

# Coversheet: Local Electoral Matters Bill – strengthening contingency mechanisms for new voting methods

Advising agencies	Department of Internal Affairs
Decision sought	Agreement that Government will support the Justice Committee's proposed amendments to the Local Electoral Matters Bill. The proposed amendments are further changes to the Local Electoral Act 2001 (in relation to the contingency mechanisms for local elections and polls).
Proposing Ministers	Minister of Local Government

## Summary: Problem and Proposed Approach

<b>Problem Definition</b> <b>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</b> <i>Summarise in one or two sentences</i>  The proposal seeks to remedy the absence of an adequate regulatory mechanism for a local election to be set aside (voided) and rerun if a major compromise or failure of a voting system, that undermines the integrity of the election result, is identified by election administrators after polling closes. The determination of whether an election outcome should be set aside requires important constitutional protections, and must be governed by primary legislation.	<b>Proposed Approach</b> <b>How will Government intervention work to bring about the desired change? How is this the best option?</b> <i>Summarise in one or two sentences</i>  This proposal, by the Justice Committee, is for further amendments to the Local Electoral Act 2001, via the Local Electoral Matters Bill (the Bill). The amendments to be included will provide a mechanism for an electoral officer to apply to the District Court for an inquiry into a local election or poll. The changes will also provide for the release of electoral results to be suspended pending the inquiry.  The amendments will provide a more fit-for-purpose mechanism for an electoral officer to seek a decision from the court on whether an election or poll should be voided and rerun if major security or reliability issues are discovered after the close of voting. It will also give greater public confidence in the integrity, transparency and impartiality of local electoral processes.
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## Section B: Summary Impacts: Benefits and costs

### Who are the main expected beneficiaries and what is the nature of the expected benefit?

#### *Monetised and non-monetised benefits*

All local authorities and their communities, and local electors, will benefit from greater confidence in electoral processes and outcomes resulting from more robust contingency mechanisms for elections. Having a robust and transparent process for initiating an inquiry by the District Court, if a significant failure or compromise is suspected, will support public confidence in the local electoral system and trials of new voting methods. Slightly greater benefits may accrue to local authorities which proceed to develop and trial new voting methods and the electors living in those local authority areas.

### Where do the costs fall?

#### *Monetised and non-monetised costs; for example, to local government, to regulated parties*

To initiate an inquiry for a District Court to consider, the electoral officer will need to pay the deposit to the Court (\$750), which would otherwise be paid by a candidate or 10 electors (under the existing mechanism for applying for a court inquiry). Because the inquiry would be initiated by the electoral officer, their legal costs may be higher than if they were simply a party to the proceedings. The costs of running the election are funded by the local authorities. The costs of legal action related to local elections are generally covered by electoral insurance purchased collectively by local councils. However, current insurance policies would likely need to be amended if they were to cover the proposed changes to the Local Electoral Act 2001 outlined in this analysis.

### What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

A risk of implementing a legislative change at this stage in the electoral cycle is that it may be difficult for guidance, education and other implementation tasks to be completed before the 2019 local elections. Electoral Officers will have to be acquainted with the new provisions so they are fully aware of the rules around voiding and rerunning an election, and may seek to raise this with their electoral insurance provider. We will work with the Society of Local Government Managers (SOLGM) and Local Government New Zealand (LGNZ) on communicating the changes to the local government sector, and supporting those organisations, if required, to develop relevant guidance.

One unintended impact of the preferred option in this paper is that the transparency of an election may be questioned as the preliminary and/or official results will not be announced before an application is made to the District Court for an election to be void and rerun. If the District Court feels that it is appropriate to release the official results during this process, then (under the preferred option) it would be within their discretion to direct the electoral officer to do so.

Given the electoral officer would be able to initiate an inquiry, there will be a chance for an elector and nine others to pressure the officer into an inquiry, instead of going down the

status quo method of initiating an inquiry themselves. The benefit of doing this is that the electors would not have to bear the cost of seeking an inquiry, the electoral officer would.

**Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.**

None identified.

## Section C: Evidence certainty and quality assurance

**Agency rating of evidence certainty?**

*How confident are you of the evidence base?*

The Department is confident that the current regulatory framework needs to be amended as outlined above in order to provide a fit for purpose mechanism for initiating and conducting a District Court inquiry into a local election or poll, particularly as a new voting method or methods are being developed. Based on consultation with local government sector representatives we are confident this is an important change to support public confidence in the effectiveness of the local electoral regulatory framework, and in the integrity of election outcomes.

*To be completed by quality assurers:*

**Quality Assurance Reviewing Agency:**

Department of Internal Affairs

**Quality Assurance Assessment:**

The panel considers that the information and analysis summarised in the RIA meets the quality assurance criteria.

