

Inquiry into the 2022 Local Elections

Submission to the Justice Committee

February 2023



Recommendations

That the Justice Committee:

Citizen participation

1. **agree** that declining citizen participation and engagement is an issue of equal concern for both central and local government.

Election promotion and communications

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

Civics education

4. **agree** that New Zealand undertake foundational research in the state of civic awareness and knowledge both in school-level students and in adults.
5. **agree** that the Government conduct an inquiry into the role of civics education in the curriculum and effective teaching and learning of civic education.

Social media

6. **agree** that the definition of advertisement in the Local Electoral Act be amended to include advertisements in any medium.
7. **agree** that the expression of personal political views on the internet be expressly excluded from the definition of electoral advertisement.

Campaign expenditure limits

8. **agree** that the Local Electoral Act be amended to allow setting of campaign expenditure limits by regulation.

Pre-election reports

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.

Postal voting

10. **note** the ongoing issues with postal voting as a means of delivering local elections.

Online voting

11. **agree** that central and local government periodically review the security, technical feasibility, and public support for online voting.

Advance booth voting

12. **agree** that central government work with local government to bring about a trial of advance voting.

Overseas votes

13. **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. This should also be considered for voters with high access needs.

Collection of votes

14. **agree** that councils providing vote collection boxes and voting in community venues be required to publish a list of dates and venues on the council website by the opening of voting.

Ratepayer enrolment

15. **agree** that section 27 of the Local Government Rating Act 2002 be amended to place the ability of local authorities to access rating data to administer the ratepayer franchise beyond doubt.
16. **agree** that regulations 15 and 17 be reviewed for consistency with a ratepayer's ability to remove themselves from the franchise.

Centralised delivery of local elections

17. **agree** that central and local government jointly develop proposals for centralised delivery of some or all of local electoral functions and consider these proposals alongside the status quo.

Foreign influence

18. **agree** that the security agencies be provided the financial and other resources necessary to support local authorities in identifying and mitigating risks of undue foreign influence in the local democratic processes.

Voting age

19. **agree** that any lowering of the voting age should be accompanied by an expansion of civics education in early secondary schools.

Citizenship of candidates

20. **agree** that section 55 of the Local Electoral Act be amended to require candidates to furnish proof of New Zealand citizenship.

Candidate photos

21. **agree** that section 61 of the Local Electoral Act be amended by specifying a period within which any candidate photo must have been taken.

Honorifics in foreign languages

22. **agree** that further research on the status of foreign language honorifics be undertaken.

Order of candidate names on ballot papers

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

Unpublished roll

24. **agree** that each local authority's electoral officer and other sworn staff be given access to the unpublished roll
25. **agree** that each local authority's electoral officer and other sworn staff be provided with the protection of having their names on the unpublished roll, should they desire it.

Supplementary rolls

26. **agree** that the Electoral Act be amended to require supply of a supplementary roll to each local authority electoral officer before polling day.
27. **agree** that each local authority electoral officer should be provided with access to the deletions file.

Local Authority Members' Interests Act 1968

28. **agree** that the \$25,000 limit on elected member contracts with their local authority be reviewed and updated
29. **agree** that the Local Authority Members' Interests Act 1968 be amended to allow the limit on elected member contracts with their local authority to be reviewed in line with inflation.

Table of Contents

List of recommendations	2
Table of contents	5
Introduction	6
What is Taituarā?	6
Our role in local elections	6
Part One: Turnout	8
Some reflections on turnout	8
Turnout: salience	10
Turnout: information deficits	14
Turnout: systems and processes	18
Part Two: Other Electoral Matters	26
Centralised delivery of local elections	26
Foreign influence in local elections	28
Lowering the voting age	29
Citizenship of candidates	31
Candidate photos	32
Honorifics in foreign languages	33
Order of candidate names	33
Collection of votes by candidates or their agents	35
Access to the unpublished roll	35
Access to the supplementary roll	36
The Local Authority Members' Interests Act 1968.	37

Introduction

What is Taituarā?

Taituarā — Local Government Professionals Aotearoa (Taituarā)¹ thanks the Justice Select Committee (the Committee) for the opportunity to submit in regard to the Committee's inquiry into the 2022 local elections.

Taituarā is an incorporated society of approximately 1000 members drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities.

Our vision is:

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

Our role is to help local authorities perform their roles and responsibilities effectively and efficiently. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to service planning and delivery, to supporting activities such as the collection of rates.

We are a managerial organisation as opposed to a political one. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation. The submission that follows provides managerial and technical perspectives on the policy and legislative framework that regulates the local electoral process, and on the delivery of the 2022 elections.

This submission is in two parts. Part One responds to the Committee's request for comments on turnout (which we also take to include options for improving turnout). Part Two deals with other matters from the terms of reference.

Our Role in Local Elections

Taituarā makes a substantial contribution to the success of the local electoral process.

The Local Electoral Act 2001 (LEA) formed part of the last substantive (and integrated) review of the three canons of local government law. The (then) SOLGM

¹ Taituarā is the trading name of the Society of Local Government Managers (SOLGM) conferred upon us in January 2021 by the (then) Ministers of Defence and Local Government, the Hon Peeni Henare, and the Hon Nanaia Mahuta.

led the development of a case for the review that ultimately resulted in the enactment of the LEA. The July 2000 SOLGM/LGNZ publication *A New Legislative Framework for Local Government Elections*, was developed with members of our Electoral Working Party 'holding the pen'.

Taituarā supports electoral officers in the transparent and efficient conduct of local elections. Each triennium we provide electoral officers with a revised and updated *Code of Good Practice* in local elections. It achieves this by identifying the key components of the local elections process, linking in the relevant statutory references and supplementing this with recommended good practices supported by sample documents and references. It is prepared with the assistance of staff from the Local Government Commission and the Department of Internal Affairs.

