

Local Electoral Bill

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to modernise the provisions for the conduct of local elections and polls, and to provide sufficient legislative flexibility to accommodate new technologies and processes as they are developed (through the use of regulations to prescribe matters of detail that will be subject to future change). The Bill is derived from a principles-based framework that is intended to provide clarity and consistency for the conduct of local elections and polls.

The principles-based framework involves the adoption of a uniform approach for-

- . election cycles and dates:
- . electoral rights in relation to voting, standing for election and nominating candidates:
- . the appointment and role of electoral officers and other electoral officials:
- . the compilation of electoral rolls:
- . the procedures for the conduct of elections and polls:
- . offences and penalties.

Local flexibility and discretion is provided for-

- . choice of electoral system:
- . choice of voting methods.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on a date to be appointed by the Governor-General by Order in Council. The reason for having the Bill commence by Order in Council is to ensure that the regulations necessary for the operation of the Bill can be drafted and promulgated before the Bill comes into force.

Clause 3 is the purpose clause.

Clause 4 sets out the principles that the Bill is designed to implement.

Part 1

Preliminary provisions

Clause 5 defines various terms used in the Bill. Some significant new terms are **electoral officer** (which replaces the term **returning officer**), **electoral system**, **electronic**, **official place** (which replaces the term **polling booth**), **voting document** (which replaces **voting paper**), and **voting method**.

Clause 6 provides that the Bill binds the Crown.

Clause 7 is an application clause, which sets out the elections and polls to which the Bill applies.

Clause 8 empowers a local authority to direct an electoral officer to conduct an election that is not required to be held under any Act.

Clause 9 empowers a local authority to direct an electoral officer to conduct a referendum that is not required to be held under any Act.

Clause 10 specifies the date of the next triennial election of members of every local authority and community board (13 October 2001) and provides for the conduct of subsequent general elections on a triennial basis.

Clauses 11 and 12 set out some exceptions to the provisions of clause 10.

Officials

Clause 13 provides for the appointment and term of office of electoral officers, and makes provision for the delegation of powers and duties by electoral officers and the appointment or engagement of persons for the purposes of carrying out those powers or duties.

Clause 14 requires every electoral officer to appoint a deputy electoral officer.

Clause 15 sets out rules applying to the appointment of electoral officers, deputy electoral officers, and other electoral officials and their ability to act. *Clause 15* clarifies that an electoral officer, deputy electoral officer, or other electoral official is (in general) not subject to the directions of any local authority in the exercise of powers or the carrying out of duties under this Bill or regulations made under this Bill.

Duties of electoral officers

Clause 16 sets out the general duties of electoral officers.

Clause 17 provides for the conduct of elections for territorial authorities and community boards.

Clause 18 provides for the conduct of elections for local authorities that are not territorial authorities.

Clause 19 provides for the appointment of a supervising electoral officer for the purposes of certain elections referred to in *clause 18*.

Part 2

Local elections and polls

Electoral rights

Clause 20 sets out the rights of residential electors and ratepayer electors to vote at elections and polls.

Clause 21 sets out the criteria for qualification as a residential elector.

Clause 22 sets out the criteria for qualification as a ratepayer elector.

Clause 23 provides that, subject to *clause 56*, every parliamentary elector is qualified to be a candidate at every election conducted under this Bill.

Clause 24 sets out the rights of 2 or more electors to nominate candidates.

Electoral systems for elections

The provisions in the Bill dealing with proportional voting are based on the provisions of the Member's Bill introduced by Rod Donald entitled the Local Elections (Single Transferable Vote Option) Bill.

Clause 25 enables a local authority to resolve ~~to~~ change electoral systems for the next triennial general election. A resolution to change an electoral System for the purpose of the next triennial general election must be made not later than 15 November in the year that is 2 years before the year in which the next triennial general election is to be held.

Clause 26 requires every local authority to give public notice, not later than 22 November in the year that is 2 years before the year in which the next triennial election is to be held, of the right to demand a poll on the electoral system to be held for the next 2 triennial general elections of the local authority and its community boards.