**Reviewer Comments and Recommendations:**

The RIA is clear, convincing and supported by good analysis. The RIA provides a clear and detailed description of the status quo, the problem definition, and assessment of options.

The RIA acknowledges only high level consultation has been undertaken given timeframe constraints. In regards to the initiation of a District Court Inquiry into a local election, the RIA focuses on one option as no other options were identified that are consistent with the principles of the Local Electoral Act 2001.

# **Impact Statement: Local Electoral Matters Bill – strengthening contingency mechanisms for new voting methods**

## **Section 1: General information**

Purpose
<p><i>The Department of Internal Affairs</i> is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing policy decisions to be taken by Cabinet.</p>

## **Key Limitations or Constraints on Analysis**

*Describe any limitations or constraints, for example:*

- *Scoping of the problem*
- *Evidence of the problem*
- *Range of options considered*
- *Criteria used to assess options*
- *Assumptions underpinning impact analysis*
- *Quality of data used for impact analysis*
- *Consultation and testing*

The need for these proposed amendments has been identified in relation to a possible trial of online voting as part of the Modernising Voting Review.

The Minister of Local Government has agreed with local government sector representatives that work towards a trial of online voting will be a prioritised component of the Modernising Voting Review. This will enable lessons learned during any such trials to be fed back into the Modernising Voting Review.

In order to move towards the first trial of online voting as soon as possible the Minister of Local Government has agreed to prioritise legislative amendments, and promulgation of enabling regulations by March 2019 (to give the sector sufficient confidence to proceed). The legislative amendments in the Bill need to be enacted before such regulations can be promulgated. This places a tight time constraint on the analysis and implementation of the changes proposed in this document which are to be included in the Justice Committee's revision-tracked version of the Bill when it is reported back to the House.

Our preliminary consultation with local government sector representatives (as noted in section 2.5) has endorsed our problem definition and preferred approach as outlined in this analysis. Further consultation on the detail of the proposals will be managed by the Justice Committee which will seek feedback from submitters on the Bill once the draft amendments have been provided to the Committee.

## **Responsible Manager (signature and date):**

Raj Krishnan

General Manager Policy

Policy, Regulation and Communities

Department of Internal Affairs

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

*Set out the context, eg:*

- *Nature of the market*
- *Industry structure*
- *Social context*
- *Environmental state, etc.*

*How is the situation expected to develop if no further action is taken? (This is the Counterfactual against which you will compare possible policy interventions in sections 4 and 5).*

The overarching policy objective of the Modernising Voting work programme is to strengthen and future-proof local democracy in New Zealand by enhancing the accessibility and convenience of the voting experience while maintaining the integrity of, and public confidence in, the local electoral system. The planned Modernising Voting Review involves reviewing the Local Electoral Act 2001 and the Local Electoral Regulations 2001 to make improvements to various aspects of voting arrangements in local elections. One component of the Modernising Voting work programme is to work with the local government sector on a trial or trials of online voting at local elections.

A group of councils are proposing to conduct an online voting trial, for the 2019 local elections. With any new voting method, there is higher risk of unforeseen problems.

Having robust contingency mechanisms and contingency planning will be a critical element of any trials and development of new voting methods both to preserve the integrity of elections if a problem actually occurs, and more generally to support public confidence in the elections and any new voting methods.

The Local Electoral Matters Bill has been introduced to make amendments to the legislative framework which will support development of any new voting method, not just online voting. The Regulatory Impact Analysis for the proposed changes in the Bill is available here [https://www.dia.govt.nz/diawebsite.nsf/wpg\\_URL/Resource-material-Regulatory-Impact-Statements-Index](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index)

### 2.2 What regulatory system, or systems, are already in place?

- *What are the key features of the regulatory system(s), including any existing regulation or government interventions/programmes? What are its objectives?*
- *Why is Government regulation preferable to private arrangements in this area?*
- *What other agencies, including local government and non-governmental organisations, have a role or other substantive interest in that system?*
- *Has the overall fitness-for-purpose of the system as a whole been assessed? When, and with what result?*

The regulatory system for local elections in New Zealand consists of the Local Electoral Act 2001 (the Act), and the Local Electoral Regulations 2001 (the Regulations). The Act sets out principles for the electoral system and prescribes important objectives, rights, obligations, powers and processes in relation to the conduct of elections. The Regulations prescribe more detailed matters relating to the administration of elections and polls, including the operation of different electoral system options (first past the post (FPP) or single transferable vote (STV)) and voting methods (currently postal or booth voting).

The objectives of this regulatory system are reflected in the principles set out in section 4 of the Act. In summary these relate to an electoral system that provides:

- fair and effective representation for individuals and communities;
- reasonable and equal opportunity to participate to all qualified persons; and
- public confidence in, and understanding of, local electoral processes.

