



Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Copy to: Hon Meka Whaitiri
Associate Minister of Local Government

Title: **Information briefing: Māori representation in Local Government, Māori wards, and the Independent Māori Statutory Board**

Date: 5 December 2017

Key issues

You are meeting with the Prime Minister on 6 December 2017 and have requested information on Māori representation in Local Government, Māori wards, and the Independent Māori Statutory Board (IMSB) as background for your discussion.

On 27 November 2017, you delegated responsibility for all functions and responsibility specifically relating to the IMSB under your Local Government portfolio to the Associate Minister of Local Government, Hon Meka Whaitiri.

We are advised that several of your ministerial colleagues - Hon Kelvin Davis, Hon Meka Whaitiri and Hon Peeni Henare - may attend your meeting with the Prime Minister, and that representatives of the IMSB have been invited.

Action sought

Note the information provided.

Timeframe

By 6 December 2017

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Raj Krishnan	General Manager Policy	04 494 0572	021 593 973	✓
Kate West	Director Policy Services	04 495 7238	027 839 0762	

Return to	Jean Kehoe-Courtney, 6 th floor, 147 Lambton Quay
Cohesion reference	3W2DU3RAJ5R2-374160447-1315
Ministerial database reference	LG201700666

Purpose

1. You have requested information on Māori representation in Local Government, Māori wards, and the IMSB ahead of your meeting with the Prime Minister, ministerial colleagues and representatives of the IMSB on 6 December 2017.
2. This briefing highlights the unique situation with respect to the IMSB and Auckland Council, and outlines considerations in relation to Māori representation.

The establishment of Māori wards in local government and the Local Electoral Act 2001

3. The Local Electoral Act 2001 (the Act) was amended in 2002 to provide communities with the option of establishing Māori wards (territorial authorities) or constituencies (regional councils) without the need for a specific local Act. Māori wards or constituencies can be established in one of three ways: by council resolution; by council resolution to conduct a binding poll on the question; or by a demand by five per cent of electors for a binding poll on the question.
4. At present only two Regional Councils - Bay of Plenty and Waikato - have Māori constituencies. The Bay of Plenty Regional Council established its Māori constituencies through a specific local Act prior to the addition of the provisions in the Local Electoral Act 2001.
5. While historically a number of polls have voted down proposals for Māori wards in 2016, a poll in Wairoa District voted in favour of establishing Māori wards.
6. This year, five councils have resolved to have Māori wards: Western Bay of Plenty District Council, Whakatane District Council, Manawatu District Council, Palmerston North City Council and Kaikoura District Council.

The unique situation regarding Māori representation and the Auckland Council

7. Under the Local Government (Auckland Council) Act 2009 (LG (AC) Act), the governing body of Auckland Council must comprise a mayor and twenty members elected in accordance with the Local Electoral Act 2001.
8. The statutory requirement for *exactly* 20 councillors is unique to Auckland. If the council were to add a Māori ward the "general" membership would reduce to 19. This would keep the total at 20 members. However, in conjunction with introducing a Māori ward, the Council would need to undertake a representation review to realign ward boundaries and representation to account for 19 "general" members rather than 20.
9. On 28 September 2017, Auckland Council resolved¹ to seek an amendment to this requirement so that a councillor elected from a Māori ward would be additional to the current requirement for 20 councillors. We have not yet received a formal request from Auckland Council for this change.

¹http://infocouncil.aucklandcouncil.govt.nz/Open/2017/09/GB_20170928_MIN_7818.HTM#PDF2_ReportName_54264

The creation and role of the Independent Māori Statutory Board

10. The IMSB was established by legislation as part of the Auckland Governance Reforms in 2009 and 2010. It acts to ensure Auckland Council takes Māori views into account when making decisions for the local community. These reforms involved the amalgamation of seven territorial authorities and the Auckland Regional Council to form a single Auckland Council.
11. Part 7 of the LG (AC) Act provides that the purpose of the IMSB is to assist the Auckland Council to make decisions, perform functions, and exercise powers by promoting cultural, economic, environmental, and social issues of significance for mana whenua groups and mataawaka of Tāmaki Makaurau².

Membership of the Independent Māori Statutory Board

12. Members of the IMSB are not elected; they are chosen by a selection body. The selection body consists of mandated representatives identified by mana whenua groups. Schedule 2 of the LG (AC) Act provides that membership of the Board consists of seven mana whenua representatives and two mataawaka representatives.
13. In your role as the Minister for Māori Development, you have oversight of the constitution and membership of the selection body.

Alternative options considered by the council for Māori participation

Co-governance entities

14. In recent years, some matters over which Māori have sought a direct role in decision-making are being addressed through Treaty settlements. Co-governance entities are being created through these processes. These entities are 50/50 decision-making bodies and provide a vehicle for the joint participation of Māori and local government in decision-making. The Tupuna Maunga Authority is one of these entities.

Te Arawa Partnership Board/Te Tatau o Te Arawa

15. The Rotorua District Council approved in principle in late 2014 the creation of the Te Arawa Partnership Board/Te Tatau o Te Arawa. The rationale was based on the rights of Te Arawa as mana whenua and the obligations on the council to include mana whenua in decision-making.
16. The partnership model also allows for one Te Arawa representative to be nominated: to act as one of three commissioners on statutory hearing panels for resource consents; another for working groups and steering committees as required.

A recent members bill sought to alter the process for approving Māori wards

17. The Local Electoral Equitable Process for Establishing Māori Ward and Māori Constituencies) Amendment Bill (the Bill) sought to amend the Local Electoral Act 2001 to alter the process by which separate Māori representation on local authorities can be

² 'Mataawaka' are defined in the Local Government (Auckland Council Act) 2009 as Māori who live in Auckland and are not in a mana whenua group.

considered and determined. This Bill was put forward by the previous member of parliament for the Māori party, Marama Fox.

18. The proposals in the Bill were to:
- remove the separate process for dealing with Māori representation proposals; and
 - require the options of Māori wards/constituencies to be considered alongside other options in the context of council representation reviews.
19. The Bill was presented to Parliament on 28 June 2017 and was defeated at first reading.