The 2022 elections saw a greater level of revision of the Code than was the case in 2016 and 2019. In particular, the abolition of District Health Boards and the changes to the poll provisions for the establishment of Māori wards² necessitated revisions to xxx parts of the code.

The Code is the basis for the training that Taituarā provides electoral officers and other staff involved in local elections.

In 2022 Taituarā participated in the Vote 2022 campaign alongside Local Government New Zealand. We commissioned the Easy to Read Vote guide to support this campaign

Taituarā 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 and
- national rates for the production and distribution of voting documents (through NZ Post and Datam).

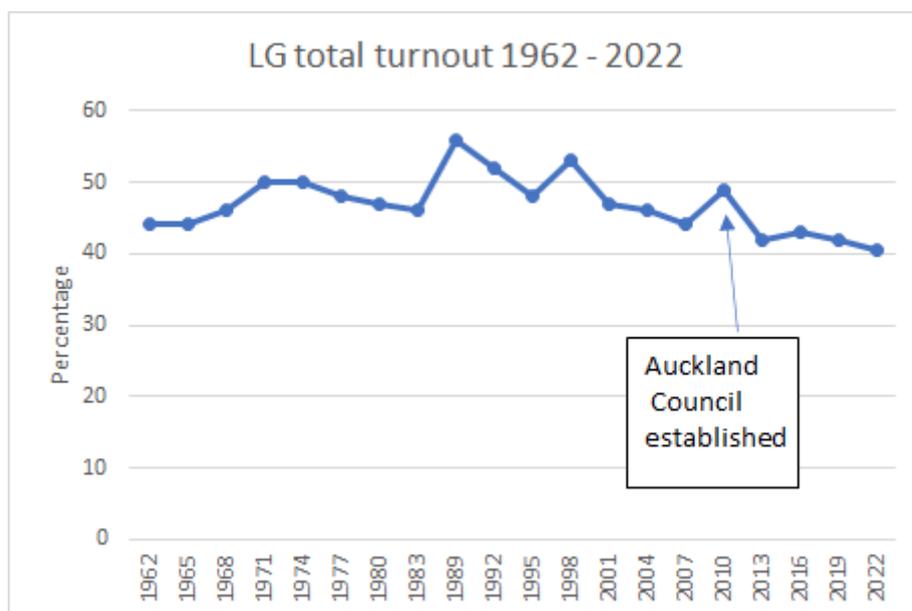
² We use the term Māori wards as a shorthand term for "Māori wards and constituencies".

Part One: Electoral Turnout

Some overall reflections on turnout

The reported turnout in 2022 was 40.4 percent, the lowest level of turnout since the introduction of postal voting in 1989. This represented a decrease of around 1.8 percent over the level experienced in 2019.

Below is a graph showing the turnout trends. The highest turnout was in 1989 which saw the reorganisation of the local government system.



Overall, the 2022 local elections saw a drop in turnout to 40.4 percent, down 1.8 percent from the last elections.

As usual voting in local elections was highest in rural councils with the median being 49 percent across 26 councils. The provincial council turnout is the next highest, with a median of 44 percent. Finally, the metro council median is 41 percent.

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.

The Inquiry into the 2013 Local Elections received advice from the Department of Internal Affairs that the causes of turnout are many and varied but can be classified into three general headings:

- a lack of salience (perceived relevance) of local government and of voting in elections in particular
- a lack of information about candidates and issues and
- the existence of procedural blockages that might create barriers to registration to vote and the act of voting itself.

A survey of the 2016 elections by Auckland Council³ explored voter awareness. Prior to the 2016 election 75 percent of people intended to vote but turnout was only 38.5 percent. The survey revealed that reasons for not voting were divided into three main categories, effort, timing, and apathy. For some, there was too much effort involved in finding out about candidates and policies and there were barriers to accessing information. Others lost track of time and missed the postal voting dates, or simply just forgot to vote. Still other people gave responses such as 'I'm not interested in politics or politicians', 'I don't think my vote will make a difference', and 'I can't be bothered voting', which all fell into the apathy category.

Voter turnout can be increased by employment of different mechanisms such as the ones used by the Electoral Commission in the 2017 and 2020 general elections. That is, strategies such as improving the ease by which people can vote or stand and better promotion of the event.

This is supported further by ongoing research that Auckland Council is undertaking around behavioural insights and local elections from which the two key lessons are to make voting easy and make voting social. Technical and procedural matters that have already been changed for the general election to increase participation should also be incorporated into local election legislation. These include overseas voting, special votes, more accessible voting place locations and compliance with campaign rules.

Citizen engagement is a matter of equal concern for both local and central government. Both must work together on shared problems such as accessibility and inculcating civic values in citizens.

³ Awareness of and attitudes towards voting in the 2016 Auckland Council elections
<http://knowledgeauckland.org.nz/publication/?mid=1657>

Recommendation: Citizen participation

- 1. That the Justice Committee agree that declining citizen participation and engagement is an issue of equal concern for both central and local government.**

Turnout: salience

Election promotion and communications

Taituarā is one of several agencies involved in the promotion and communications of the 2022 election. Specifically:

1. LGNZ ran the Vote 2022 campaign encouraging people to stand for election to local bodies and provided local authorities with resources to support get out the vote efforts.
2. the Department of Internal Affairs provided funding of \$175,000 towards the campaign.
3. the Electoral Commission conducts a campaign that encourages people to enrol as residential electors.
4. Taituarā coordinates a similar campaign for ratepayer electors.
5. some local authorities ran their own campaigns.

The national Vote 2022 campaign used familiar faces and local heroes sharing what was important to them for the local communities, whanau and rohe. The Vote 2022 campaign was designed to encourage more people to stand for election and get more people to vote by positioning local government as relevant, impactful and connected to communities, and for potential candidates to feel excited about community leadership.