All electors, candidates, local electoral staff and central government have an interest in ensuring that the principles outlined in Section 4 of the Local Electoral Act 2001 are upheld. A robust, effective and trusted electoral system is an essential element in the establishment of a constitutional framework for democratic local government in New Zealand.

The Act provides for triennial local elections for territorial authorities, regional councils, district health boards and some other elected bodies such as licensing trusts. Territorial authorities conduct the triennial elections for all the relevant bodies within their area together. There is no ministerial involvement in running local elections. The Electoral Commission provides local authorities with information from the registered database of electors but is otherwise uninvolved in local elections.

Each local authority appoints an electoral officer to administer elections and polls. The electoral officer is a statutory officer with prescribed obligations and responsibilities as well as powers. The electoral officer has a great deal of independence from the local authority. The courts are the sole recourse for challenging the electoral officer's conduct of a local election.

The currently mandated process for re-running a local election or poll can be broken down into the following steps:

1. Immediately after the close of voting , ordinary votes are counted and preliminary results are released by the electoral officer;
2. Official results are announced once special votes have been processed;
3. In the case of an election, the previous holders leave office, and the new office holders take office, the day after the official results of the election have been announced;
4. A petition can be submitted by a candidate or 10 electors, demanding that the District Court conduct an inquiry into the election or poll. This petition has to be submitted within 21 days of the official results being announced. The inquiry must be commenced within 14 days after the petition is filed;
5. The District Court makes a decision as to whether the election or poll is void; and
6. Depending on the outcome of the Court's decision, an election or poll is rerun.

The key point is that only external parties can trigger an inquiry by the District Court, not those with close knowledge of the conduct of an election.

The Department does not hold historical data on how many petitions for inquiries there have

been by a candidate or group of ten electors, however, our understanding is that it is not frequently used. Since the introduction of postal voting there has been one case of a serious systems failure (with the vote counting system) delaying announcement of official results for several weeks, however, in that case the problem was able to be remedied and the results declared without seeking intervention from the District Court.

The overall fitness-for-purpose of the regulatory system for voting in local elections, as a whole, is to be considered as part of the wider Modernising Voting Review. The proposed changes to the Bill outlined in this analysis are being prioritised as they support the Bill's policy objective, and will facilitate meeting the aspirations of the participating councils in the online voting trial.

The Justice Committee is also currently conducting an inquiry into the 2016 local elections. In recent years there has been a convention that a select committee undertakes an inquiry after every local election to evaluate election processes. There will not be time for the outcomes of the Justice Committee inquiry to result in changes to the legislative framework before the 2019 local elections but could be for subsequent elections.

### 2.3 What is the policy problem or opportunity?

- *Why does the Counterfactual constitute “a problem”?*
- *What is the nature, scope and scale of the loss or harm being experienced, or the opportunity for improvement? How important is this to the achievement (or not) of the overall system objectives?*
- *What is the underlying cause of the problem? Why cannot individuals or firms be expected to sort it out themselves under existing arrangements?*
- *How robust is the evidence supporting this assessment?*

The specific issue in relation to contingency mechanisms for local elections is the need to provide a better mechanism for an election to be set aside (voided) and rerun if a major compromise or failure of a voting system, that undermines the integrity of the election result, is discovered after polling closes. While this need has been identified in the context of proposals for trials of new voting methods and online voting in particular, the possibility of a voting method failure or compromise of this severity has already increased over recent years with greater reliance on technology in the processing of votes.

At present, if an unexpected event occurred which destroyed a large number of completed voting papers (such as a fire) the only mechanism currently available to seek rerunning of the election is the one described in 2.2 above. The risk of this is considered to be low with the existing voting methods, but it is an existing issue with the regulatory framework and the risk of the contingency mechanism being needed is increased when new voting methods are being trialled. The Act currently contains no administrative mechanism for reopening, extending, or replacement voting to remedy a serious problem with a voting system that undermines the integrity of the election result if that problem is discovered after polling has closed. The Act does provide for the District Court to direct that an election outcome be set aside and the election rerun, but a District Court inquiry can be initiated only by a candidate

or 10 electors and only after the full results have been announced. The status quo requires official election results to be announced, and “elected” members to take office while court action is in progress.

This current District Court mechanism provides an avenue for candidates or electors to dispute or challenge the result of an election or poll that is alleged to have been affected by an “irregularity”. As well as voiding an election, the Court may confirm the results of the election or may amend those results (e.g. determine that a different candidate was elected).