Local Government New Zealand (LGNZ) views the process of establishing Māori wards as unfair

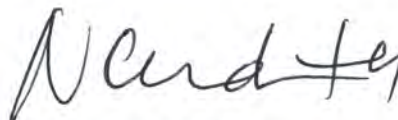
20. LGNZ, in its recent Briefing to Incoming Ministers, stated that it views the process of establishing Māori wards as unfair, as this allows for a poll to overturn a council decision. LGNZ has indicated that it wants the process for establishing Māori wards and constituencies to be the same as that for establishing other wards and constituencies.

Recommendation

21. We recommend that you **note** the contents of this briefing ahead of your meeting with the Prime Minister, ministerial colleagues, and representatives of the IMSB on 6 December 2017.



Raj Krishnan
General Manager Policy



Hon Nanaia Mahuta
Minister of Local Government

6/12/17

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to see if
there ~~is~~
is a will to
consider a
standardised
approach in
the context of
inclusive democracy

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Local Government briefing

Hon Nanaia Mahuta

Minister of Local Government

Hon Meka Whaitiri

Associate Minister of Local Government

Title: **Auckland Council representation and Māori wards**

Date: 29 January 2018

Key issues

You and the Prime Minister met with the Independent Māori Statutory Board of Auckland Council on 6 December 2017. At the meeting, the Prime Minister suggested reviewing the membership requirement on the Auckland Council governance board as it is a potential barrier to the Council considering Māori representation. Auckland Council has previously also asked for the requirement to be removed.

Following the meeting on 6 December 2017, the Associate Minister requested further information about removing this requirement.

The Local Elections (Miscellaneous Amendments) Reform Bill is a potential vehicle to remove the requirement.

Subject to your agreement, policy approval to remove the Auckland Council membership requirement could be sought from Cabinet in February and relevant provisions included in the Bill.

Action sought

Timeframe

Discuss the contents of this briefing with your Local Government portfolio colleague;

By 19 February 2018

Agree in principle that the fixed membership of the Auckland Council governing body should be removed to align with the approach for other councils in the Local Electoral Act 2001;

Agree to explore implementing this change through the Local Elections (Miscellaneous Amendments) Reform Bill; and

Note that, should you agree with these recommendations, we will provide you with further advice on removing the membership requirement following consultation with Auckland Council and Te Puni Kōkiri.

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Nick Law	Policy Manager	027 594 1719		✓
Raj Krishnan	General Manager Policy	04 494 0572	021 593 973	

Return to Lisa Mackay, Level 9, 45 Pipitea Street

Cohesion reference [3W2DU3RAJ5R2-1905231989-50](#)

Ministerial database reference LG201800046

Purpose

1. This briefing provides information on options to remove the requirement for 20 councillors on Auckland Council's governing body. This will provide for smaller councillor to resident ratios for Auckland's population in the future, and give the Council more flexibility in creating Māori wards.

Auckland Council is statutorily required to have 20 councillors plus a mayor on its governing body

2. Section 8(1) of the Local Government (Auckland Council) Act 2009 (LGACA) sets the required number of members on the governing body of Auckland Council (the Council) at 21, comprising the mayor and 20 councillors.
3. Auckland Council is the only council in New Zealand to have a fixed number of councillors. The Royal Commission on Auckland Governance recommended the Council have 23 councillors, including three permanent Māori seats. On 24 August 2009 Cabinet decided that Māori seats should not be provided for in the legislation, leaving the Council with 20 councillors and it is now reflected in the legislation.
4. For all other territorial authorities, the Local Electorate Act 2001 (LEA) sets the range for the number of councillors at between 6 and 30. For regional councils, the membership range is between 6 and 14.
5. The fixed membership requirement makes the Council less flexible in its governance arrangements, causing the issues set out below.

Maintaining the number of councillors at 20 will lead to councillors representing more people as Auckland's population grows

6. As Auckland continues to grow, maintaining councillor numbers at 20 will mean that each councillor must represent increasing numbers of people and increasingly diverse communities.
7. Auckland Council has the highest ratio of elected councillors to their constituent population in New Zealand, at 1 councillor to 82,860 people. The next highest is Christchurch City Council, with 1 councillor to 23,858 people.
8. Over the next 25 years, this ratio will continue to increase. Statistics NZ estimates Auckland's population by 2043 will grow to between 2 and 3 million, depending on migration trends. This would represent a ratio of councillors to constituents of between 1:100,000 and 1:150,000 respectively at the current membership requirement.

The Council would currently have to give up one current councillor in order to create a Māori ward

9. The Local Government Act 2002 requires local authorities to establish processes for Māori to contribute to council decision making. Māori wards are one way territorial authorities can comply with these obligations.
10. The maximum of 20 councillors means Auckland Council would have to reduce the number of councillors to 19 in order to create a Māori ward. This reallocation would require ward boundaries to be reviewed, and the number of councillors representing each ward to be reconsidered. The Local Government Commission would also need to

undertake a reorganisation process to align Auckland's local board boundaries with the ward boundaries.

11. Local Government Commission figures estimate the electoral population of Māori living in Auckland at 112,500. The current framework and allocation of members to wards would permit the Council to establish one Māori ward with one elected member.

Auckland Council has previously expressed interest in both making changes to the 20 member requirement and establishing a Māori ward in Auckland

12. Auckland Council currently has no Māori wards. The Council wrote to the Department in October 2015, requesting an amendment to the LGACA to alter the 20 councillor requirement. The Department carried out initial work to support the inclusion of an amendment in a Statutes Amendment Bill. The Government at the time did not wish to pursue any changes to the requirement and this did not proceed.
13. As set out in our previous briefing dated 5 December 2017 titled *Māori representation in Local Government, Māori wards, and the Independent Māori Statutory Board*, in September 2017 Auckland Council identified the opportunity to establish a Māori ward for the 2019 elections, and noted that no further councillors could be added under the LGACA. The Council reaffirmed its 2015 request to remove the 20 councillor membership requirement.