The national campaign had two parts:

What do you stand for – to encourage people to stand?

What makes you tick – to encourage people to vote in FPP elections?

Your vote. Your voice – to encourage people to vote in STV elections

A series of design assets including social media tiles, advert mock-ups, billboard and poster designs were available for paying councils to customise, along with a social media strategy, media release templates, and branded pencils. 28 councils used the national campaign.

The campaign targeted groups with low turnout, Māori, Pasifika and rangatahi. There is an increase in Māori candidates (also facilitated by the Māori Ward legislation) and a slight increase in women mayors.

For councils which chose to use their own local campaign rather than the national campaign, free Vote 2022 logos in Māori and English were made available. Many councils also ran local campaigns.

The campaign worked well for its size and scale. However, it's not pitched at the same level as the campaign that say, the Electoral Commission, run that make use of national media. However, the practical reality is that such a campaign will be possible only if the sector as a whole contributes to the campaign.

Recommendations: Election promotion and communications

That the Justice Committee:

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

Civics Education

Declining levels of trust and confidence in government and its institutions are far from confined to central government and is a phenomenon that is common to many jurisdictions.

Declining trust and confidence manifests itself in many forms. The 2022 local elections were marked by the participation of individuals who were standing with the intent (in some cases stated) of making the country ungovernable (e.g. Voices for Freedom).

Recent years have been marked by a decline in the state of civic discourse – including some willingness to resort to compulsion and force as a tool (e.g. the occupation of Parliament grounds, blocking State Highway one, assaults on a local authority Chief Executive). Sadly, the 2022 elections were subject to a marked increase in incidents of intimidation, harassment and abuse of candidates and electoral staff.

One of the consistent features of post-election research is that there are significant elements of the community that did not vote because they consider:

- voting would make little difference to the way that their local authority is run (this has been cited by one in five non-voters)
- local government is not relevant to them personally (this has been cited by one in six non-voters).

Civics education is a counter to all of this, and to that extent is an investment in the country's future. On one level it's a device to inculcate an understanding of institutions of local government and its role in New Zealand's constitutional arrangements at an early age. But more fundamentally civics inculcates a culture of being actively involved in communities and an understanding of the value of community and participation for the common good.

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 in a legitimate protest). An engaged citizen also involves themselves in community activity – for example, by participating in voluntary work.

The obvious place to raise awareness is through a civics component in the 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.⁴

The last international comparative study of civic awareness and knowledge that this country participated in actually ranked New Zealand students above average with their peers. This comes despite that same study citing New Zealand as one of two

⁴ Refer to the 2009 International Civic and Citizenship Education Study (ICCS).

nations where the authors found civics education has a low priority (their words)⁵ Sadly that study was in 2009. New Zealand did not participate in the 2016 edition of that study – in fairness it appears none of the English-speaking countries did.

If New Zealand is to make useful investments in civics education it should begin with foundational research on civic awareness and knowledge, both in school students and in the wider community. This includes participation in the next ICCS study and/or advocacy internationally for a replacement.

In its response to the 2013 Inquiry into Local Elections the Government undertook to “work with LGNZ (sic), SOLGM (as it then was) and other local council organisations to encourage the provision of experiential learning opportunities for schools.”⁶ Ten years on, we’ve not been contacted, nor has LGNZ (to our knowledge).

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.

Research suggests that experiential learning (learning by doing) is generally the most effective means of civics education. The Electoral Commission undertakes the so-called Kids Voting programme in advance of general elections. We understand that this has a relatively good take-up.

This is also run in local government elections – though not well taken up (only 55 schools participated in the programme in 2022). But of course civics is much more than ‘just’ voting. At least one council suggested they saw the cost as prohibitive.

We are aware that the Scandinavian countries make experiential learning a key component of their programmes e.g. site visits, mock debates, and the like. The American Centre for Civic Education runs a programme called ‘We, The People’ where high-school age children debate issues of relevance and discuss constitutions, democracy and its fundamental principles.

We’ve become aware that the Ministry of Education has produced a recent (2020) and very useful teaching and learning guide.⁷ The guide restates the core values and

⁵ Schulze et al, ICCS 2009 International Report, Civic knowledge, attitudes and engagement among lower secondary school students in 38 countries, pp 44- 45

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

⁷ Available at <https://sltk-resources.tki.org.nz/assets/Uploads/Teaching-and-Learning-Guide.pdf>

objectives of civics education (though it appears with more of a social studies lens). The guide then provides a series of exemplars of resources or programmes deemed effective at different levels of the curriculum. This includes at least one example of a mock debate on a local issue with/through a local authority.

However it appears there is a focus on year 7 and there is no compulsion to use these resources. The kind of systematic teaching of civics we have in mind would require both.

Predecessors to this Committee have regularly called for enhancements to civics education. We call on the Committee to not only renew that recommendation, but perhaps consider something more, for example an inquiry into civics education and awareness in general.

Recommendations: Civics education

That the Justice Committee

- 4. agree that New Zealand undertake foundational research in the state of civic awareness and knowledge both in school-level students and in adults.**
- 5. agree that the Government conduct an inquiry into the role of civics education in the curriculum and effective teaching and learning of civic education.**

Turnout: information deficits

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 come the use of social media by electors with views on particular issues or candidates. It has also come with a raft of issues around the applicability of the regulatory settings to social media. This is particularly true of the provisions around election advertising.

We have previously been asked whether communications on the internet are advertising for the purposes of section 113. The advice we have suggests 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.

However this is also safeguarded with a series of exemptions. Where consistent with the intent of the LEA, these exemptions should be incorporated into the LEA. In particular, section 3A(2)(e) expressly excludes "*any publication on the Internet, or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication of those views*" from being regarded as an advertisement. This would avoid doubt as to whether activity as trivial as a member 'liking' a candidate's Facebook post requires a promoter statement.