Clause 27 enables a specified number of electors to demand a poll on a proposal to change the electoral system to be used for triennial elections of the local authority. A **specified number of electors** in relation to a local authority means a number of electors equal to or greater than 5% of the number of electors enrolled as eligible to vote at the previous general election of the local authority.

Clause 28 sets out the requirements for a valid demand.

Clause 29 enables a local authority to resolve to hold a poll on a proposal to change the electoral system for triennial general elections.

Clause 30 places some limitations on the ability to change electoral systems.

Clause 31 sets out procedures for a poll of electors.

Clause 32 deals with the effect of the poll on electoral systems. If a poll is held, the electoral *system* adopted or confirmed must be used -

- . for the next 2 triennial general elections; and
- . for all subsequent elections until a further resolution by the local authority or a further poll is held, whichever occurs first.

Electoral systems for polls

Clause 33 enables a local authority to determine by resolution the electoral system to be used for a poll conducted by that local authority.

Voting methods

Clauses 34 and 35 deal with voting methods for elections and polls. Every election or poll must be conducted using 1 or more methods of voting adopted by resolution of the territorial authority concerned. Resolutions may be made for the purposes of a particular election or poll or for elections and polls to be conducted at the same time. *Clause 35* requires a territorial authority to undertake consultation in certain cases before passing a resolution.

Electoral rolls

Clause 36 requires the electoral officer for every territorial authority to compile a roll of electors in every year in which a triennial general election is to be held, and at any other time when there is to be-

- . a general election of any local authority;
- . an election to fill an extraordinary vacancy;
- . a poll of electors of the local authority.

Clause 37 requires the electoral officer to provide public notice during May in each year in which a triennial general election is held of the qualifications and procedures for enrolment or nomination as a ratepayer elector. *Clause 37* contains a new requirement that notice of such qualifications or procedures must also be issued with at least 1 rates assessment delivered by the local authority before September in the year in which a triennial general election is held.

Clause 38 prohibits the inclusion of a person's name more than once in the same electoral roll.

Clause 39 requires the Chief Registrar of Electors to supply the electoral officer with details that will assist the electoral officer to determine whether a person is qualified as a ratepayer elector. This provision is based on section 7BF of the Local Elections and Polls Act 1976.

Clause 40 provides for the electoral roll to be available for public inspection. This provision is based on section 7D of the Local Elections and Polls Act 1976.

Clause 41 provides for the inspection of the electoral roll at any meeting or hui. This provision is based on section 111 of the Electoral Act 1993 (which contains a similar provision in relation to electoral rolls under that Act).

Clause 42 allows certain persons (generally those whose names and details do not appear on an electoral roll or are incorrectly recorded) to apply for registration or correction of registration as a parliamentary elector. (This clause is based on section 7E of the Local Elections and Polls Act 1976.)

Clauses 43 to 47 provide for the completion of the electoral roll, removal of names from the electoral roll, amendments to the electoral roll, objections to the electoral roll, and appeals to the District Court in respect of the electoral roll. These provisions are based on sections 7F to 7GB of the Local Elections and Polls Act 1976.

Clause 48 relates to the closing of electoral rolls. An electoral roll closes at the time prescribed in respect of the election or poll and, subject to certain exceptions, remains closed until the election is held or the poll is taken.

Clause 49 sets out rules governing the coming into force of an electoral roll, the period for which it remains in force, and the status of certified copies of the electoral roll.

Part 3

Conduct of elections and polls

Notice of election or poll

Clause 50 requires an electoral officer to give public notice of an election or poll not later than 28 days before the earlier of-

- the closing of the electoral roll; or
- the day and time by which nominations for candidates must be received.

Clauses 51 and 52 set out the additional information relating to an election and a poll, respectively, that must be set out in a notice under *clause 50*.

Candidacy

Clause 53 provides for the nomination of candidates by any 2 qualified electors. A nomination is invalid unless-

- the person nominated consents to nomination by notice in writing in the prescribed form;
- the nomination is accompanied by the deposit prescribed for the applicable class of election.

Clause 54 contains requirements relating to the names of candidates set out in nomination forms.

Clause 55 enables an electoral officer to require a candidate to produce evidence relating to any affiliation claimed by a candidate in certain circumstances. It also sets out rules governing what happens if the electoral officer considers that the candidate is not eligible to claim an affiliation or that the affiliation claimed might cause offence to a reasonable person or is likely to cause confusion to or mislead electors.