Removing or changing the membership requirement requires an amendment to the LGACA

14. Should you wish to remove or change this requirement, the Department's initial view is that there are three potential ways to do this:
 - **Option 1: Remove the membership requirement.** Auckland Council would be subject to the membership limits in the LEA. This would align Auckland Council with other territorial authorities in New Zealand and allow full flexibility in responding to future population and demographic changes.
 - **Option 2: Set a new membership requirement, (e.g. exactly 25).** Increasing the requirement to a new set figure would give Auckland Council more scope in choosing to pursue a Māori ward without reducing current councillor numbers. However, it may be less durable and further legislative change on the same issue may be required at a later date.
 - **Option 3: Set a new maximum membership limit, (e.g. up to 25).** As with Option 1, this would give Auckland Council increased flexibility over changes occurring in the region in the future. It could be used to keep councillor numbers below the default limit of 30 set in the LEA.
15. The Department considers **Option 1** is the most appropriate as it would align Auckland Council with all other councils in New Zealand and would give it the flexibility to respond to changing circumstances. This option could lead to a significant increase in the number of councillors. However, any increase would be subject to a representation review process, which would include community consultation, and decisions could also be referred to the Local Government Commission if any objection is received. Without the Council undertaking a representation review, however, we cannot know what the final number of councillors would be.

Next steps towards removing the membership requirement

16. Should you wish to proceed with altering this requirement, there is an opportunity to amend the LGACA through the proposed Local Elections (Miscellaneous Amendments) Reform Bill (LEMAR Bill). A legislation bid was recently submitted for this proposed Bill, which is intended to provide for an online voting trial in local elections.
17. This is our preferred option for amending the LGACA to remove or change the membership requirement. The change may not be appropriate for inclusion in a Statutes Amendment Bill as it may not receive wide Parliamentary support. It may not be considered a large enough issue for a standalone bill for efficient use of House time.
18. While this is likely to be the quickest method of implementing this change, there is a limited amount of time to include the amendment in the proposed LEMAR Bill. The Department expects that policy approval for the LEMAR Bill will be sought from Cabinet in February 2018. Subject to your agreement, policy approval to remove the Auckland Council membership requirement could be sought from Cabinet in February and relevant provisions included in the Bill.
19. Any change could not be implemented by the Council until the local elections in 2022. There is insufficient time to make the amendment in time for the 2019 elections. This is because Auckland Council is required to conduct a representation review before the 2019 local body elections. This process requires the council to give public notice of its proposal by 8 September 2018. The LEMAR Bill is unlikely to be in force by that time.
20. Auckland Council could hold another representation review in 2021 once any legislative changes are in place, and in time for the 2022 local elections. The Department has not yet spoken to Auckland Council about these timing options.
21. The Department can provide you with a briefing further evaluating these potential options. To prepare this advice, the Department would need to engage with Auckland Council, Te Puni Kōkiri, the Independent Māori Statutory Board and other affected groups as necessary to further inform our view.

Recommendations

22. We recommend that the Minister of Local Government and Associate Minister of Local Government jointly **discuss** the contents of this briefing. **Yes/No**
23. We recommend that the Minister of Local Government:
- a) **Agree** in principle that the fixed membership of the Auckland Council governing body should be removed to align with the approach for other councils in the Local Electoral Act 2001; **Yes/No**
 - b) **Agree** to explore implementing this change through the Local Elections (Miscellaneous Amendments) Reform Bill; and **Yes/No**
 - c) **Note** that, should you agree with these recommendations, we will provide you with further advice on removing the membership requirement following consultation with Auckland Council and Te Puni Kōkiri. **Yes/No**



Raj Krishnan
General Manager Policy



Hon Nanaia Mahuta
Minister of Local Government

_____/_____/_____

Hon Meka Whaitiri
Associate Minister of Local Government

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Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: **Draft Cabinet paper: Modernising voting and improvements to the regulatory framework for local elections**

Date: 2 March 2018

Key issues

This briefing provides, for your review, the draft Cabinet paper: *Modernising Voting and improvements to the regulatory framework for local elections*.

The final Cabinet paper need to be lodged with the Cabinet Office by 10am on 8 March 2018, for consideration at the Cabinet Business Committee on 12 March 2017. You will also need to seek the Prime Minister's agreement, as Chair of Cabinet, for the Cabinet Business Committee to have Power to Act on Cabinet's behalf on this paper so that we can meet the timeline for introduction.

Officials are currently working through the outstanding issue of meeting the Electoral Commission's costs arising from two of the proposed legislative amendments, as well as finalising the Regulatory Impact Statements and Privacy Impact Assessment to will accompany the finalised Cabinet paper.

Action sought

Timeframe

Advise the Department of any changes you wish to be made to the attached draft Cabinet paper by 6 March 2018; and

By 6 March 2018

Sign and forward the attached letter to the Prime Minister in her capacity as Chair of Cabinet.

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Kay Baxter	Acting Policy Manager	04 495 9331	021 802 176	✓
Raj Krishnan	General Manager Policy	04 494 0572	021 593 973	

Return to	Josephine Clarke, Level 9, 45 Pipitea Street
Cohesion reference	3W2DU3RAJ5R2-666574291-240
Ministerial database reference	LG201800320

Purpose

1. This paper provides, for your review, the draft Cabinet paper for the Modernising Voting work programme and proposed local electoral legislative amendments. This paper is to be considered at the Cabinet Business Committee (CBC), with the Power to Act for Cabinet, on 12 March 2018.

Background

2. On 27 February 2018, the Department provided you with an indicative draft and expedited timeline for the Cabinet paper in order to meet your request for the Local Electoral Matters Omnibus Bill to be introduced in March 2018.