In preparing this recommendation we were cognisant of developments in election law in the United States, especially the so-called *Citizens United* case around advertising and electoral donations. Our view is that the exemption we recommend below should apply only to so-called natural persons and should not extend to personalities in the legal sense (such as a corporation, trust, or the Whanganui River). The Committee may wish to consider the equivalent parallels in the Electoral Act.

Recommendations: Social media

That, in accordance with practice in Parliamentary elections, the Justice Committee:

- 6. agree that the definition of advertisement in the Local Electoral Act be amended to include advertisements in any medium.**

- 7. agree that the expression of personal political views on the internet be expressly excluded from the definition of electoral advertisement.**

Candidate expenditure and donations

The last inquiry made a group of four recommendations that promote alignment of advertising rules between the Local Electoral Act and the Electoral Act. These included aligning the rules around third party promotion and rules around donation disclosure.

Democracy flourishes where political discourse is encouraged – having different rules applying to central and local government creates an unnecessary barrier to such discourse.

We would also strongly support the annual indexing of expenditure limits. The latest Half Year Economic Update from Treasury forecasts that the headline rate of inflation will increase by around 13 percent in the next three years.

Even in a low inflation environment inflation still moves at 4-5 percent over the course of a triennium. We submit that the Act should be amended to allow for the setting of expenditure limits through regulation than by statute. Parliament's time ought not be diverted for mechanical amendments such as these.

Recommendation: Campaign Expenditure Limits

- 8. That the Justice Committee agree that the Local Electoral Act be amended to allow setting of campaign expenditure limits by regulation.**

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)^{8,9}
- 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.¹⁰ A 2019 PER will contain forecast financial information for the 2020/21, 2021/22 and 2022/23 financial years and
- 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 PER draws together information that already exists into a single document. Few local authorities have identified significant issues with the production of PER, 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 the 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 meaning there is the potential for misuse of information.

We are 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. 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 2014.¹¹

⁸ 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.

⁹ 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.

¹⁰ Strangely, there is no requirement to include information for election year in a PER. Almost all local authorities did include this information, however.

¹¹ 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.

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 any factual inaccuracies that come up during the campaign). The PER serves as 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. Taituarā 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 as the basis for setting rates so should be reliable.

Recommendation: Pre-election Reports

- 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.**

Turnout: systems and processes

Postal voting

Managing an election by post is challenging. NZ Post advises that the 3.5 million voting packs delivered last October is triple the volume of mail for an average week.

Confidence in postal elections is eroding – both on the part of electoral officers and the general public. The Taituarā post-election survey of electoral officers revealed that 42% of sector respondents rated the overall performance of NZ Post as poor, up from 27% in 2019.

Sector concern about postal performance revolves more around slower and less accurate delivery of voting papers than actual non-delivery (though we are aware of one proven case of voting papers delivered *after* the election period). There were documented pockets of delayed papers in Amberley, Ngāruwahia, Southland, Marlborough Sounds, and parts of Sydney. Ironically, there were a small number (approximately 200) of voting packs delivered *early* in three local authorities in the central North Island.

How did the sector manage these issues in 2022?

In some rural areas of New Zealand local authorities advised electors to allow a week for return of both nomination forms and voting documents. Many also issued

publicity around a 'last date to post' and advice to voters as to where they could deliver votes in person.

LGNZ coordinated the provision of orange ballot bins to give voters another option to return their votes. Some 45 councils took up this option (and Auckland arranged for collection using its own means). Some 48% of votes in Wellington and 33% in Auckland were returned to the ballot bins and not posted back.

One council used DX Mail for delivery of outgoing and incoming voting papers instead of NZ Post with very successful results. Another used DX for part of their services also with very good results.

Diminishing mail volumes may mean that it becomes increasingly difficult to conduct elections via the postal system. Postal deliveries to residential addresses are made every other day rather than daily. Post office branches and post boxes are becoming increasingly difficult to find.¹² A majority of commercial invoicing and almost all payment is done electronically, it does not appear there is any real prospect of a reversal of declining mail volumes. It should also be noted that the return of overseas votes from anywhere other than Australia and some parts of the Pacific is very low.

Our Elections Reference Group will be working with the sector to maintain confidence in the delivery of outgoing and incoming voting papers for 2025 with the understanding that NZ Post continues to wind down its services as postal demand decreases yearly. We submit that long-term New Zealand will not be able to successfully deliver local elections through the postal system. We now turn to two alternatives.

Recommendation: Postal voting

10. That the Committee note the ongoing concerns with the postal system as a means of delivering local elections.

Online voting

Unlike the 2013, 2016, and 2019 local elections, the sector made no concerted effort to seek the ability to trial online voting (though we are aware some local authorities would still like to pursue online voting as an option). The last substantive attempt undertaken in 2017 and 2018 foundered on two fundamental concerns:

¹² We are aware of one council having attempted to verify the locations of post boxes in their district and having found three no longer existed.

- the sector’s willingness to meet the cost of conducting a trial (which was estimated in the mid-seven figure range following an exhaustive request for proposal and evaluation process undertaken by a group of nine councils) and
- the concerns of security agencies about the security of online voting and the authenticity of the vote – especially set against a backdrop of declining trust and confidence in government and concern about foreign influence in the electoral process.

For the record, Taituarā supports an online voting option in principle, subject to sufficient public confidence in the security and accuracy of the system. In itself, online voting is more of a tool for making the act of voting more convenient for those that have decided to cast a vote. Online voting is not a substitute for engaging the public and persuading them to vote.

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.¹³

Overseas experience tells us that the most successful means of introducing online voting is in a staged way, making incremental progress towards a full trial of online voting.

With Covid-19 having finally brought about the demise of cheques, and the consequent move of almost all financial transactions into an online environment, it may be timely to take a fresh look at public confidence in online transactions. We should also continue to monitor the international developments with online voting and in particular security.

