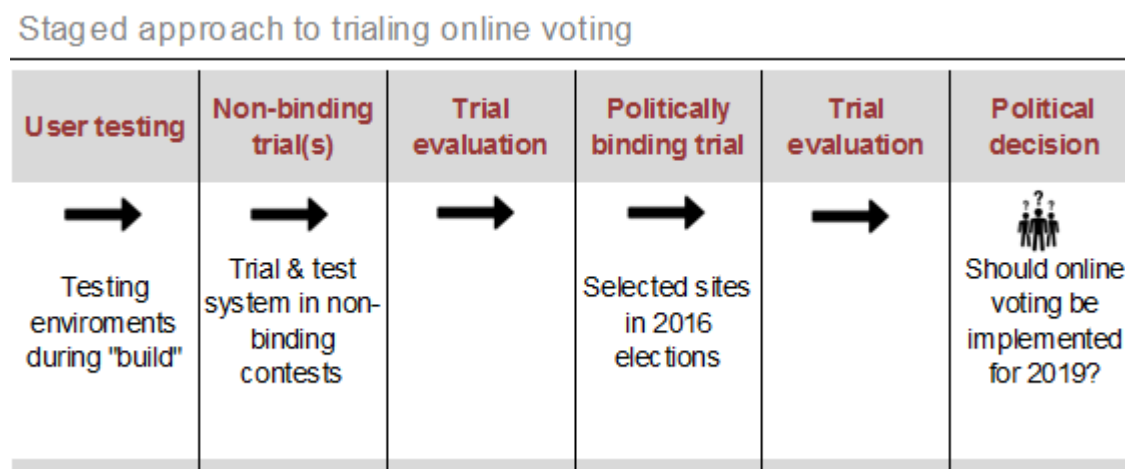
²¹ The framework runs to 24 pages, with a further two pages of updates and amendments made during the trial process. Both are still available online, the initial document can be found at the following:

[https://www.dia.govt.nz/vwluResources/Reqs-for-trial-online-voting-in-local-elections-Nov15-pdf/\\$file/Reqs-for-trial-online-voting-in-local-elections-Nov15-pdf.pdf](https://www.dia.govt.nz/vwluResources/Reqs-for-trial-online-voting-in-local-elections-Nov15-pdf/$file/Reqs-for-trial-online-voting-in-local-elections-Nov15-pdf.pdf)

²² Hon Louise Upston (2016), *Councils' Progress on Plans to Trial Online Voting in Local Elections, Paper to Cabinet Economic Growth and Infrastructure Committee* contains a full description of the organisations consulted during the trial. The Committee will note the omissions from the list, and should note that Local Government New Zealand might contest the assertion that they were "involved throughout".

²³ Online Voting Working Group, page 45.

Figure One: Staged Approach to Trialling Online Voting



The recommendations we make in the remainder of this section are intended to:

- better provide for phased introduction and trialling of online voting and
- remove some of the redundancy from the policy and security framework.

Legislative Blockages to a Trial

Note: This recommendation is regarded as urgent and will be pursued through additional channels including directly with Ministers.

The omission of Auckland Council from eligibility for the trial placed a significant impediment in the way of a successful trial. The Cabinet paper of the time stated that *"Auckland Council has expressed a keen interest in taking part in any trial of online voting. However, a trial for over one million electors is not appropriate, at it would be harder to mitigate any risks from trialling with such a large number. Auckland Council has indicated it would like to restrict a trial to a smaller subset of voters, such as those living overseas. This cannot be done under the existing regulation-making powers. So Auckland Council, or any other council which is not willing or able to trial across its entire electorate, could not trial under the existing regulation-making powers."*²⁴

SOLGM has some sympathy with concerns that a trial over one million voters carried risks, and may not have been representative of the range of matters online voting would raise. We have an alternative view as to whether regulation-making powers allow for a trial over part of a local authority – whether geographic (e.g a local board)

²⁴ Hon Louise Upston (2014), *Trialling Online Voting in Local Elections, Paper to Cabinet Economic Growth and Infrastructure Committee*, page 7.

or demographic. Regardless, the amendment to regulation powers is relatively trivial. That is to say that while 'Auckland-wide' participation in the trial did carry risks, these could have been mitigated had there been a willingness on the part of the Government to do so.