Cabinet paper and associated documents

3. As agreed at our meeting with you on 28 February 2018, the attached draft Cabinet paper (**Appendix A**) focuses on:
 - 3.1 the Modernising Voting Review;
 - 3.2 the legislative amendments which would support future trials of alternative voting methods; and
 - 3.3 the proposed changes to the statutory requirements for Auckland Council's representation arrangements.
4. The paper does not contain details of a proposed online voting trial or the funding request from the local government sector. The paper signals, at paragraph 20, that you will report back to Cabinet on those matters, and a trial or trials before the 2022 local elections remains possible. The paper also notes that you will report back to Cabinet with finalised Terms of Reference for the Modernising Voting Review.
5. Attached to the draft Cabinet paper are:
 - 5.1 a draft Regulatory Impact Statement for the legislative amendments related to the Modernising Voting work programme (a signed version will be provided with the final version of the Cabinet paper); and
 - 5.2 a draft of the Department's Privacy Impact Statement (a copy of this will be provided to the Office of the Privacy Commissioner early next week and a signed version will be provided with the final version of the Cabinet paper).
6. A copy of the second Regulatory Impact Statement, for the proposed changes to the statutory requirements for Auckland Council's representation arrangements, will be provided to your office on 6 March 2018.

There is an outstanding issue of funding for the Electoral Commission's costs

7. The Electoral Commission has identified up to \$70,000 in costs arising from the proposed amendments to the Electoral Act 1993. These costs arise from system changes to their database and changes to their enrolment application form. The Electoral Commission has forecast a deficit for the 2017/18 financial year so is unlikely to be able to absorb this cost.
8. We are working with officials from the Ministry of Justice and Treasury to identify a source of funding to cover the financial implications in the Cabinet paper in time for lodgement of the paper. We will keep your office informed of progress on this issue.

Some outstanding departmental feedback is best included in future online voting papers

9. Te Puni Kōkiri noted the trial of online voting could provide for improving accessibility of Te Reo Māori, particularly in the light of the Maihi Karauna (Māori language strategy). We consider this is in line with the Modernising Voting Review objectives and opportunities for greater use of Te Reo have been discussed with councils during the exploratory work. We will include this in the future Cabinet paper discussing a potential trial of online voting.
10. The Department has been in contact with Stats NZ Tatauranga Aotearoa (Stats NZ) to gain insights into feedback on this year's census being held primarily online. The census process has also been scrutinised in media coverage this week. We will continue to work with Stats NZ, including understanding their "lessons learnt" from the 2018 Census, to inform the report back to Cabinet on a proposal for a future online voting trial.

Next steps

11. For the attached Cabinet paper to be considered at CBC on 12 March 2018, it will need to be lodged with the Cabinet Office by 10am on 8 March 2018. We will provide your office with a final version of the paper, incorporating your feedback, for your approval on 7 March 2018.
12. You will also need to seek the Prime Minister's approval for CBC to have Power to Act for Cabinet on this paper. A draft letter to the Prime Minister is attached for your signature (**Appendix B**). This letter also includes the request for Power to Act on the Cabinet paper for the Local Government (Community Well-being) Amendment Bill.
13. Timelines for the Cabinet paper and introduction of the Local Electoral Matters Omnibus Bill are:

Date by	Action
Tuesday 6 March	Auckland Council amendment Regulatory Impact Statement provided for your information
Wednesday 7 March	Revised CBC paper (policy) provided for your approval
Thursday 8 March	Final CBC paper (policy) lodged with the Cabinet Office
Monday 12 March	CBC consideration (with Power to Act)
Monday 12 March	Draft LEG papers (Bill) provided for your review
Wednesday 14 March	Revised LEG paper (Bill) provided for your approval
Thursday 15 March	Final LEG paper (Bills) lodged with the Cabinet Office
Thursday 22 March	LEG consideration
Monday 26 March	Cabinet approval for introduction

Recommendations


14. We recommend that you:

- a) **advise** the Department of any changes you wish to be made to the attached draft Cabinet paper by 6 March 2018; and Yes/No
- b) **sign and forward** the attached letter to the Prime Minister in her capacity as Chair of Cabinet. Yes/No

Copy to Associate Minister

15. Please indicate if you would like a copy of this briefing to be forwarded to the Associate Minister of Local Government. Yes/No


Raj Krishnan
General Manager Policy


Hon Nanaia Mahuta
Minister of Local Government
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Appendix A: Draft CBC paper - *Modernising voting and improvements to the regulatory framework for local elections*

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Office of the Minister of Local Government

Chair
Cabinet Business Committee

Modernising voting and improvements to the regulatory framework for local elections

Proposal

1. This paper is written in two parts:
 - 1.1 First, the paper proposes central government undertake a work programme to modernise voting in local elections in partnership with representatives of the local government sector (the Modernising Voting Review) and seeks the Committee's agreement to:
 - 1.1.1 the scope of the Modernising Voting Review;
 - 1.1.2 the approach to working with local government sector representatives in partnership on the Modernising Voting Review and on online voting trials as part of that Review; and
 - 1.1.3 legislative changes to support the trialling and analysis of voting methods through an omnibus local electoral bill.
 - 1.2 Second, the paper seeks agreement to a legislative amendment to the Auckland Council representation arrangements for addition to the omnibus local electoral bill.

Executive summary

2. The Government has an important stewardship role in ensuring the framework for local elections is fit for purpose and future proofed. I propose my officials partner with local government sector representatives to undertake a programme of work to review the local electoral framework with a view to modernising and future proofing the system.
3. While civic participation needs to be wider than engagement between citizens and councils, and that engagement must itself be wider than electoral representation, improving public confidence and involvement in election processes can make an important contribution to civic participation outcomes overall.
4. Civic participation spans a broad range of activities. Engagement between citizens and councils is one component of civic participation and this includes involvement in local elections. The Modernising Voting Review is an opportunity to set a framework for improved civic participation in local elections, particularly by improving accessibility for those electors with physical disabilities, or who are overseas or travelling. As part of this partnership approach, I am proposing to progress work towards trial(s) of online voting in local elections as a key element of the Modernising Voting Review.

5. The exploratory work to scope the Modernising Voting Review and trial(s) of online voting has identified some minor legislative amendments that need to be made ahead of any trial of new voting methods and completion of the Modernising Voting Review. I am seeking Cabinet's approval to issue drafting instructions for these legislative amendments through an omnibus local electoral bill. The proposed legislative changes would:
 - 5.1 enable regulations to be made authorising a local authority to adopt a voting method for a specified subset of electors at an election for the purposes of trialling a voting method;
 - 5.2 allow local authorities to access date of birth information from the database of registered electors held by the Electoral Commission when required for the purposes of conducting an election; and
 - 5.3 clarify that local authorities may access age group information for individual electors for the purpose of analysing participation in local elections.
6. Part two of this paper proposes an additional change for inclusion in the omnibus local electoral bill. This proposal is to remove the current 20 councillor requirement on the number of councillors making up the governing body of the Auckland Council, so that the same representation rules apply to Auckland Council as for all other territorial authorities.