There are three major problems with relying on this mechanism where significant problems with the electoral mechanisms are identified by the electoral officer after the close of voting:

- the electoral officer cannot initiate a District Court inquiry, and would need to rely on a candidate or group of electors to get the matter before the Court. While this is often likely to be possible, the different perspectives and incentives of candidates and electors, and their limited access to election administration information, mean this option is neither reliable nor appropriate. The electoral officer’s independent statutory responsibility for the integrity of the election and unique access to information about the conduct of an election, requires a direct and different role in initiating District Court scrutiny of an election;
- an inquiry cannot be initiated until after the official results have been announced, at which time outgoing members leave office, and newly “elected” members take office. This may leave councils without a viable “caretaker” membership if “successful” candidates in a discredited election are reluctant to assume office on an interim basis. While uncertainty is undesirable we think the bigger problem would be proceeding with an elected member, if the entire election has been called into question;
- the criteria for the Judge’s determination that an election outcome is void requires proof that the irregularity has materially impacted the result and it may not be possible to prove this in circumstances where the votes are simply unreliable (e.g. a serious hack into an online voting system occurs but it cannot be determined how many votes were altered and whether this was enough to affect the election outcome).

The absence of an appropriate mechanism to enable an election “result” to be set aside, and the election rerun, where the integrity of the election is found to be have been compromised after voting is undesirable for several reasons:

- The risk of a serious systems failure or data compromise in a voting system is relatively low if the regulatory settings are appropriate and electoral officers manage the conduct of the election including the operation of the voting system with appropriate diligence. However, the impact of a failure or breach could be significant in terms of the validity of the election results and public acceptance of the democratic mandate of the elected body;
- There is also a significant risk that public confidence in elections, particular voting systems, and proposals to trial new voting methods will be significantly undermined if there are no visible and fit-for purpose contingency mechanisms as a “safety net” in the unlikely event that things go wrong.

An example of a potential problem for an online voting system would be a large-scale hacking of the system or a significant software failure. While we consider the likelihood to be low, there is a higher risk in a test environment than when using a well-established voting

method.

#### **2.4 Are there any constraints on the scope for decision making?**

- *What constraints are there on the scope, or what is out of scope? For example, ministers may already have ruled out certain approaches.*
- *What interdependencies or connections are there to other existing issues or ongoing work?*

The major constraint on the development and assessment of options to address this problem is the timeframe for enactment of the Local Electoral Matters Bill, which is driven by the timeframe local government and central government are working towards for a trial of online voting to be conducted at the 2019 local elections. The local government sector has advised that enabling regulations need to be in place by March 2019 for a trial at the 2019 local elections to be possible. The Bill needs to be enacted by the end of February 2019 for it to be possible to have regulations in place in March to authorise the proposed 2019 online voting trial. These timeframe restraints have meant only high level consultation has been done, as referred to in section 2.5.

Local Elections are due to take place on the 12<sup>th</sup> of October 2019.

The scope of this proposal is necessarily narrow to address an identified gap in the regulatory framework. The Minister of Local Government has considered the option of retaining the status quo contingency mechanisms in the Local Electoral Act 2001 for the 2019 local election. The Department provided advice that while the risk of serious failure or compromise of a voting method is low, it is increased in the context of a possible trial of a new voting method. The absence of an appropriate contingency method is also likely to impact significantly on public confidence and acceptance of proposals to trial online voting. Therefore the Minister has directed the Department to prepare a Cabinet paper seeking approval to the Bill providing for a more fit-for-purpose contingency mechanism. Subsequently the Justice Committee has resolved to include such a mechanism in the Committee's revision-tracked version of the Bill to be reported back to Parliament.

Our preliminary consultation with local government sector representatives (as noted in section 2.5) has endorsed our problem definition and preferred approach as outlined in this analysis. The Justice Committee intends to provide submitters on the Bill with the opportunity to comment on the proposed changes once the draft amendments are provided to the Committee (discussed further in section 2.5 below)

## 2.5 What do stakeholders think?

- *Who are the stakeholders? What is the nature of their interest?*
- *Which stakeholders share the Agency's view of the problem and its causes?*
- *Which stakeholders do not share the Agency's view in this regard, and why?*
- *What consultation has already taken place and with whom?*
- *Does the issue affect Māori in particular? Have iwi/hapū been consulted, and if not, should they be?*
- *If consultation is planned, how will this take place, with whom and when? If is not intended, why is this?*

The primary stakeholders this proposal concerns are electors. The contingency mechanism proposal is in line with the principles outlined in Part 4 of the Local Electoral Act 2001. In particular, local electoral processes should support public confidence in, and public understanding of, local electoral processes and this includes providing effective and impartial mechanisms for resolving disputed elections and polls. The Justice Committee Chair will send the draft changes to all submitters on the Bill as soon as the draft amendments are provided to the Committee. The submitters include representatives of the local government sector, disability advocacy groups, and private individuals. We have not undertaken public consultation on the proposed changes as the deliberations of the Justice Committee are confidential until reported back to Parliament. A contingency mechanism is unlikely to be used, however public confidence will be reinforced if a robust contingency mechanism is in place.