Clause 56 repeats the existing provisions of section 101GA of the Local Government Act 1974, prohibiting dual candidacy for both a regional council and a constituent authority.

Clause 57 sets out rules governing the forfeiture and refund of candidates' deposits. It is based on section 15 of the Local Elections and Polls Act 1976, but is somewhat simplified.

Clause 58 sets out rules governing the withdrawal of nominations before the close of nominations and the consequences of the electoral officer receiving advice of the death or incapacity to hold office of a candidate before the close of nominations.

Candidate profile statements

Clauses 59 and 60 are new provisions enabling a candidate to provide the electoral officer, before the close of nominations, with a candidate profile statement. A candidate profile statement is a statement, not exceeding 150 words, containing information about the candidate and the candidate's policies and intentions if elected to office. Clause 60 relates to the duties of the electoral officer or, in some cases, more than 1 electoral officer, to ensure that all prescribed requirements concerning the publication, display, or distribution of candidate profile statements to electors at the election are complied with.

Procedures after close of nominations

Clause 61 provides that if the number of candidates does not exceed the number of vacancies at the close of nominations, all nominated candidates must be declared to be elected.

Clause 62 provides that if, at the close of nominations, the number of candidates is less than the number of vacancies to be filled, a vacancy remaining unfilled is an extraordinary vacancy.

Further notice of election or poll

Clause 63 requires the electoral officer to give further public notice of the election or poll 'as soon as is practicable after the later of the close of nominations or the closing of the electoral roll.

Scrutineers

Clause 64 enables a candidate to appoint 1 or more scrutineers for the purposes of an election.

Clause 65 enables any 10 electors to appoint 1 or more scrutineers for the purpose of a poll.

Clause 66 sets out various requirements and restrictions relating to scrutineers.

Retirement of candidates, etc

Clause 67 provides that a candidate may retire at any time before polling day (or in a case where an election is not required to be held, at any **time** until all nominated candidates are declared to be elected under *clause 61*).

Clauses 68 and 69 deal with what happens if, after the close of nominations but before the close of voting, an electoral officer becomes aware that a candidate at an election-

- . has died; or
- . has retired; or
- . has become incapable under any Act of holding the office for which the candidate was nominated; or
- . was not validly nominated; or
- . was not qualified to be nominated as a candidate.

Clause 70 provides for certain situations where an election becomes unnecessary.

Adjourned elections and polls

Clause 71 relates to the adjournment of an election or poll in certain circumstances (generally involving natural disaster, adverse weather conditions, or a breakdown in communication or energy services). *Clause 71* is based on section 48 of the Local Elections and Polls Act 1976.

Voting, processing, and counting of votes

Clause 72 sets out the general duties of the electoral officer to maintain security and secrecy at an election or poll. The duties of the electoral officer relate to the security of voting documents and electoral records and the manner in which they are dealt with, and the disclosure of any information as to any candidate for whom or the proposal for which a voter is about to vote or has voted. The electoral officer is also required to take all reasonable steps to ensure that the processing and counting of votes, and the scrutiny of the electoral roll are conducted in a manner that facilitates checking of the processes adopted to conduct these duties (whether at a recount, inquiry, or otherwise).

Clause 73 provides that votes may be cast during the voting period. It also provides that no vote received by the electoral officer after the close of voting may be counted, unless permitted by regulations made under the Bill.’

Clause 74 provides that a local authority may determine that the voting documents in the election or poll are to be processed during the voting period.

Clause 75 sets out rules relating to the processing of votes before the close of voting.

Clause 76 prohibits the presence of scrutineers while votes are being processed during the voting period, but permits them to be present at processing after the close of voting, and at the scrutiny of the electoral roll.

Clause 77 requires the electoral officer to appoint at least 1 Justice of the Peace to observe the early processing of voting documents.

Clause 78 provides for the scrutiny of the roll (which is the recording of the names of all electors who appear to have voted at the election or poll), and the disallowance (with certain exceptions) of every vote cast in the name of an elector if more than 1 vote is cast in that person’s name).