Part One: Modernising voting in local elections

Background

Civic participation is interdependent with effective local democracy which itself is dependent on accessible and trusted electoral processes

7. Participation by citizens in formal and informal collective activities and governance of their communities is essential to both the effective identification and pursuit of public goals, and to the well-being of communities in terms of social cohesion and identity. Local democratic processes are both symbolic and tangible opportunities for individuals to join in the governance of their communities, and to share in determining the nature and direction of the collective outcomes sought.
8. Trusted, efficient and attractive voting processes are essential to maintaining public engagement and confidence in local elections, which in turn are essential to acceptance and support of the legitimacy of the mandate for local government decisions. While civic participation needs to be wider than engagement between citizens and councils, and that engagement must itself be wider than electoral representation, improving public confidence and involvement in election processes can make an important contribution to civic participation outcomes overall.

Local authorities are responsible for conducting local elections and polls

9. The local elections cover city and district councils, regional councils and district health boards. Territorial authorities run the elections for all the relevant bodies within their area during triennial elections. In some parts of New Zealand, elections are also held for local or community boards, licensing trusts and other bodies.

10. There is no ministerial involvement in the running of local elections. However, central government is responsible for maintaining the regulatory framework for local elections and has a responsibility to maintain public confidence in the electoral system. This involves ensuring the framework:
 - 10.1 maintains the integrity of local electoral systems and democratic processes;
 - 10.2 allows electors a reasonable and equal opportunity to participate; and
 - 10.3 promotes public acceptance of the legitimate mandates of elected councils.

Previous select committee inquiries have identified areas for improvement

11. The Justice and Electoral Committee (the Committee) has, by convention, inquired into the conduct of each local authority election, and examined the law and the administrative procedures surrounding the elections.¹ In recent years, submissions on the inquiries, and the Committee's reports, have highlighted that although local elections generally function well, changes to the Local Electoral Act 2001 would improve the administration of local elections.

Policy

12. Central government stewardship of the local electoral system is needed to ensure its sustainability and that it continues to be fit for purpose over time. The local electoral framework is becoming out of touch with how electors, candidates and other bodies interact, or wish to interact, with local government.
13. As online transactions, such as online banking and even passport applications, become a normal feature of people's everyday lives, paper-based and booth voting are becoming out of step with the imaginable future of conducting elections. This is of particular interest to the local government sector as postal voting shows increasing limitations in a modern environment.
14. Central government's stewardship responsibilities include maintaining a strong partnership with local government as the practitioners of local elections. The local government sector depends heavily on central government setting in place the enabling regulatory environment for them to administer local elections efficiently and effectively.

I propose a Modernising Voting Review to investigate opportunities to strengthen the framework for local elections

15. Previous select committee inquiries into local elections, and discussions with local government representatives, have highlighted a number of issues with the regulatory framework for local elections that warrant further attention.²

¹ This convention began in 2001, leading into the enactment of the Local Government Act 2002. The Committee's "Inquiry into the 2016 local elections" lapsed when the House rose prior to the general election and was not reinstated by the new Justice Committee.

² The Committee's 2010 report recommended that the Government consider a trial of online voting in local elections, and the 2013 report recommended that any trial be conducted successfully before online voting is introduced nationwide

16. The Modernising Voting Review is an opportunity to set a framework for improved civic participation in local elections. There are also opportunities to improve accessibility, for example, for electors with physical disabilities, overseas and travelling electors, and those with a preference for using digital technologies. The purpose of the review is to modernise the local authority electoral system and put in place a more enduring platform for voting in local elections, including the application of new technologies.
17. The proposed objectives and scope of the Modernising Voting Review, developed in consultation with Local Government New Zealand and the New Zealand Society of Local Government Managers, are attached as **Appendix A**. I will report back to Cabinet on finalised Terms of Reference for the Modernising Voting Review as part of the Cabinet report back referred to in paragraph 21 below.
18. A key driver for the local government sector is to move towards a more sustainable and cost-effective means of conducting local elections in the future. This is in part due to the increasing unsuitability of traditional postal services to support postal voting in terms of both reducing service levels and increasing costs. To progress this sustainable future, new voting methods (or combination of methods) need to be explored.

Progress towards trial(s) of online voting is a key element of the Modernising Voting Review for the local government sector

19. Taking a partnership approach to working with the local government sector will be crucial to the success of the Modernising Voting Review. The local government sector has a particular interest in progressing online voting as a future voting method, the first step of which is a trial in upcoming local elections or by-elections. Sector representatives have expressed an interest in progressing this as a joint central/local government programme and investment.
20. The timing constraints of the electoral cycle and external pressures on the local government sector mean work towards a trial of online voting will be best undertaken in parallel to the Modernising Voting Review. Therefore I am proposing to prioritise investigation of trial(s) of online voting in parallel to the Modernising Voting Review. This will enable lessons learnt during any such trials to be fed back into the Modernising Voting Review.
21. I will report back to Cabinet with more detail on the proposed approach to an online voting trial, including the respective roles of central and local government, and any financial implications. Before a trial(s) of online voting can proceed I will also need to seek Cabinet agreement to regulations to authorise trials of online voting. I understand from officials that it is feasible for a trial or trials to occur between the 2019 and 2022 triennial local elections, such as in a by-election, referendum or mock election.

Legislative amendments to be prioritised

22. Work to date with local government sector representatives has highlighted a small number of legislative amendments that would enable a better design of a trial(s) of voting methods. All three amendments described below will enable the development and analysis of a range of alternative voting methods, and the two proposed amendments to the Electoral Act 1993 are of potential benefit for the running of local elections generally.

23. I propose these amendments be made as part of an omnibus local electoral bill. Part two of this paper discusses a further amendment proposed for inclusion in the omnibus local electoral bill.