When developing advice for the Minister of Local Government on the issue outlined in this paper, officials discussed the proposed amendments to be included in the Bill, with representatives of the Local Government New Zealand (LGNZ) and the New Zealand Society of Local Government Managers (SOLGM). These organisations represent, respectively, elected members of local authorities and local authority staff (including electoral officers). LGNZ and SOLGM are supportive of the proposed amendments. We also outlined, in general terms, the need to make amendments to the members of SOLGM's Electoral Sub-committee which is made up of electoral officials and staff from a number of local authorities. The Sub-committee members agreed that amendments are desirable.

We have consulted with officials from the Ministry of Justice due to the potential constitutional implications of making changes to processes for voiding elections and they are comfortable with the proposed approach. Although the proposal is specific to local elections we provided the Electoral Commission with a copy of the draft proposals.

We sought feedback from the Ministry of Health (as DHB elections are governed by the Local Electoral Act 2001), the Department of the Prime Minister and Cabinet (Policy Advisory Group), Te Puni Kōkiri, and the Parliamentary Counsel Office. No concerns were raised.

There has not been consultation with iwi/hapū as the proposals do not relate to interests specific to any particular iwi/hapū. As the changes are constitutional in nature they are relevant to all New Zealanders including Māori, iwi and hapū in a more general sense. The Justice Committee resolved to provide submitters on the Bill with the opportunity to comment on these particular changes but it is not proposing to consult more widely.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

- *List and describe the key features of the options. Set out how each would address the problem or opportunity, and deliver the objectives, identified.*
- *How has consultation affected these options?*
- *Are the options mutually exclusive or do they, or some of them, work in combination?*
- *Have non-regulatory options been considered? If not, why not?*
- *What relevant experience from other countries has been considered?*

The Department considers that an alternative mechanism to trigger an inquiry into an election by the District Court is needed. In our initial scoping work we considered various options as to who should be able to initiate an inquiry by the District Court. However, as noted in section 3.3 of this analysis, the alternative parties were not included in the detailed options analysis below as we consider it would be inappropriate for them to have this function in the electoral process. The only option we have identified which is consistent with the principles in section 4 of the Local Electoral Act 2001 is for the electoral officer to apply to the District Court for an inquiry.

### **Proposed way forward**

#### *Initiation of District Court Inquiry*

This solution would involve changes to the Local Electoral Act 2001, so that an inquiry into an election or poll can be initiated by the electoral officer. In a situation where an electoral officer becomes aware that there has been a serious systems failure or data compromise of a voting system, after the voting period has closed, the electoral officer would be able to initiate a District Court inquiry.

The advantages of the electoral officer being able to initiate inquiries are mentioned above. In some situations, the electoral officer is in the best position to decide whether there has been an irregularity that could undermine the integrity of the election result and therefore initiate the contingency mechanism in the event of an online system failure.

#### *The District Court will have an additional ground for determining an election or poll to be void*

Another change we are proposing to the Local Electoral Act 2001 is the power the District Court Judges have when determining whether, as a result of an irregularity that, in the Judge's opinion, materially affected the result, the election or poll is void. If a serious systems failure or data compromise occurred, it may not be possible to show that votes lost or compromised would have materially affected the result.

We recommend that an amendment be made to this test to provide that the Judge can determine that the election or poll is void if the number of votes that are unable to be counted or relied on is sufficient to materially affect the result. We have not identified any alternative options to making this change other than the status quo which would significantly reduce the usefulness of the electoral officer being able to initiate the inquiry.

### **Options for the release of preliminary results**

Three options have been considered for how results are released, and when office holders leave and take office, as detailed below.

<b>1. Preliminary and official results are released, but don't take effect</b>	<b>2. Preliminary results released but official results withheld</b>	<b>3. No results released</b>
Under this option the current status quo would apply to releasing the election results. Preliminary and official results would be	Option 2 is the same as Option 1 except the Electoral Officer would be precluded from releasing the official results pending the outcome	Option 3 is the same as Option 2 except the Electoral Officer would not release the preliminary results (unless the preliminary results had already been released)