The Government's decision referred to a need for the sector to make incremental and demonstrable progress towards meeting the conditions necessary to establish a trial. We submit that an amendment that would allow for trialling over a subset of a local authority would lower the risks involved in participating in a trial. For example allowing local authorities to offer to a subset such as voters with high needs or voters overseas would allow local authorities to offer online voting, but allow for some degree of control in the event of a failure. We submit that making this amendment is a sensible step in allowing for the incremental and demonstrable progress that the Government has asked the sector to develop.

Recommendation

- 10. That the Committee agree that section 139 of the Local Electoral Act be urgently clarified to better empower the making of regulations that would allow local authorities to offer online voting to geographic or demographic subsets of electors.**

Policy and Security Framework

We have already seen that the policy and security framework designed to support the trial in 2016 was particularly complex. All in all the framework contained some 95 requirements.

Many are obvious, for example online voting can only be offered alongside postal voting, online voting must protect the secrecy of the vote and the like. Some have been drawn from overseas, in particular the Council of Europe Recommendations to Ministers of Member States on *Legal, Operational and Technical Standards for E-voting* (COE recommendations). Around half appear to be 'local rules'.

While we draw a couple of specific examples to your attention, we submit that these represent the 'tip of the iceberg' and that the whole framework is in need of a review. Officials have commented that one of the reasons that the Government decided not to proceed with a trial was that the councils had focussed on meeting the technical requirements, and not undertaken the necessary community engagement. We suggest that the overdesign of the framework was a driver of this.

One of the requirements that we expressed most concern about was requirement 1.11, that electors receive a valid voter ID and access code in two separate and independent transactions. Two factor authentication is a standard component of many online transactions. What is of concern is the 'double handling' aspect to this requirement (effectively this requires two mail-outs to the community) at more or less double the cost. It is not clear what the rationale was for this particular requirement was, it doesn't appear to be replicated in the COE recommendation (or in other jurisdictions).

Discussion Question

Aside from double notification of access information, are there other aspects of the policy and security requirements that you consider SOLGM should specifically submit on. If so, what and why?

Recommendations

That the Committee:

- 11. agree that the Government's policy and security requirements for online voting be reviewed against international best practice**
- 12. agree that the double notification of access information be removed from the Government's policy and security requirements.**

Technical and Procedural Matters

In this section we cover the following matters of a technical and procedural nature. Many, but not all of these are matters that have been raised by SOLGM in previous inquiries. We cover the following matters:

- access to the unpublished roll
- access to the supplementary roll
- ratepayer franchise
- electronic transmission of nomination documents
- electronic transmissions of votes from overseas
- electoral deposit
- matai names
- candidate order on voting documents
- public notice and
- electoral timetable.

Access to Unpublished Roll

The Electoral Act 1993 creates what is known as the unpublished roll. We are advised that as at January 2017 there were approximately 17,600 electors on this roll. This is a device for protecting those electors whose personal circumstances are such that publication on the electoral roll may compromise their personal safety (for example, police officers and those who protected by a domestic violence protection order). By law, details of those on this roll cannot be provided to anyone outside the Electoral Commission. This includes local authority electoral officers and their staff.

Those on the unpublished roll are eligible to vote in local elections. In these cases the Electoral Commission notifies the elector that they are eligible to vote as a residential elector. The voter then contacts the electoral officer to exercise a special vote, and fills in a special voting declaration.

As it stands the process is reliant on the elector making an approach to the electoral officer. The number of special votes issued is generally a great deal lower than the number of on the unpublished roll (and remember that this is just one of the grounds that an elector may have for requesting a special vote). For example, at the 2013 local elections there were approximately 15,600 electors on the unpublished roll, and around 13,000 special votes cast in total (there is no estimate of the number on the unpublished roll that actually voted).

SOLGM accepts that personal safety is a valid concern and that there should be protections for voters with a genuine and demonstrable concern for their personal safety. Electoral officers and staff make a declaration, which includes an undertaking not to disclose information received in this role unless authorised by the LEA. An intentional or reckless breach of this Act is an offence punishable by a fine of up to \$2000. We suspect that an electoral officer guilty of any breach, whether intentional or not, would also face disciplinary action and (potentially) employment consequences

We do not see these concerns as insurmountable in that electoral officers and staff are subject to the same restrictions as Electoral Commission staff and the returning officers. These protections could be extended to others exercising functions in support of local elections, such as mailhouse staff.