Legislative change so that regulations can be made for a partial trial

24. When considering options for trialling voting methods, Local Government New Zealand and the New Zealand Society of Local Government Managers see Auckland Council's involvement as critical to a trial's success because of the resources the Council can bring to this type of project. The Department of Internal Affairs considers that Auckland Council is too large for full participation in a trial to be appropriate. Such a trial would involve approximately one third of registered electors. If a fundamental problem occurred, the logistics involved in re-running the election would be significant.
25. As a compromise, local government sector representatives would like to be able to conduct partial trial(s) at Auckland Council elections. A partial trial might involve voters in particular areas such as wards, and/or specified categories of a local authority's voters (for example, disabled or overseas voters).
26. A new voting method can be approved by creating regulations under the Local Electoral Act 2001, without needing to make changes to the Act. However, the limits of the regulation-making power mean that regulations cannot enable a "partial" trial of online voting.
27. Therefore I recommend amendments to the Local Electoral Act 2001 to enable regulations to be promulgated authorising a local authority to adopt a voting method for a specified subset of electors at an election, for the purposes of trialling a voting method.
28. To minimise the need for future amendments, I propose that this amendment not be limited to trials for a specified voting method or be fixed in time. This is because it is conceivable that trials for other voting method(s) may be required in the future. This approach will enable flexibility in the design of a trial to make the best use of available resources and mitigate risk which would otherwise be posed, in some cases, by trialling a voting method (or combination of methods) over a full local authority area.

Access to date of birth information for the purpose of conducting an election

29. Local authorities rely on electoral roll information provided by the Electoral Commission for the purposes of conducting their elections. The specified information local authorities receive under section 113 of the Electoral Act 1993 is limited. Electors' date of birth information is not provided to local authorities to administer the elections.
30. Enabling local electoral officers and supporting staff to access electors' date of birth information would provide more options for developing robust voter authentication mechanisms when considering new voting methods. Date of birth information has been identified as a piece of identity information held by both the Electoral Commission and the elector that is not on the published roll or printed on the voting papers mailed out.

31. Therefore I recommend that amendments be made to the Electoral Act 1993 to allow local authorities to access date of birth information from the database of registered electors held by the Electoral Commission for the purposes of conducting an election. The date of birth information would, however, not be able to be included in the information on the published roll available for public inspection. This may require minor consequential amendments to the Local Electoral Act 2001 and/or the Local Electoral Regulations 2001.
32. To minimise the need for future amendments, I propose that this amendment not be limited to specified voting methods. The local authority would, however, need to demonstrate that they need to access this information for the purposes of a voting method at an election, including for the purpose of a trial.

Access to age group information for the purpose of analysing participation

33. There is limited information on voter participation at local elections. Effective monitoring and evaluation will be crucial parts of robust management and trialling of new voting methods. This analysis should include information about voting behaviour categorised by age groups. For this to be possible the local authorities need access to age group information held by the Electoral Commission, and to be able to use this for the purposes of analysing participation.
34. Section 112 of the Electoral Act 1993 allows age group information to be supplied, at a fee, for the purpose of research that relates to a scientific matter or human health. It is not clear that local authorities researching electoral participation would be assessed as a scientific matter, and the merits of each application would have to be assessed on a case by case basis by the Electoral Commission. For efficiency in applying section 112 of the Electoral Act 1993, I am proposing to amend this section to clearly provide for this.
35. I consider that this proposed change is of potential benefit to all local authorities conducting local elections, and will improve the quality of analysis of local electoral participation by those involved in running local elections. For this reason, I recommend clarifying that age group information could be supplied to any person wishing to analyse participation in a local election, on request, and not just local authorities trialling a new voting method.
36. Therefore I recommend that amendments be made to the Electoral Act 1993 to clarify that local authorities may access age group information for individual electors for the purpose of analysing participation in local elections.

Part Two: Auckland Council Representation

Background

Auckland Council membership requirement

37. Under section 8 of the Local Government (Auckland Council) Act 2009 the governing body of Auckland Council must comprise a mayor and 20 members elected in accordance with the Local Electoral Act 2001.
38. The statutory requirement for exactly 20 councillors is unique to Auckland. For all other territorial authorities the Local Electoral Act 2001 sets the range for the number of members of the governing body, including the mayor, at between 6 and 30. For regional councils the membership range is between 6 and 14.

39. The Royal Commission on Auckland Governance recommended the Council have 23 councillors, including three permanent Māori seats. On 24 August 2009, Cabinet decided that Māori seats should not be provided for in the legislation, leaving the Council with 20 councillors as is now set out in the legislation.
40. Councils must carry out a representation review at least once every six years. Representation arrangements that must be reviewed include:
 - 40.1 whether councillors are elected on a ward basis, or at large;
 - 40.2 the name and boundaries of each ward and the number of councillors to be elected in each ward;
 - 40.3 whether local board members are elected on a subdivision basis or for the local board area as a whole; and
 - 40.4 the number of members in each local board.
41. Auckland Council must commence formal consultation on its first representation review by 8 September 2018.

Policy

Auckland Council has requested an amendment to the councillor requirement as it makes it more difficult to create a Māori ward

42. Under the Local Government (Auckland Council) Act 2009, the requirement for 20 councillors means Auckland Council would have to reduce the number of general councillors to 19 in order to create a Māori ward. This reallocation would require ward boundaries to be reviewed, and the number of councillors representing each ward to be reconsidered. The Local Government Commission would also need to undertake a reorganisation process if Auckland's local board boundaries were to be aligned with the updated ward boundaries.
43. On 28 September 2017, Auckland Council resolved to seek an amendment to this statutory requirement so that a councillor elected from a Māori ward could be additional to the current requirement for 20 councillors.