<p>released. However, to avoid confusion about the mandate of elected office holders, elected councillors would not take office if the electoral officer had applied to the District Court for an inquiry before the official results were announced.</p> <p>Persons who held relevant elected positions before the election would remain in their position until (at a minimum) the decision from the District Court is received. This would ensure that interim governance of the elected body remained the responsibility of members with an undisputed electoral mandate. Newly elected councillors would only assume office if the District Court declines the application for an inquiry or rules that the election outcome is valid, or after an election is rerun and new official results announced.</p> <p>This would differ from the situation for inquiries initiated by a candidate or 10 electors, where the newly elected candidates take office the day after official results are released.</p>	<p>of the District Court's inquiry, unless directed to do so by the Court.</p> <p>The advantages of this option would be that the general public would not be confused by the announcement of an "official result" while inquiry outcomes are pending, but transparency will still be provided by releasing the preliminary results.</p> <p>This would differ from the situation for inquiries initiated by a candidate or 10 electors, whereby an inquiry can only be applied for after the official result is announced.</p>	<p>before the significant failure or compromise was discovered) or the official results (pending the District Court's inquiry).</p> <p>This option would avoid the confusion of releasing results to the public when there are serious concerns about the reliability of the results.</p> <p>This option would provide less transparency because no results would be released, therefore electors and also candidates would receive no initial information on the result.</p> <p>However, this option would support certainty of outcomes by not suggesting that any particular result "might" have occurred, and making it clear that any result is on hold pending a determination by the Court.</p> <p>This would differ from the situation for inquiries initiated by a candidate or 10 electors where the results would be released and the new office holders would take office the next day.</p>
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Note that for all three Options, in the case of triennial elections, this restraint on releasing the results would also apply to all results for an election that is only partly within the affected local authorities' area. For example, if only some electors in a district health board (DHB) election reside within a territorial authority area which is the subject of an application by the electoral officer for an inquiry, all the official results for that DHB election would be withheld (or for Option 1 the DHB results would be released but not take effect) unless the District Court directs they be released. This is necessary because of the risk, using the same example, that the District Court directs the entire DHB election to be rerun.

#### Non-regulatory option

Given the importance of contingency mechanisms being prescribed in legislation, the only non-regulatory option we have identified is retaining the status quo as the method of initiating an inquiry.

Time constraints mean that we have not analysed overseas examples, however, given the unique features of the New Zealand local electoral framework we think that overseas examples would provide limited additional value.

### 3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

- *Comment on relationships between the criteria, for example where meeting one criterion can only be achieved at the expense of another (trade-offs)*

Assessing the likely impacts of the options under consideration involved ensuring that the process of re-running an election was fit for purpose, including in the context where a new voting method is being developed.

This assessment was based on the principles outlined in Section 4 of the Local Electoral Act 2001, and in particular, supporting public confidence in, and public understanding of electoral processes through:

- The provision of **transparent** electoral systems and voting methods and the adoption of procedures that produce **certainty** in electoral outcomes;
- The provision of **impartial mechanisms** for resolving disputed elections and polls.

Although efficiency, including cost efficiencies, are an important consideration in conducting elections and polls, when considering processes for voiding and re-running elections the principles in the Local Electoral Act 2001 will outweigh cost considerations.

### 3.3 What other options have been ruled out of scope, or not considered, and why?

- *List the options and briefly explain why they were ruled out of scope or not given further consideration.*

Two high level options for dealing with the identified problem were considered only briefly and not given further consideration;

- The first would involve empowering the electoral officer to determine that a completed election has been compromised and needs to be rerun. This was discarded because a decision to discard or overturn an election result goes far beyond the electoral administration responsibilities that are appropriately exercised by the holder of a statutory office appointed by a local authority. Such a decision can be distinguished from the contingency powers already available to an electoral officer who have the objective of safeguarding the ability of all electors to cast a valid vote despite a range of adverse circumstances.
- The second option would have involved the responsibility for determining that an election should be rerun being exercised at central government level, either at Ministerial level or by the Governor-General in Executive Council. This was discarded for two reasons:
  - The involvement of Ministers, directly or in making recommendations to the Governor-General, would not be seen as politically neutral and could detract from public confidence in the impartiality of the decision;
  - It would be inconsistent with the allocation of responsibilities under the local

electoral framework which has locally appointed electoral officers accountable to the law and overseen by the Courts. Dealing with these issues locally has advantages of accessibility, information efficiencies and transparency.

Another option which has been considered is the Chief Executive of the local authority being involved in initiating an inquiry to the District Courts. This option was ruled out because the Local Electoral Act 2001 specifically provides for statutory independence in the role of the electoral officer, and specifically excludes the Chief Executive from a role in conducting the elections. While the Chief Executive has responsibilities in relation to local elections they do not have access to much of the information about the conduct of the election that would be relevant to questions of any irregularities.

## Section 4: Impact Analysis

**Marginal impact:** How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2? Add, or subtract, columns and rows as necessary.