Recommendation: Online voting

- 11. That the Select Committee agree that central and local government periodically review the security, technical feasibility and public support for online voting.**

¹³ 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.

Advance voting

The Committee's 2016 report recommended that the Government "support a trial of advance booth voting in local government". It appears this recommendation followed the success of advance voting at the 2017 election (and repeated at the 2020 elections). The theory goes that a return to booth voting might create a sense of occasion and enhance turnout.

We support a trial of advance voting in principle. We temper this by noting that the historic experience with booth voting in local elections is far from encouraging e.g. the last booth election in local authorities had 26 percent turnout in a tightly contested Mayoral race.

If a trial of advance voting is to be successful it will need a greater level of promotion in the areas where it is offered (as per our earlier recommendation). It would also need some legislative change to allow local authorities to issue a replacement vote (see later recommendations).

The Government of the day agreed to the Select Committee's recommendation. As of this writing nothing further has happened. We call on the current committee to renew that recommendation.

Recommendation: Advance voting

12. That the Select Committee agree to support a trial of advance voting,

Electronic transmission of votes from overseas

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 permit the electronic transmission of special voting documents from electors who are overseas, provided that a secure means of transmission is available.¹⁴ We can see no reason why a similar provision could not be incorporated into the Local Electoral framework.

¹⁴ Regulation 47B, Electoral Regulations 1996.

Recommendation: Overseas Votes

- 13. That the Justice 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. This might also be considered for voters with high access needs.**

Collection of votes

We strongly encourage local authorities to place collection boxes in places such as libraries, operate mobile collection stations etc. We temper this with advice about the need to ensure security, secrecy of the ballot and so on.

One of the initiatives that was put in place aligned to the Vote 2022 campaign was a centralised purchase and distribution of collection boxes (the so-called 'secure orange bins). We are advised that 44 local authorities took up the offer (in addition to Auckland Council and Palmerston North City Council that each ran their own initiative). They made the act of voting a little more convenient, especially in the last days before voting, and interestingly there's been no reports of any evidence of any attempt to tamper with a collection box (or any evidence of a collection bin having been tampered with).

We are aware of instances where candidates have challenged the placement of some facilities and whether that provided electors with equal opportunity. For example, one local authority announced an intention to place ballot boxes at the local University. Several candidates challenged the neutrality of such a decision.

The risks to these approaches can be managed with advance publicity of when and where boxes will be placed. Often local authorities will know when and where people will congregate, for example at significant sporting events, cultural or community events and the like. Councils might also tie in the availability of collection boxes with their own engagement event, where dates and times are known in advance.

This all points to having a plan for when and where collection is undertaken and good communications. Mechanisms such as including a timetable of dates and venues on a council website, in the pre-election report, as part of the notice calling the election and so on all make sense.

Recommendation: Collection of Votes

- 14. That the Justice Committee agree that councils providing vote collection boxes and voting in community venues be required to publish a list of dates and venues on the council website before voting begins.**

Ratepayer roll

One of the features unique to local elections is the existence of the non-resident ratepayer franchise i.e. a ratepayer who lives in Auckland but owns property and pays rates in Thames, can vote in both local authority elections if they register as a ratepayer elector.

There is a degree of public misconception that the ratepayer franchise somehow breaches the one person, one vote principle. Those who make these arguments commonly follow it with comments such as “no-one gets two votes in a general election”. This is based on a misunderstanding of the nature of local governance – each local authority is a single jurisdiction and those on the ratepayer roll pay local tax (i.e. rates) in that jurisdiction.

A person may not exercise a vote on the ratepayer franchise and one on the general franchise in the same election. Denying a ratepayer elector, the opportunity to vote is to deny the principle of “no taxation without representation”.

A person wanting to vote as a ratepayer elector needs to register as a ratepayer elector in the relevant local authority (Thames-Coromandel in the above example). The Act requires local authorities to notify ratepayers with postal addresses outside the area of the option, and publicly advertise the option once every three years.

Unlike the residential roll, a person who wants to stay on the ratepayer roll needs to re-register each election. 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.

The eligibility for the ratepayer franchise is determined from information on the local authority’s rating information database (a collection of information that is used for assessing and collecting rates).

A person becomes eligible for the ratepayer roll through the act of acquiring a property in a district in which they do not normally live. The local authority becomes

aware of the acquisition when it receives a notice of sale (which the former owner is responsible for furnishing).¹⁵ Amendments to the local authority's district valuation roll are made through a process known as 'roll maintenance' – which some local authorities undertake themselves and others contract their valuer to undertake for them. That the new ratepayer is eligible for the ratepayer franchise is picked up through the ratepayer's address for sending rates assessments/invoices as it appears on the district valuation roll (DVR).

It is this process that could be used to determine when a ratepayer elector is no longer eligible for the ratepayer roll. All this requires is the addition of an indicator to the rating unit's entry on the local authority's rating information database (not the district valuation roll) that signals whether the owner is on the DVR.¹⁶ When a property is sold, the person doing the roll maintenance is made aware the property was formerly owned by a ratepayer elector and advises the electoral officer.

Ratepayer electors may remain eligible for the roll but choose not to stay on it. Currently, all they need do is not return the form when the registration process opens. This change would require a ratepayer elector to take action to get themselves *removed*. That requires some redesign of the existing forms or the creation of a new form signalling the elector's wish to leave the roll.

Section 27 of the Local Government Rating Act 2002 allows a local authority to use information on the database for communication with ratepayers. In this era of privacy and litigiousness it may be desirable, but probably not essential, that this provision be amended to put the use of information for administering the ratepayer franchise beyond doubt.¹⁷ There would be a need to change some of the regulations governing preparation of the ratepayer roll. Regulation 15 would need to change to allow for the possibility of a ratepayer deciding to remove themselves from the ratepayer roll. A similar provision may be needed in regulation 17.