This is one of the issues where SOLGM will be undertaking further developmental work during 2017 and will report to you before 31 December.

Recommendations

That the Justice and Electoral Committee:

- 13. note that SOLGM is considering means for safeguarding privacy of details for those on the unpublished roll while allowing electoral officers access to this information**
- 14. agree in principle that electoral officer be given access to the unpublished roll.**

Access to the Supplementary Roll

The Electoral Commission maintains what are known as supplementary rolls. These are electors who have enrolled after the close of the roll. This data is not currently available to local authority's requests for this data have been rejected due to an apparent lack of specific authority for the Commission to supply information.

In the absence of this information the electoral officer must send details of the requests to the Electoral Commission and wait for confirmation. We have received advice this process has delayed the declaration of final results by as much as three days in some local elections.

The Committee's last inquiry recommended that the Commission provide local authorities with access to the supplementary roll and the deletions file (a list of those

who have recently ceased to be electors in the particular district). Obviously we support both aspects this recommendation – we understand access to the so-called deletions file may be matter of practice rather than a matter for regulation. We note that the Government undertook to progress this recommendation with the sector, and with the Electoral Commission. At the time of writing there has been no discussion with SOLGM (or LGNZ).

Recommendation

That the Justice and Electoral Committee:

- 15. agree that the Electoral Act be amended to require supply of a supplementary roll before polling day**
- 16. agree that local authorities should be provided with access to the deletions file.**

Ratepayer franchise

The ratepayer electoral franchise is a feature unique to the LEA. Voters on the electoral roll vote in the local authority in which they reside, but in cases where they are a ratepayer in another local authority can also choose to vote in that local authority.²⁵ The textbook example would be an Aucklanders with a holiday home in Waihi Beach, he or she is on the roll for Auckland Council, but may also enrol to vote in elections for the Western Bay of Plenty District Council. The ratepayer franchise flows from the principle of 'no taxation without representation' and should be retained.

Eligible electors who wish to exercise the ratepayer franchise need to enrol separately as a ratepayer elector. But, unlike the process for enrolling as a Parliamentary elector, the ratepayer elector must re-enrol each triennium.

The nature of the enrolment process is such that only the truly committed take up ratepayer enrolment. Turnout on this franchise is generally a great deal higher than for other voters - in past elections turnout of ratepayer electors has generally been 75 – 80 percent. However, the number of ratepayer electors has declined markedly.

²⁵ To qualify as a ratepayer elector, the potential voter must be identified in the appropriate valuation roll as the sole ratepayer in respect of a rating unit within the region, district, local board area, or community. That is to say if A Smith and B Smith, Aucklanders, jointly own a rating unit in Kaipara only one of them can exercise rights to enrol as a ratepayer elector in Kaipara. An elector who owns property in different community or local boards within the same local authority can also register as a ratepayer elector in respect of the community/local board election only.

In 1992, there were 22,300 on the ratepayer roll across the country, in 2013 there were 6,900.

Local authorities must provide public notice of the qualifications and process for enrolment as a ratepayer elector, in the May proceeding local elections, and provide a further notice with rates assessments or rates invoices delivered before the end of September preceeding local elections. SOLGM undertakes a promotional campaign on behalf of the sector to ensure messages are clear and consistent across the country, and acts as an agent in the joint procurement of media space.

The Committee's report on the 2013 elections recommended that enrolment as a ratepayer remain continuous up to the point where the elector chose not to remain on the roll, or is no longer eligible. Electoral officers have reported that some on the ratepayer roll do not always realise that they need to reapply, and consequently there is attrition on the roll, or the ratepayer needs to cast a special vote.

We therefore concur with that recommendation in principle, but will be undertaking further developmental work during 2017. The Government response to the Committee's last report undertook to

"discuss this matter further with local councils ... with a view to making any appropriate legislative changes when a suitable opportunity arises".²⁶

This is another instance where no such discussion has occurred as of the time of writing.

Recommendations

That the Justice and Electoral Committee:

- 17. note that the Committee's report on its inquiry into the 2013 local elections recommended that enrolment on the ratepayer franchise be made continuous**
- 18. note SOLGM's agreement in principle with this, and that SOLGM is considering how continuous enrolment could be given effect.**

Electronic transmission of nominating documents

The 2016 elections marked the first where the decline in levels of service provided by the postal system were evident. One of the ways that this manifested itself was in the delivery of nomination forms from potential candidates.