If possible use this table to provide information on monetary, as well as qualitative, costs and benefits for each of the options under consideration. Give evidence supporting your judgements, including stakeholder feedback where relevant.

Try to keep this table to a single side. If you find that you are having to write a lot to explain your assessment of whether each option is better or worse than taking no action under each criterion, add text under the table rather than filling the table with words.

Criteria (weighting)	Weighting	No action	Option 1 - Preliminary and official results released but don't take effect	Option 2 - Preliminary results released but official results withheld	Option 3 - No results released (preferred)
Transparency of electoral systems and voting methods	2	0	++	+	-
Certainty of electoral outcomes	3	0	+	+	++
Impartial mechanisms for resolving disputed outcomes	3	0	0	0	0
Efficiency of process	1	0	+	++	++
Cost reduction	1	0	- (marginal)	- (marginal)	- (marginal)
Overall assessment		0	+	+	++

**Key:**

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

## Section 5: Conclusions

### 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

- Where a conclusion as to preferred option is reached, identify it and set out reasons for considering it to be the best approach (by reference to the assessment criteria).
- If no conclusion as to preferred option is reached, identify the judgement (eg, which stakeholders, or which criteria, are the most important) or the additional information that is needed, to enable a decision to be made
- How much confidence do you have in the assumptions and evidence?
- What do stakeholders think - in particular, those opposed? Why are they concerned, and why has it not been possible to accommodate their concerns?

Option 3 (in combination with the main proposed change) is most likely to meet the objectives for the local electoral regulatory framework (as described in section 2.2). Option 3 provides for:

- the electoral officer to apply to the District Court for an inquiry into an election;
- the Court to have an additional ground for finding an election or poll outcome to be void (that, in the Judge's opinion the irregularity meant enough votes to materially affect the result are unable to be counted or relied on); and
- preliminary and official results to be withheld by the electoral officer if they have identified a need to apply to the District Court for an inquiry into an election or poll.

By not releasing the official results of the election, new office holders will not take office until after the Court has decided whether to rerun an election or not. This ensures that there is not a change in office until the result of the election is upheld, or new elections are held, making the process more efficient and providing more certainty and confidence to electors. Similarly, poll outcomes will be suspended until the Court's decision is clear. We also propose that the District Court would have the discretion to direct that the official results be released during the inquiry if that is justified under the circumstances. This Option is also consistent with the current provisions in the legislation for impartial decision-making by the District Court (as are the other Options).

While there is less transparency of the outcome of the election or poll under this process, because the results may not be released we consider that is justifiable in a situation where any results information held may be very inaccurate. On balance we consider that it is better to avoid the potential confusion, and the follow on consequences if office holders take up a position based on suspect results, at least until a District Court Judge has had the opportunity to consider the full circumstances.

As outlined earlier, we have confidence in our assumptions as we believe having the electoral officer involved in this process will provide a more robust contingency mechanism for local elections and support public confidence in the integrity of electoral processes.

### 5.2 Summary table of costs and benefits of the preferred approach

Summarise the expected costs and benefits of the proposed approach in the form below.  
Add more rows if necessary.

*Give monetised values where possible. Note that only the **marginal** costs and benefits of the option should be counted, ie, costs or benefits additional to what would happen if no action were taken. Note that “wider government” may include local government as well as other agencies and non-departmental Crown entities.*

See <http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis/x/x-guide-oct15.pdf> and

<http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis> for further guidance.

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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<b>Additional costs of proposed approach, compared to taking no action</b>			
Regulated parties (Local authorities and electoral officers)	Court deposit fee and legal fees (may involve additional legal fees for the electoral officer as the initiator of the application when compared to the status quo of a candidate or 10 electors needing to file a petition)  A change may mean that electoral officers could be the subject of judicial review proceedings. This is another matter that councils would need to consider as part of their electoral insurance.	\$0-10,000	Medium
Regulators (DIA)	No additional costs identified	-	High
Wider government	No additional costs identified	-	High
Other parties	No additional costs identified	-	Medium
<b>Total Monetised Cost</b>		\$0-10,000	
<b>Non-monetised costs</b>		<i>Non identified</i>	

<b>Expected benefits of proposed approach, compared to taking no action</b>			
Regulated parties (Local authorities	Efficient court process, public confidence in local elections and	Medium	High

and electoral officers)	polls, and a transparent election/poll process. (risk of serious failure is low but impact would be high)		
Regulators (DIA)	Public confidence in local elections and polls – reduced risk of state intervention (risk of serious failure is low but impact would be high)	Medium	High
Wider government	Non identified	-	Medium
Other parties (candidates or group of 10 electors)	Proposed change is essentially a transfer of costs from candidate/10 electors to the electoral officer/local authority	\$0-10,000	Medium
Other parties (general public)	Confidence in the local election or poll process (risk of serious failure is low but impact would be high)	Medium	High
<b>Total Monetised Benefit</b>		\$0-10,000	
<b>Non-monetised benefits</b>		<i>Medium</i>	