¹⁵ Section 32, Rating Act, it is this act that is the means through which the former owner removes themselves as the person liable for rates.

¹⁶ A local authority's rating information database holds all the information necessary to set and assess rates. This includes the information on the district valuation roll, but in many cases also includes other information valuers do not collect and which is used to set rates.

¹⁷ The provisions governing the use of, and access to, information on the rating information database and the links between these provisions and other statute that draws on this information are well-known for their overall lack of coherence and ability to 'talk to' each other.

Recommendations: Ratepayer Enrolment

Taituarā recommends that the Justice Committee:

- 15. agree that section 27 of the Local Government Rating Act 2002 be amended to place the ability of local authorities to use rating database information to administer the ratepayer franchise beyond doubt and**
- 16. agree that regulations 15 and 17 be reviewed for consistency with a ratepayer's ability to remove themselves from the franchise.**

Part Two: Other Electoral Matters

In this section we cover electoral matters that do not directly go to the promotion of electoral turnout. Many, but not all of these are matters that have been raised by Taituarā and the wider sector in previous inquiries. We cover the following matters:

- centralised delivery of local elections
- foreign influence in local elections
- lowering the voting age
- citizenship of candidates
- candidate photos
- honorifics in foreign languages
- order of candidate names
- collection of votes by candidates or their agents
- access to the unpublished roll
- access to the supplementary roll
- the contracting rule as set out in the Local Authority Members' Interests Act 1968.

Centralised delivery of local elections

The report into the 2019 Local Elections recommended that the Government consider giving responsibility for running all aspects of local elections to the Electoral Commission. This has more recently been supported by the draft report of the Independent Review Panel considering the Future for Local Government.

Taituarā supports the centralisation of some or all local electoral functions in principle. Functions such as an investigative or ombudsman role, the conduct of promotion and working to strengthen civics education may well lend themselves to centralisation.

There is no single common international practice for the administration of local elections. Most Australian states have a state-level electoral commission that administers state and local elections. In Northern Ireland there is a single returning officer, who appoints the Chief Executives of local authorities as the Deputy Returning Officer in each local authority. Elsewhere in the United Kingdom, local authorities appoint their own returning officers who administer all elections (including central government) to nationally set performance standards. Most local jurisdictions in the United States run their own elections – including local delivery of the federal elections. There is a mix of practice in Canada – in some provinces local authorities run their own elections, in others a provincial level body is responsible.

A centralised agency may be better able to research, develop and implement new voting methods. A centralised agency is likely to have a greater level of internal capacity to undertake the many and varied tasks that come with a new voting method e.g. developing any technology, advising on the regulatory framework that accompanies the method, developing and administering public education about the new method and so on.

Similarly, a centralised agency would have the capacity to commission national level education and promotional campaigns for local elections. Additionally, the Electoral Commission would have its experiences in promoting and voter education in Parliamentary elections to draw on.

It is a fact that the local government sector's capacity to undertake national level initiatives is limited by the fact that membership of the national bodies such as Taituarā and LGNZ is voluntary. There is no compulsion to contribute to a promotional campaign or developing a new technology.

It is sometimes argued that a centralised body will promote greater consistency in the interpretation and application of electoral law and regulations. We are not as convinced by this argument as others. The two private providers of election services provide election services to 76 of the 78 local authorities. The Taituarā Code of Electoral practice also provides a set of templates, advice and interpretations that is seen as industry standard. That is to say that there is a degree of consistency already built into the existing arrangements. Often perceived inconsistencies in approach come down to small changes in factual circumstances that trigger different approaches at law.

Any move to a centralised model of delivery will need to address three key concerns.

The first is that centralising the delivery of local elections would effectively move elections to monopoly provision. Local government's experience with monopoly service provision by central government and its agencies is not encouraging. One of the drivers for the establishment of the present regime for performing council rating valuations was concerns at the charging practices of the then Crown-owned Valuation New Zealand.

Local government would need to be satisfied that there is sufficient equity, transparency and efficiency in what costs are recovered from local government, and how. There would also need to be an exceptional level of engagement with the sector in developing the approach to the administration of elections on the ground as well as any national level activity.

A second and related concern lies in the Commission's ability to attract and retain the capability it would need to run local elections. On the face of it the Commission will need to increase its capability over what it needs to administer the Parliamentary elections on more or less a permanent basis.

During the last local elections the Commission closed some regional offices. The Commission's existing regional infrastructure would need restoration and further enhancement particularly if it were to be given a role to investigate alleged conduct issues during local elections. Similarly, it could be expected that the range of candidates and elections in play will be such that trying to deal with genuine queries won't be something that can be done at national level.

And thirdly, there are aspects of the election process where ongoing local government involvement and process may be required. For example, the administration of the ratepayer franchise requires access to the rating information database in each local authority and interaction with the out-of-district ratepayer that might be better handled locally. Care would be needed to ensure that national administration of elections does not undermine any promotion or engagement activity undertaken locally. And most importantly of all, the representation review process should remain with local authorities – with the Local Government Commission acting as the appellate body.

Recommendations: Centralised Delivery of Local Elections

17. That central and local government jointly develop proposals for centralised delivery of some or all of local electoral functions and consider these proposals alongside the status quo.

Foreign influence in local elections

The last Select Committee inquiry made a number of recommendations aimed at minimising potential foreign interference in local elections. We agree that foreign interference, or the perception of foreign interference, is a risk in New Zealand politics at all levels.

Foreign interests might want to acquire influence over regulatory decisions in a particular council, such as the allocation of water rights or particular planning and consenting decisions. Equally, foreign interests might want to intervene in decisions to undertake certain infrastructure investments and where these are awarded. More generally foreign influence might be sought as a means of compromising public trust in government.