The 20 member requirement results in a very low councillor to population ratio

44. I do not consider that there is a good basis for Auckland Council having a set membership requirement that is lower than other local authorities. Auckland Council has the lowest ratio of elected councillors to their constituent population in New Zealand, at 1 councillor to 82,860 people. The next lowest is Christchurch City Council, with 1 councillor to 23,858 people. Having a low ratio of councillors to constituents may undermine the councillors' ability to effectively represent their areas.
45. Over the next 25 years, this ratio will continue to decrease. Statistics NZ estimates Auckland's population by 2043 will grow to between 2 and 2.6 million, depending on migration trends. This would represent a ratio of councillors to constituents of between 1:100,000 and 1:130,000 respectively at the current membership requirement.
46. Auckland Council is the only council in New Zealand to have a fixed number of councillors and the fixed membership requirement makes Auckland Council less flexible in its governance arrangements.

Removing the unique requirement provides desirable flexibility, in line with other councils

47. I have considered the following three options for removing or changing the membership requirement:
- 47.1 remove the membership requirement (Auckland Council would be subject to the standard membership limits in the Local Electoral Act 2001);
 - 47.2 set a new (higher) membership requirement (for example, exactly 25); or
 - 47.3 set a new maximum membership limit (for example, up to 25).
48. On balance I consider that the most appropriate approach is to remove the membership requirement, as this would align Auckland Council with all other New Zealand councils and would give it the flexibility to respond to changing circumstances. This option could lead to a significant increase in the number of councillors, up to 29. However, Auckland Council would need to carry out a representation review process before any increase could be made. This would necessarily involve community consultation, and decisions would also be referred to the Local Government Commission if an appeal or objection is received on the Council's final proposal.
49. I seek your agreement to remove the unique membership requirement for the Auckland Council governing body from the Local Government (Auckland Council) Act 2009 as part of the omnibus local electoral bill.

Consultation

50. This paper was prepared by the Department of Internal Affairs in consultation with Local Government New Zealand and the New Zealand Society of Local Government Managers. It also incorporates feedback from Auckland Council and the Independent Māori Statutory Board.
51. The following agencies were provided draft versions of this paper for consultation: The Treasury, the Department of the Prime Minister and Cabinet, Te Puni Kōkiri, the Ministry of Health, the Ministry of Justice, the Electoral Commission, Statistics New Zealand, and the Parliamentary Counsel Office.

Financial implications

Modernising voting review and proposed legislative changes

52. The costs of conducting the review are largely staff time and consultation and engagement costs which can be met from within departmental baselines.
53. The Electoral Commission has estimated the costs of system changes and testing to enable the provision of date of birth and age group information to be between \$7,500 and \$15,000.
54. The Electoral Commission would also have to update the disclosure statement on their enrolment application form and guidance to specify that date of birth information would be provided to local authorities. The cost of this, for a print run of 500,000 is estimated to be \$55,000.
55. [Consultation with the Electoral Commission, the Ministry of Justice and Treasury on how these costs can be met is still underway].

Auckland Council member numbers

56. There are no financial implications arising from the proposals in this paper. Any costs to local government will be addressed through the representation review process.

Human rights and gender implications

57. There are no human rights or gender implications arising from the proposals in this paper.

Disability perspective

58. The development of modernised voting in local elections, such as online voting, could assist the visually impaired and other disabled people to vote independently. Disability advocacy groups will be consulted as part of the development of any online voting trial.

Legislative implications

59. I seek agreement to implement the policy proposals in this paper in an omnibus local electoral bill to amend the Local Electoral Act 2001, Electoral Act 1993 and Local Government (Auckland Council) Act 2009.
60. To expedite the drafting process, the Attorney-General agreed to instruct the Parliamentary Counsel Office to begin drafting for this bill in advance of policy approvals from this Committee. I seek authority to make any adjustments to policy decisions consistent with the overall policy intent that are revealed to be necessary during the drafting process.
61. I also note that the draft bill will be developed in consultation with the Electoral Commission and representatives of Local Government New Zealand, the New Zealand Society of Local Government Managers, Auckland Council, and the Independent Māori Statutory Board. Draft legislation will be provided to these parties in accordance with the Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown.

Regulatory impact analysis

62. The regulatory impact analysis requirements apply to the proposals outlined in this paper.
63. The Department of Internal Affairs' Regulatory Impact Analysis Panel has reviewed the regulatory impact statement for the proposed amendments to the Local Electoral Act 2001 and the Electoral Act 1993 and...<insert text>[currently under consideration by the RIS Panel]
64. The Department of Internal Affairs' Regulatory Impact Analysis Panel has reviewed the regulatory impact assessment for the proposed amendment to the Local Government (Auckland Council) Act 2009 and ...<insert text>[currently under consideration by the RIS Panel]

Privacy impact analysis

65. The Department of Internal Affairs carried out a Brief Privacy Analysis on the proposals to allow local authorities to access age group and date of birth information. The Brief Privacy Analysis determined that the provision of age group information does not introduce substantial new risks to an individual's privacy.

66. A Privacy Impact Assessment Report was recommended and completed on the proposal to allow local authorities to access date of birth information. The Report concluded that, based on current information, the proposal itself does not introduce substantial risks to an individual's privacy. However, the potential use of date of birth information by future voting methods may introduce higher risks of a breach to an individual's privacy. Therefore an updated Privacy Impact Assessment is recommended during the development of the proposal for future voting methods that require date of birth information.
67. The Office of the Privacy Commissioner was provided with a copy of the Brief Privacy Analysis and Privacy Impact Assessment Report on [insert date once forwarded].

Publicity

68. Local Government New Zealand and the New Zealand Society of Local Government Managers are likely to communicate with staff from the councils which are interested in participating in online voting trials about the decisions in this paper.
69. It is likely that I will issue a media statement at the time of introduction of the omnibus local electoral bill. I also propose to approve proactive release of this Cabinet paper.

