



20 December 2012

Committee Secretariat
Justice and Electoral
Parliament Buildings
Wellington

Dear Sir/Madam

Re: *Local Government New Zealand (LGNZ) submission to Local Electoral Amendment Bill No 2*

Local Government New Zealand is generally in favour of the amendments proposed in the Local Electoral Amendment Bill No 2 (the Bill).

The five main areas of change these amendments address are:

1. Anonymous donations
2. Representation arrangements
3. Candidacy and candidate information
4. Election timetable
5. Voting documents

Our submission focuses on the amendments relating to representation reviews and anonymous donations.

We also wish to raise issues for consideration by the Committee relating to donation provisions on the basis of candidacy versus candidate, and the need for clarification of what constitutes a 'return'.

We endorse the comments made in the submission from the Society of Local Government Managers (SOLGM), and have not commented further on the administration and enforcement processes in the Bill which are part of the SOLGM submission.

We wish to appear before the Committee.

REPRESENTATION ARRANGEMENTS

Local Government New Zealand supports the principles of fair and effective representation for electors embodied in the Local Electoral Act.

The current legislation ensures that each vote has approximately the same value and that wards and constituencies have about the same ratio of representatives to voters (known as the +/- 10% rule).

We agree with the statement in the Regulatory Impact Statement (2011, 2) to the Bill that councils have had difficulty arranging wards and constituencies to meet the “+/- 10%” test as well as the effective representation requirement of grouping communities of interest.

Local government has asked for a number of years for more flexibility regarding effective representation.

We therefore agree with the two additional exceptions to the ‘fair representation rule’ the Bill proposes.

ANONYMOUS DONATIONS

Local Government New Zealand supports the principle of a transparent local body electoral process which is the foundation of the Local Electoral Act.

The current Local Electoral Act provisions relating to anonymous donations are minimal, especially compared to the Electoral Act which governs parliamentary elections. The Local Electoral Act requires a candidate only to note an anonymous donation larger than \$1,000.

The Regulatory Impact Statement (2012, 3) argues that “the provisions in the Local Electoral Act for donations are not sufficiently robust to achieve electoral transparency, which is one of the Act’s principles”.

We do not believe that the volume of donations in local body elections to date has been sufficiently large to lead to the ‘buying of influence’.

However, we are concerned that the lack of transparency in the current process for anonymous donations may reduce public confidence in the electoral process.

We therefore support the amendments in the Bill regarding anonymous donations which reflect the processes in the Electoral Act.

We seek one amendment. In Clause 103F any person involved in the administration of a candidate’s campaign must disclose the identity of the donor where an anonymous donation exceeds \$1,500.

Yet in Clauses 103D-E a transmitter must disclose the identity of the donor irrespective of whether the amount is within or exceeds the limit for an anonymous donation.

We recommend that Clause 103D(2) is amended to reflect that a donor’s details need only be disclosed by a transmitter where the donation—single or multiple—is greater than \$1,500.

ISSUES FOR CLARIFICATION

Donations per candidate or candidacy

Candidates in local elections can stand for multiple positions within a local authority, and also stand in multiple local authorities. The electoral donation provisions indicate that a candidate designates a particular campaign for donations received when standing for multiple candidacies (Clause 103H(1-2)). The Bill’s provisions also indicate that a candidate will need to submit a return for each candidacy position stood for.

For example, where a candidate stands for three positions an anonymous donor gives a donation of \$4,500 with the instruction that this is to be spread equally across the three positions, i.e. \$1,500 per candidacy. This appears to be within the provisions of the Bill. If a candidate were to receive the same donation (\$4,500), with or without the instruction that this is a donation for one campaign only, the anonymous donation provisions apply and the candidate can only retain \$1,500. It is unclear whether a candidate needs to submit multiple returns when standing for multiple positions or whether one return only needs to be submitted.

We are concerned that the provisions appear rather complex for both the candidates and the Electoral Officers. We therefore seek clarification about the interpretation and application of the provisions relating to multiple candidacy and donations.

We suggest that a single limit applies per candidate and that only one return is required per candidate, including if they stand for multiple positions.

Meaning of the word 'return'

An additional issue we would appreciate the Select Committee to consider is that of the meaning of the word 'return' in the Local Electoral Act and public access to candidate expenditure information (and in the future donations received).

The Local Electoral Act sets limits to what candidates can spend on advertising and receive in donations. Candidates have 55 days after results are declared to file a return to their Electoral Officers setting out expenses incurred and donations received during their campaigns.

A recent case in which a community group sought information on whether a successful candidate had exceeded the statutory expenditure threshold highlighted a number of questions about the meaning of the word 'return' and the degree of public access to this information, namely:

1. Does a 'return' include receipts and invoices? Electoral Officers must make returns available for public inspection (Clause 110 Local Electoral Act). Some Electoral Officers interpret a 'return' as a summary of a candidate's expenses while others include invoices and receipts as part of the return. More clarification of the meaning of 'return' would improve consistency and community understanding.
2. While it is clear that the public has the right to view 'returns', do they have the right to view, and if necessary copy, receipts and invoices? Some councils provide receipts and invoices as part of a review and make them available for public inspection and copy. Others interpret Clause 110, which requires that returns are destroyed after seven years, as evidence that copies should not be taken. Copying receipts may be necessary to ensure expenditure is contained within statutory limits. Some clarification would be helpful.
3. The requirement that returns are destroyed after seven years (Clause 110) begs the question as to whether this extends to invoices and receipts and, if so, does it also apply to copies held by candidates and others.
4. When problems arise citizens will often turn to the Ombudsman to investigate. The Ombudsman's office was recently asked to inquire into a matter involving public accessibility to information held by an Electoral Officer. After considering the request the Ombudsman's office declined on the basis that Electoral Officers are technically contractors to each council. The Ombudsman is able to investigate the Electoral Commission—should the same apply to local elections?

5. The Local Electoral Act requires that any prosecutions for donation or expenditure offences must be initiated within six months of an election. In contrast the Electoral Act allows that prosecutions can be initiated any time within three years following an election. Given that this Bill is partly focused on aligning the Local Electoral Act with provisions in the Electoral act, should this provision also be aligned?

We ask that the Select Committee provide clarification on the issues raised above.

Thank you for considering our submission.

Yours sincerely



Lawrence Yule
President
Local Government New Zealand