To the best of our knowledge there has been no comprehensive assessment of the likely level and location of risks that undue foreign influence might be sought or achieved at local government level. The intelligence agencies might assist the sector to undertake such an assessment and provide the sector with guidance on how individual local authorities might undertake their own.

In its testimony to the Committee both intelligence agencies submitted they are not resourced to provide such support to local authorities. If the agencies are genuinely concerned about the levels of risk of foreign interference in local democracy, that is advice central government should be taking seriously in the next budget round.

Recommendations: Foreign influence

- 18. That the Justice Committee agree that the security agencies be provided the financial and other resources necessary to support local authorities in identifying and mitigating risks of undue foreign influence in the local democratic processes.**

Lowering the voting age

The Committee has asked for comments on the voting age. Of course, this is an extremely topical matter given the:

- recent Supreme Court decision holding that a voting age of 18 is inconsistent with the Bill of Rights and
- recommendation in the draft report from the Independent Panel considering the future for the local government sector that the voting age be lowered to 16.

The arguments advanced against lowering the voting age are that those younger than 18 have not sufficiently developed the judgement necessary to exercise an informed vote, and that there is a greater risk that a third party (such as a parent) might exercise undue influence. Neither argument stands informed scrutiny.

Evidence adduced by Make it 16 in their recent litigation showed that.

"... when situations call for deliberation in the absence of high levels of emotion (cold cognition), such as voting, granting consent for research participation, and making autonomous medical decisions, the ability of an individual to reason and consider alternative courses of action reaches adult levels during the mid-teen years. When situations that involve emotionally charged situations where time for deliberation and self-restraint is unlikely or difficult (hot cognition), such as driving, consuming alcohol,

and criminal behaviour, impulse choices are more likely and mental processes are slower to develop, reaching adult levels into adulthood.”¹⁸

These findings suggest that the law governing the legal capacity of those under 21 is riddled with inconsistencies. A person may drive at the age of 15, have sex at 16, and consume alcohol at 18. Hot cognition is often involved in each of these decisions. Each comes with some degree of risk to oneself and to others e.g. a bad judgement when driving might result in an accident. Yet in only one case does the age limit align with the voting age – the ‘drinking’ age.

Undue influence may be a concern at the margins. Today’s younger generations are amongst the more active in bringing their concerns to the attention of decision-makers (for example, the so-called ‘climate strikes’) and in organising to do so. It seems to us more likely that teenage voters will be more influenced by each other than a parent, teacher etc.

In short, the basis for selecting 18 as the voting age is based more on custom and practice than on any evidence-based rationale. As a managerial organisation, it is not for us to recommend a particular age. It is incumbent on Parliament to ensure that the voting age coheres with the assumption of other rights and to periodically review the voting age.

There have been some suggestions that Parliament might extend the electoral franchise for local elections in advance of (or instead of) those for Parliamentary elections. This appears more based on the likelihood of change (or lack thereof) to what is an entrenched provision of the Electoral Act 1993, than to any actual policy rationale.

We advise that differing voting ages would necessitate two electoral rolls – one with 16/17-year-olds added and one prepared with these voters excluded. In the medium-term such a move is likely to create voter confusion – which is most likely to manifest at the first Parliamentary election after such a change is made. Considerable voter education would be needed on this aspect alone.

Research strongly suggests that voting is habit-forming. We have noted elsewhere that a prolonged, consistent, and substantial investment in civics education is a critical component of any long-term strategy to improve turnout. An extension of the franchise to younger voters makes such an investment all the more critical both to expand awareness that the opportunity to vote is open, and why it’s important. Early secondary education appears to be the timing that’s most proximate to the first

¹⁸ Grace Icenogle and others “Adolescents’ Cognitive Capacity Reaches Adult Levels Prior To Their Psychosocial Maturity: Evidence for a ‘Maturity Gap’ in a Multinational, Cross-Sectional Sample” (2019) 43 Law & Hum Behaviour.

vote where the curriculum remains largely mandated and uniform (i.e. there is still mandatory English, Social Studies, Health etc).

Recommendations : Voting Age

19. That the Justice Committee agree that any lowering of the voting age should be accompanied by an expansion of civics education in early secondary schools.

Citizenship of candidates

Candidates must be a New Zealand citizen to stand for election. We are aware of historic cases of candidates having been elected to office who were not New Zealand citizens and therefore were ineligible to stand. The two most recent cases (2017) did not come to light until months after the candidates began acting as elected members.

Section 25 of the Local Electoral Act is very clear – a candidate must be a New Zealand citizen. The nomination form requires the candidate to attest to their holding New Zealand citizenship. Section 21 makes it an offence to nominate a candidate knowing that person is ineligible to hold office, or to accept a nomination knowing that you are ineligible to hold office. The offence is punishable by a maximum fine of \$2000.

The nomination form in use in most local authorities makes the candidate aware that they may be asked to furnish proof that they are a New Zealand citizen. The form also makes it clear that acceptable proof includes a New Zealand Passport, New Zealand Birth Certificate, or other New Zealand Citizenship documents, such as a Certificate of Citizenship or Determination of Citizenship.

It appears some electoral officers rely on the candidate certifying their eligibility in two places and signing the form, on the legal sanction and on loss of office as the control.

The nomination form for the 2017 general election appears to require a similar certification. It also requires candidates born outside New Zealand to furnish proof of citizenship and helpfully directs candidates who are unsure about their status to the Department of Internal Affairs. On one level there is a practice issue which we will resolve by asking candidates to furnish proof.

However, the legislative authority for this could be made a lot more certain especially in circumstances where a candidate refuses to produce proof. We recommend an amendment to section 55 to require candidates to furnish proof that they are a New Zealand citizen.

The 2018 Census showed that around 27 percent of New Zealand's usually resident population were not born here. This was up from around 25 percent at the 2013 Census. With the reopening of the borders, New Zealand is likely to remain a nation with a growing migrant population. This issue will not go away.