### **5.3 What other impacts is this approach likely to have?**

- *Other likely impacts which cannot be included in the table above, eg because they cannot readily be assigned to a specific stakeholder group, or they cannot clearly be described as costs or benefits*
- *Potential risks and uncertainties*

In the event that a District Court considers whether to void and rerun an election, councils may seek to mitigate the risk of the cost of legal action through election insurance. In this case, the impact of the proposed changes will be on all local authorities regardless of whether they are developing new voting methods. Within the time constraints for this policy development, it has not been possible to quantify how insurance premiums might change as a result. This will be discussed with the local government sector as part of consultation on the draft amendments.

It is possible that the proposed change could result in some pressure or lobbying for the Electoral Officer to exercise their ability to seek an inquiry from those unhappy with the outcome or process. This would be a greater call on the time and resources of the electoral officer and their staff which would need to be managed by the electoral officer and the relevant local authority(ies).

### **5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?**

- *Identify and explain any areas of incompatibility with the Government's 'Expectations for the design of regulatory systems'. See <http://www.treasury.govt.nz/regulation/expectations>*

Yes

## Section 6: Implementation and operation

### 6.1 How will the new arrangements work in practice?

- *How could the preferred option be given effect? Eg,*
  - *legislative vehicle*
  - *communications*
  - *transitional arrangements.*
- *Once implemented, who will be responsible for ongoing operation and enforcement of the new arrangements? Will there be a role for local government?*
- *Have the responsible parties confirmed, or identified any concerns with, their ability to implement it in a manner consistent with the Government's 'Expectations for regulatory stewardship by government agencies'? See <http://www.treasury.govt.nz/regulation/expectations>*
- *When will the arrangements come into effect? Does this allow sufficient preparation time for regulated parties?*
- *How will other agencies with a substantive interest in the relevant regulatory system or stakeholders be involved in the implementation and/or operation?*

Amendments to the Local Electoral Act 2001 will be required to give effect to proposed legislative changes. The progress of the amendments will be done via select committee consideration of the current Bill.

It is intended that the changes will be in effect prior to the 2019 triennial local elections. The Department will work with the Society of Local Government Managers and Local Government New Zealand to ensure that local authorities are informed of the changes and to provide any assistance to those organisations in developing guidance materials.

### 6.2 What are the implementation risks?

- *What issues concerning implementation have been raised through consultation and how will these be addressed?*
- *What are the underlying assumptions or uncertainties, for example about stakeholder motivations and capabilities?*
- *How will risks be mitigated?*

As outlined in section 3.4, the main implementation risk is meeting the timeframe for the legislative changes, prior to promulgating enabling regulations for the proposed online voting trial at the 2019 local elections.

## Section 7: Monitoring, evaluation and review

<b>7.1 How will the impact of the new arrangements be monitored?</b>
<ul style="list-style-type: none"><li>• <i>How will you know whether the impacts anticipated actually materialise?</i></li><li>• <i>System-level monitoring and evaluation</i></li><li>• <i>Are there already</i></li><li>• <i>/y monitoring and evaluation provisions in place for the system as a whole (ie, the broader legislation within which this arrangement sits)? If so, what are they?</i></li><li>• <i>Are data on system-level impacts already being collected?</i></li><li>• <i>Are data on implementation and operational issues, including enforcement, already being collected?</i></li><li>• <i>New data collection</i></li><li>• <i>Will you need to collect extra data that is not already being collected? Please specify.</i></li></ul>
A formal monitoring programme is not planned because it is not anticipated that the changes will be used very often at all. The changes are more in the nature of a safety measure and confidence builder for local authorities and electors.  In the event that there is an inquiry into an election using the contingency mechanism, the department would observe proceedings and provide regular updates to the Minister of Local Government.
Note the convention of a select committee inquiry discussed in 7.2 below.
<b>7.2 When and how will the new arrangements be reviewed?</b>
<ul style="list-style-type: none"><li>• <i>How will the arrangements be reviewed? How often will this happen and by whom will it be done? If there are no plans for review, state so and explain why.</i></li><li>• <i>What sort of results (that may become apparent from the monitoring or feedback) might prompt an earlier review of this legislation?</i></li><li>• <i>What opportunities will stakeholders have to raise concerns?</i></li></ul>
The convention in recent years has been that after every triennial local election, a select committee undertakes an inquiry. This is an opportunity for stakeholder organisations and electors to raise any issues with the regulatory framework and the operation of local elections.