Clause 79 provides for the counting of votes using the relevant prescribed procedures.

Clause 80 empowers the electoral officer to make announcements about the state of the poll at any time after 7 pm on polling day. *Clause 80* also requires the electoral officer to declare the official result of the election or poll in the prescribed manner as soon as practicable after—

- the scrutiny of the roll has been completed; and
- the validity of all special votes has been determined; and
- all valid votes have been counted.

Clause 81 sets out rules for dealing with a situation where a candidate dies or becomes incapable under any Act of holding the office for which the candidate was nominated, after the close of voting but before the declaration of the official result (or in the case of a recount any amended result).

Clause 82 sets out rules for dealing with a situation if the same person is elected as both the mayor and another member of a local authority. *Clause 82* is based on section 101W of the Local Government Act 1974.

Clause 83 requires all electoral records to be deposited with the Registrar of the District Court nearest to the principal office of the local authority, held for a period of 6 months, and then destroyed.

Part 4

Disputed elections and polls

The provisions of this Part largely repeat (in a modernised form) the corresponding provisions of the Local Elections and Polls Act 1976.

Recounts of votes cast at election

Clauses 84 to 86 make provision for recounts of elections.

Inquiry into election or poll

Clauses 87 to 96 make provision for inquiries at elections and polls.

Part 5

Electoral expenses

Currently there are no limits on candidate expenditure in local elections, in contrast with parliamentary elections.

This Part introduces candidate expenditure limits for local elections. The essential features of the new regime for candidate expenditure are as follows:

- a set of limits that will apply to all candidates for all forms of local election:

- a single set of tiered expenditure limits determined by the population of the area being contested, based on the parliamentary limit of \$20,000 for constituencies with average populations of 52 000:
- a total limit on campaign expenditure for a person standing for more than 1 position, based on the highest single limit for the positions for which that person is a candidate:
- definitions of **electoral activity** and **electoral expenses**, similar to those prescribed in the Electoral Act 1993:
- equal apportionment of electoral expenses when publicity relates to more than 1 candidate:
- measures relating to the authorisation of campaign expenditure, disclosure of campaign contributions, and enforcement provisions, similar to those in the Electoral Act 1993.

Clause 97 relates to interpretation. It contains similar definitions to those contained in the comparable provisions of the Electoral Act 1993. However, the period during which expenditure is regulated is of shorter duration (between the close of nomination day and the close of polling day) than under the Electoral Act 1993.

Clause 98 relates to periods for claiming and paying expenses. It is based on the provisions of section 206 of the Electoral Act 1993.

Clause 99 relates to the procedure applicable if a claim for electoral expenses is disputed. This provision is based on section 207 of the Electoral Act 1993.

Clause 100 relates to the grant of leave by a District Court to a candidate to pay a claim for electoral expenses sent in after the time permitted. This provision is based on section 208 of the Electoral Act 1993.

Clause 101 requires payments in respect of electoral expenses for \$200 or more to be vouched by a bill and a receipt. This provision is based on section 209 of the Electoral Act 1993.

Clause 102 requires a candidate, within 70 days after the day on which the successful candidates at any election are declared elected, to transmit to the electoral officer a return of the candidate's electoral expenses. This provision is based on section 210 of the Electoral Act 1993.

Clause 103 requires the electoral officer to keep a return of electoral expenses for 6 months, during which period the return must be open for public inspection and, after the expiry of that period, destroyed.

Clause 104 sets out the maximum amount of electoral expenses for any election. The total electoral expenses (inclusive of goods and services tax) of a candidate must not-

- exceed \$2,500 in the case of a candidate at an election for any local government area over which the election is held with a population smaller than 5000:
- exceed \$5,000 in the case of a candidate at an election for any local government area over which the election is held with a population smaller than 10 000, and larger than 4999:
- exceed \$10,000 in the case of a candidate at an election for any local government area over which the election is held with a population smaller than 20 000, and larger than 9999:
- exceed \$15,000 in the case of a candidate at an election for any local government area over which the election is held with a population smaller than 40 000 and larger than 19 999:
- exceed \$20,000 in the case of a candidate at an election for any local government area over which the election is held with a population smaller than 60 000 and larger than 39 999:
- exceed \$25,000 in the case of a candidate at an election for any local government area over which the election is held with a population smaller than 80 000 and larger than 59 999:
- exceed \$30,000 in the case of a candidate at an election for any local government area over which the election is held with a population smaller than 100 000 and larger than 79 999:
- exceed \$40,000 in the case of a candidate at an election for any local government area over which the election is held with a population smaller than 150 000 and larger than 99 999:
- exceed \$50,000 in the case of a candidate at an election for any local government area over which the election is held with a population of 150 000 or more.