Recommendation: Citizenship of Candidates

20. That the Justice Committee agree that section 55 of the Local Electoral Act be amended to require candidates to furnish proof of New Zealand citizenship.

Candidate photos

Section 61 empowers, but does not require, candidates to supply a recent photograph for inclusion alongside their candidate profile statement. The Act does not specify what constitutes 'recent'. As a result we are aware there are differences in practice between election providers – one regards six months as recent, another says a year. Both providers report debates with prospective candidates.

The dictionary definition of 'recent' (having begun or happened or started from a short time ago) is not helpful in this regard. We have no preference as to what time period should be selected, only that there should be one.

Recommendation:

21. That the Justice Committee agree that section 61 of the Local Electoral Act be amended by specifying a period within which any candidate photo must have been taken.

Honorifics in foreign languages

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, for example the former Minister of Local Government the Hon Peseta Sa, Lotu-liga possesses the matai title 'Peseta'. These are honorifics in certain Pacific cultures, which we understand link to the bearer's ancestral home and are more in the nature of names than of a title.

Similarly we are aware that in other cultures certain suffixes and prefixes can denote rank or title. The exact nature of these titles can vary greatly from culture to culture – such that we do not consider a blanket recommendation in this area is appropriate. We do consider further research is necessary.

Recommendation: Honorifics in foreign languages

22. That the Justice Committee agree that further research on the status of foreign language honorifics be undertaken.

Order of candidate names

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 effects 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 Salant¹⁹ 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".

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

¹⁹ 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,

*“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”.*²⁰

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.

Recommendation: Order of candidate names

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

²⁰ Webber, Railings et al (2012), *Ballot Order Positional Effects in British Local Elections 1973 – 2011*, Oxford Journal of Parliamentary Affairs, volume 67 number 1.

Collection of votes by candidates and their agents

We have been made aware that during a recent by-election a candidate and their agent have been offering to collect votes for posting.

Section 123(1)(e) creates an offence if a person "obtains or has possession of any voting document, other than one issued to that person under [the LEA] or any regulations made under [the LEA] for the purpose of recording his or her vote, without authority".

Electoral officers generally advise candidates and their agents against this – noting that the perception that candidates had access to votes other than their own fails the 'front page of the paper test'.

We have no reason to doubt the motives of this candidate and their agent. However, we ask the Committee take note that this practice is both a risk to the security of an individual vote and the perceived integrity of the election. Those who consider postal voting is 100 percent secure should take note.

Access to the unpublished roll

The Electoral Act 1993 creates what is known as the unpublished 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 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).

Taituarā 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 mail house staff.

On a related issue, the 2022 local elections saw a significant increase in aggressive and intimidatory conduct towards electoral officers and staff. This includes instances directed to home addresses. We submit that electoral officers and other staff may need some protection from these behaviours by placing their names and details on the unpublished roll.

Recommendation: Access to the unpublished roll

That the Justice Committee agree:

- 24. that each local authority's electoral officer and other sworn staff be given access to the unpublished roll and**
- 25. that each local authority's electoral officer and other sworn staff be provided with the protection of having their names on the unpublished roll if they so desire.**

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 authorities and 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 has previously recommended that the Commission provides 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 of this recommendation – we understand access to the so-called deletions file may be matter of practice rather than a matter for regulation. This has not been actioned to date.

Recommendation: Access to the supplementary roll

That the Justice Committee:

- 26. agree that the Electoral Act be amended to require supply of a supplementary roll to each local authority electoral officer before polling day.**
- 27. agree that each local authority electoral officer should be provided with access to the deletions file.**

Links to the Local Authority Members' Interests Act 1968

And to finish, an issue that may seem peripheral to inquiry, but goes to who chooses to stand for election. The Local Authority Members' Interests Act 1968 (LAMIA) governs situations where an elected member's personal pecuniary interests conflict or could come into conflict with their official duties.

Of course, we support the policy intention of LAMIA, namely that those in elected office make decisions in the public interest and without the intrusion of personal interest.

We want to draw the Committee's attention to one of the two core provisions in this Act. The so-called contracting rule provides that any elected member who is concerned or interested in contracts with the local authority of more than \$25,000 in any year is disqualified from office (unless they receive approval from the Auditor-General).

The \$25,000 limit has not been reviewed since 1982. Inflation has so pushed up costs and contract values to the point where what was a \$25,000 contract in 1982, would be nearer \$90-100,000 in today's money. In short, any businessperson with any contract with the local authority may well be disqualified from office.

We submit that New Zealand should not so baldly rule out candidates with business experience, acumen and the governance skills that could be more than useful around a council table. We submit that the amount needs to be reviewed and updated to a more 'modern' level. As this is a matter where a legislative amendment would be required, we suggest that the Act might also be amended to allow the amount to be determined in regulations.

Longer term, we have real doubts that this provision is necessary at all. The other core provision in LAMIA, the *discussion and voting rule*, provides that elected members must not vote or take part in discussion of any matter where they have a pecuniary interest (other than one in common with the public) that is before a local authority. To take the example of a road contractor, clearly its inappropriate for them to be involved in matters relating to tender processes, or roading provision in general. But other decisions such as a library extension do not raise obvious conflicts.

We say longer term, because the wider law around elected member roles and conduct is being considered through the Future for Local Government review. It would be appropriate for a first principles review at the point when we know more about the nature of the elected member's role.

Recommendations: Local Authority Members' Interests Act 1968

- 28. That the Select Committee agree that the \$25,000 limit on elected member contracts with their local authority be reviewed and updated.**
- 29. That the Select Committee agree that the Local Authority Members' Interests Act 1968 be amended to allow the limit on elected member contracts with their local authority to be reviewed in line with inflation.**



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