²⁶ New Zealand Government (2015), *Government Response to Justice and Electoral Committee Report on Inquiry into the 2015 Local Elections*, page 5.

In some parts of many regional councils, and some of the larger rural councils, it is not uncommon for post to take a week to get from an isolated community to the receiving council offices. We became aware that local authorities were advising residents contemplating nomination to allow a week for delivery by post. We also became aware that local authorities had received conflicting legal advice as to whether nominations that were scanned and emailed were 'in writing' for the purposes of the LEA.

We also sought advice and concluded that the answer to this question was far from clear, and the least risk course was for candidates to 'post early'. Clearly something as fundamental as what 'nomination in writing' means should be clear and certain.

We submit that a nomination received by facsimile or by email should be valid provided that the particulars are all clearly legible (including the signatures and addresses of the nominee, nominator and seconder).

Recommendation

19. That the Justice and Electoral Committee agree that the law around transmissions of nomination forms be clarified to allow for transmission by electronic mail.

Electronic transmission of votes from overseas

As noted above SOLGM considers that it is a matter of 'when' online voting becomes available for local elections.

The LEA and Regulations currently only allow voters wanting to cast a special vote to receive or deliver the documents by post or in person. This makes casting a special vote problematic at best for those voters who are overseas. In essence the voter has to know that they will be at a particular postal address during a particular window of time (in some parts of the world that window may be as narrow as 2-3 days even if the international postal system works to the optimum).

The Electoral Regulations 1996 now permit the electronic transmission of special voting documents from electors who are overseas, provided that a secure means of transmission is available.²⁷ We can see no reason why a similar provision could not be incorporated into the Local Electoral framework.

²⁷ Regulation 47B, Electoral Regulations 1996.

Of course, this is very much an interim, second-best solution while central and local government works on the policy, security and technical issues associated with online voting.

Recommendation

20. That the Justice and Electoral Committee agree that the law be amended to allow for electronic transmission of special votes to and from voters who will be overseas during the election period.

Electoral Deposit

The electoral deposit has long been a feature of local authority elections, and parliamentary elections. Contrary to popular belief the deposit is not a contribution toward the cost of the election, other than in the most nominal sense. The deposit is a mechanism for discouraging frivolous candidacy.

However, more than 15 years on from the enactment of the LEA, SOLGM is unconvinced of both the policy rationale and the effectiveness of a deposit as a means of discouraging 'frivolous' candidacy. The deposit for local elections is \$200 (as compared with a \$300 deposit for parliamentary elections), which we suspect is not a significant barrier to those who are determined to be frivolous. Were the deposit really intended to be a disincentive to stand, those who withdraw during the course of an election would lose their deposit.

Of course, any financial barrier created by a deposit would not discriminate between the alleged 'frivolous' candidate and those who are 'genuine'. For someone on a fixed income such as a superannuitant, student or beneficiary even an outlay of \$200 could be significant.²⁸ One of the reasons for the claimed loss of salience is that there are perceptions that local authorities are not

Recommendation

21. That the Justice and Electoral Committee agree that the law be amended to remove the requirement for candidates to pay a deposit at local elections.

²⁸ A deposit of \$200 is about 0.9 percent of the 'single, living alone' rate that superannuitants are paid at the time of writing.

Question for Discussion

Would your local authority support removal of the electoral deposit as a condition of candidacy at local elections?

Matai Names

The LEA prohibits the use of official titles when listing candidate names on the voting document. Names that can be used include a registered name or a name by which the candidate has been commonly known for the six months prior to an election. Some local authorities have been challenged on their application of so-called 'matai' names, which we understand to be more in the nature of names than of a title. To avoid doubt, the legislation should give guidance.

Recommendation

22. That the Justice and Electoral Committee agree that the law be amended to clarify whether a matai name may be used on voting documents.

Candidate Order on Voting Documents

The order in which candidate names appears on a ballot can make a difference to the outcome of the election. Although we are unaware of any New Zealand evidence, most of the overseas research concludes that these so-called candidate order effect exist in elections to all levels of government.