If a candidate is a candidate for more than 1 election held at the same time the total electoral expenses of that candidate (inclusive of goods and services tax) must not exceed the highest amount permitted in respect of any of the elections for which the person is a candidate.

Clause 105 provides for the equal apportionment of electoral expenses if the electoral activity to which those expenses relate,

relate exclusively to campaigns for the return of 2 or more candidates.

Clause 106 restricts the publication of candidate advertisements.

Clause 107 relates to the use of public money.

Part 6

Term of elected members and extraordinary vacancies

Term of membership of elected members

Clause 108 provides standardised rules governing when a successful candidate at an election comes into office. A candidate at a triennial general election who is declared to be elected before polling day comes into office on polling day. In any other case a successful candidate at any election comes into office on the day after the candidate is declared to be elected. A person appointed to fill an extraordinary vacancy comes into office at the time of his or her appointment.

Clause 109 provides standardised rules for the vacation of office by members of a local authority or community board. In a case where the member's office is the subject of an election, the member, unless he or she vacates office sooner, vacates office when the members elected at the next election come into office. In a case where provision is made by any enactment to fill a vacancy by appointment, the member, unless he or she vacates office sooner, vacates office when the member's successor comes into office.

Filling of extraordinary vacancies

Clauses 110 to 113 deal with the filling of extraordinary vacancies. These clauses are designed to simplify the existing rules governing extraordinary vacancies. The general principle is that if a vacancy occurs in the office of a member of a local authority or community board more than 12 months before the next triennial general election, the vacancy must be filled by an election. In other cases the vacancy must either be filled by appointment or left unfilled. *Clause 111* provides for the giving of public notice to fill a vacancy by appointment. (Slightly different rules are provided in the case of mayoral vacancies.) *Clause 112* provides for the giving of public notice to leave a vacancy unfilled. *Clause 113* sets out procedures for the conduct of an election to fill an extraordinary vacancy.

Part 7
Offences

Parr 7 repeats in a modernised form, with updated penalties, a number of provisions containing offences currently in the Local Elections and Polls Act 1976. The offences continued in this Bill are the offences relating to-

- illegal nominations (*clause 114*), the maximum penalty for which is a fine not exceeding \$2,000 (currently a fine not exceeding \$100):
- interfering with or influencing voters (*clause 115*), the maximum penalty for which is a fine not exceeding \$5,000 (currently a fine not exceeding \$200):
- offences in respect of official documents (*clause 116*), the maximum penalty for which is a term of 2 years imprisonment for electoral officers and electoral officials, and a term of 6 months imprisonment in the case of any other person (the current maximum penalty for the offences set out in *paragraphs (a) and (b) of clause 116(1)* is a fine not exceeding \$500):
- voting offences (*clause 117*), the maximum penalty for which is a term of 2 years' imprisonment:
- bribery (*clause 118*), the maximum penalty for which is a term of 2 years' imprisonment:
- treating (*clause 119*), the maximum penalty for which is a term of 2 years' imprisonment:
- undue influence (*clause 120*), the maximum penalty for which is a term of 2 years' imprisonment:
- personation (*clause 121*), the maximum penalty for which is a term of 2 years' imprisonment:
- infringement of secrecy (*clause 122*), the maximum penalty for which is a term of 6 months' imprisonment:
- disclosing voting (*clause 123*), the maximum penalty for which is a fine of \$5,000 for electoral officers and deputy electoral officers and \$2,000 for any other person.

Clause *124* provides that every electoral officer, deputy electoral officer, or other electoral official commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, who is guilty

of any intended, reckless, or negligent act of commission or omission contrary to the provisions of this Bill or negotiations made under this Bill in respect of any election or poll, and for which no other penalty is imposed by this Bill. The maximum penalty for the offence is increased from a fine not exceeding \$100 to a fine not exceeding \$2,000.