In a study of Californian city, county and school board elections between 1995 and 2008 Meredith and Salant²⁹ concluded that

"candidates listed first on the ballot are between four and five percentage points more likely to win office than expected absent order effects. This estimate implies that the first listed candidate wins roughly one out of every ten elections that he or she would otherwise lose".

²⁹ Meredith M and Salant Y (2011), *On the Causes and Consequences of Ballot Order Effects*, retrieved from <https://www.sas.upenn.edu/~marcmere/workingpapers/BallotOrder.pdf> on 25 January 2017,

In a similar vein, a study of British local elections between 1973 and 2011 has concluded that:

"comparing votes for last-placed and first-placed candidates in the ballot order demonstrates a clear advantage to those who placed first. This increases in size as both the number of seats (vacancies) and competing candidates increases. Those located in the top half of the ballot paper are more likely to finish in the top half of the vote order".³⁰

The size of this candidate order effect is estimated at between one percent and 2.5 percent.

The LEA recognises the potential existence of these effects by allowing local authorities to choose one of three methods for ordering names on the ballot:

- *alphabetical* – candidates appear in alphabetical order of surname
- *pseudo-random* – the order is determined by a draw, and the order so determined is used on all ballot papers, that is to say if John Smith's name is drawn first, his name appears first on all voting documents
- *random* – the order of candidate names is different on each set of documents.

The main argument against random order has been cost. Developments in information technology mean that there is now only a minimal difference in the costs of producing voting documents under the different systems. In recent years there has been an observable trend towards random and pseudo-random order.

The LEA sets alphabetical order as the legislative default, local authorities that wish to use pseudo-random or random order need a council resolution to this effect. We suggest that there is an obvious conflict of interest in those who are/may be candidates at an election making this type of decision, especially as this decision comes with no right of appeal (unlike other decisions such as ward boundaries and voting systems). We submit that the legislation should set random order as the means for ordering candidate names on the ballot papers themselves, we submit that the ordering of names in the candidate booklets should remain alphabetical. This is consistent with the recommendation that the Committee made in its last report.

³⁰ Webber, Railings et al (2012), *Ballot Order Positional Effects in British Local Elections 1973 – 2011*, Oxford Journal of Parliamentary Affairs, volume 67 number 1.

Recommendation

- 23. That the Justice and Electoral Committee agree that random ordering of candidate names on ballot papers be made mandatory and that this would not extend to candidate profile booklets.**

Public Notice

One of the means through which local authorities advise the public of certain decisions or intention to act, or of certain rights (such as the right to demand a poll on the electoral system) is by the giving public notice. Public notice under the LEA replicates the provisions of the Local Government Act which requires publication in:

- (i) 1 or more daily newspapers circulating in the region or district of the local authority; or
- (ii) 1 or more other newspapers that have at least an equivalent circulation in that region or district to the daily newspapers circulating in that region or district.

Local authorities may, but do not have to, supplement the above by giving notice at other times and places as they see fit. Most newspapers have been experiencing steady decline in their hard copy circulation, to the point where notice only in newspapers will be ineffective.

The Government's proposals for inclusion in the Local Government Regulatory Systems Bill includes a proposal to amend the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987 to include a mandatory requirement for councils to publish public notices on their council's website until any opportunity of review or appeal has lapsed. This is additional to publication in newspapers and is seen as a transitional step. We concur.

Recommendation

- 24. That the Justice and Electoral Committee agree that the Local Government Act be amended to require local authorities to give public notices on their council's website until the opportunity of review of appeal has lapsed.**

Electoral Timetable

The timing of the 'spring' school holidays was changed about 15 years ago. One of the consequences of the change is that there is now a two-week overlap in the timing of school holidays and the local election period. For example, in 2016 the election date was 8 October, while Term Four began in most schools on 10 October, meaning there was an overlap of a fortnight. This means that the election period coincides with a time when people are far more likely to be away from home.

SOLGM is investigating the practical implications of moving the election date (and other dates in the electoral timetable) forward by a week to reduce the overlap. So, for example the election date for 2019 would be Saturday 5 October as opposed to Saturday 12 October.

Recommendation

- 25. That the Justice and Electoral Committee note that SOLGM is investigating the practicalities of moving the election calendar forward by one week.**

Question for Discussion

Do you see any practical issues in moving the election calendar forward by one week?