Electoral expenses

Clause 125 makes it an offence to make a payment in contravention of *clause* 98 (which relates to periods for claiming and paying expenses). The offence is punishable on summary conviction by a fine not exceeding \$5,000.

Clause 126 makes it an offence to fail to transmit a return of election expenses within the prescribed period. The offence is punishable on summary conviction by a fine not exceeding \$1,000, and, if the person has been elected, to a further fine not exceeding \$400 for every day on which he or she continues to act until the return is transmitted. This provision is based on section 210(4) of the Electoral Act 1993.

Clause 127 makes it an offence to transmit a return of electoral expenses that is false in any material particular. The maximum penalty for the offence, if it is committed with knowledge of its falsity, is a term of imprisonment of 2 years or a fine not exceeding \$10,000. In any other case the maximum penalty is a fine not exceeding \$5,000. This provision is based on section 210(5) of the Electoral Act 1993.

Clause 128 makes it an offence, punishable on summary conviction by a fine not exceeding \$1,000, to publish or broadcast any material promoting the election of a candidate, without the written authority of the candidate or the candidate's agent.

Clause 129 makes it an offence to pay or knowingly aid any other person to pay any sum in excess of the prescribed maximum amount that may be incurred as an electoral expense. The maximum penalty for the offence, if it is committed with knowledge that the payment is in excess of the maximum prescribed amount, is a term of imprisonment of 2 years or a fine not exceeding \$10,000. In any other case the maximum penalty is a fine not exceeding \$5,000.

General provisions

Clause 130 is a restatement of section 61 of the Local Elections and Polls Act 1976. It provides that, for the purposes of any proceedings, property in any relevant item is to be treated as that of the electoral officer.

Clause 131 is a new provision that requires an electoral officer who receives a written complaint that an offence under this Part of the Bill has been committed or who believes that an offence under this Part of the Bill has been committed, to report the matter to the police, unless the electoral officer is satisfied, after making appropriate enquiries, that no offence under this Part of the Bill has been committed.

Part 8

Miscellaneous provisions

Clauses 132 to 139 are regulation-making powers. The regulation-making powers under the Bill are substantial and detailed. This reflects 1 of the primary policy objectives of the Bill; namely to provide for many matters of detail to be prescribed in regulations, and in particular those matters of detail that are tied to particular technologies or processes, and therefore subject to future change. The overall objective is to ensure that the Bill contains all relevant statements of principle, while providing sufficient flexibility to enable the use of new and more efficient systems, processes and technologies, without the need for constant amendment to primary legislation.

Clause 132 sets out a number of general regulation-making powers.

Clause 133 supplements *clause 132(a)* (which deals with the powers and duties of electoral officials) by specifying a number of matters for which provision may be made under that paragraph.

Clause 134 supplements *clause 132(b)* (which deals with electoral systems) by specifying a number of matters for which provision may be made under that paragraph.

Clause 135 supplements *clause 132(c)* (which deals with voting methods) by specifying a number of matters for which provision may be made under that paragraph.

Clause 136 supplements *clause 132(f)* (which deals with electoral rolls) by specifying a number of matters for which provision may be made under that paragraph.

Clause 137 supplements *clause 132(g)* (which deals with the conduct of elections or polls) by specifying a number of matters for which provision may be made under that paragraph.

Clause 138 provides for transitional regulations.

Clause 139 provides that *clause 138* (which relates to transitional regulations) expires on the close of 30 June 2002 and on the close of that date is repealed.

Clause 140 repeats, with some modifications, section 118 of the Local Elections and Polls Act 1976 (which deals with the cost of elections and polls).

Clause 141 provides that an election or poll is not invalid on the ground of certain irregularities set out in that clause.

Clause 142 makes provision for the validation of certain irregularities.

Clause 143 makes amendments to other enactments.

Clause 144 deals with repeals and revocations.

Clause 145 contains transitional provisions.

Schedule 1 lists the enactments repealed and revoked by the Bill.

Schedule 2 lists the amendments to other enactments made by the Bill.