Recommendations

70. The Minister of Local Government recommends that the Committee, with power to act:
 1. **note** that the Minister of Local Government is proposing a work programme to modernise the local authority electoral system and put in place a more enduring platform for voting in local elections, including the application of new technologies (the Modernising Voting Review);
 2. **note** the Modernising Voting Review is an opportunity to set a framework for improved civic participation in local elections, particularly by improving accessibility for electors with visual impairments, and overseas and travelling electors;
 3. **note** the Modernising Voting Review will be conducted as a partnership between the Department of Internal Affairs, the New Zealand Society of Local Government Managers and Local Government New Zealand;
 4. **note** that proposed objectives for the Modernising Voting Review have been developed with the New Zealand Society of Local Government Managers and Local Government New Zealand, but that I will report back to Cabinet with the finalised Terms of Reference for this Review;
 5. **note** investigation into a trial of online voting at local elections is a local government sector priority and a key part of the Modernising Voting Review;
 6. **note** I will return to Cabinet to seek agreement to proposals for a trial(s) of online voting, including to the content of regulations to authorise online voting trials and consideration of the financial implications of any such trial;
 7. **agree** that the Local Electoral Act 2001 will be amended to enable regulations to be promulgated authorising a local authority to adopt a voting method for a specified subset of electors at an election, for the purposes of trialling a voting method;

DRAFT - IN CONFIDENCE

8. **agree** that the Electoral Act 1993 will be amended to:
 - 8.1 allow local authorities to access date of birth information from the database of registered electors for the purposes of conducting an election; and
 - 8.2 clarify that local authorities and other persons can be supplied age group information for individual electors for the purpose of analysing participation in local elections;
9. **note** the date of birth information provided to local authorities would be precluded from inclusion on the published rolls that local electoral officers must make available for public inspection;
10. **note** that for all local authorities (other than Auckland Council) the Local Electoral Act 2001 sets the range for the number of members of the governing body at between 6 and 30 (for territorial authorities) and between 6 and 14 (for regional councils);
11. **note** that Auckland Council is the only council in New Zealand that has a fixed membership requirement and that this requirement makes the Council less flexible in being able to adapt governance arrangements to changing circumstances including population growth;
12. **agree** that the Local Government (Auckland Council) Act 2009 be amended to remove the requirement that the governing body of Auckland Council must comprise a mayor and 20 members so that the standard provisions under the Local Electoral Act 2001 will apply instead;
13. **note** that, with the agreement of the Attorney-General, the Minister of Local Government has issued drafting instructions to the Parliamentary Counsel Office in accordance with recommendations 7-9 and 12 above for these legislative amendments to be included in an omnibus local electoral bill;
14. **authorise** the Minister of Local Government to make decisions on any subsequent minor issues arising from legislative drafting that align with the overall policy intent of the proposals;
15. **note** that the Electoral Commission, Local Government New Zealand, the New Zealand Society of Local Government Managers, Auckland Council and the Independent Maori Statutory Board will be consulted on the draft bill;
16. [insert a recommendation if required about any funding required for Electoral Commission costs]; and
17. **note** that I intend to approve proactive release of this Cabinet paper, and to issue a media statement at the time of introduction of the omnibus local electoral bill.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Local Government

Appendix A: Objectives and scope of the Modernising Voting Review

1. The proposed objectives of the Modernising Voting Review are to:
 - 1.1 support local democracy by ensuring all electors have a reasonable and equal opportunity to vote in local elections;
 - 1.2 develop a sustainable platform for the efficient conduct of local elections;
 - 1.3 improve the voter experience in local elections;
 - 1.4 undertake a small-scale pilot(s) of online voting to test public support and technical considerations for a possible wider rollout of online voting in local elections; and
 - 1.5 make efficiency gains in the administration of local elections.
2. The following matters would be in scope of the Modernising Voting Review:
 - 2.1 improving accessibility for identified groups of voters (for example, overseas voters, voters with English as a second language, and voters with disabilities);
 - 2.2 developing and testing online voting options, including wider changes required to support online voting;
 - 2.3 improving the arrangements for electoral officers' access to electoral rolls – particularly supplementary rolls and deletions, and unpublished rolls;
 - 2.4 considering options for continuous enrolment for the ratepayer franchise (currently those who own property in a local authority's district, but live outside the district, have to re-enrol for every election);
 - 2.5 reviewing delivery of district health board election services;
 - 2.6 considering alternative options for the length of the voting period and the timing of polling day; and
 - 2.7 making minor legislative changes to improve the workability of the Local Electoral Act 2001.
3. The following matters would be out of scope of the Modernising Voting Review:
 - 3.1 voting systems - Single Transferable Vote (STV) and First Past the Post (FPP);
 - 3.2 candidate nomination qualifications;
 - 3.3 activities by local authorities to encourage voter participation;
 - 3.4 electoral representation, including Māori representation; and
 - 3.5 frequency of electoral cycle.

Coversheet: Modernising voting - trial of online voting

Advising agencies	The Department of Internal Affairs
Decision sought	<p>Agreement to issue drafting instructions for legislative changes to:</p> <ol style="list-style-type: none"> 1 the Local Electoral Act 2001 to: <ol style="list-style-type: none"> 1.1 enable regulations to be promulgated under the Local Electoral Regulations 2001 authorising a local authority to adopt a voting method for a specified subset of electors at an election, for the purposes of trialling a voting method; 2 the Electoral Act 1993 to: <ol style="list-style-type: none"> 2.1 allow local authorities to access date of birth information from the enrolment database held by the Electoral Commission, for the purposes of conducting an election (including a minor consequential amendment to the Local Electoral Act 2001, if required); and 2.2 clarify that local authorities may access age group information for individual electors for the purpose of analysing participation in local elections.
Proposing Ministers	Minister of Local Government

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

A current programme of work to modernise voting in local elections has identified a number of barriers to trialling and evaluating new and existing voting methods in those elections. This proposal seeks to remove these legislative barriers to enable a more efficient and effective trial and evaluation of future voting methods than is currently possible.

In particular, the limitations of the current statutory framework mean that:

1. voting methods cannot be trialled with subsets¹ of electors within a local authority district;
2. local authorities cannot access date of birth information from the enrolment database to administer elections (for example, to authenticate electors' identities); and
3. there is uncertainty as to whether local authorities could access age group information about electors (for analysis of voter participation by age group).

¹ The subsets could be based on a geographic area such as a ward, or a category of voters such as remote or self-identified disabled voters.

These problems have wider application than the development or assessment of any particular voting method.

This RIA has broken the analysis of these problems into three areas:

1. Enabling a 'partial' trial;
2. Enabling local authorities to access date of birth information from the enrolment database held by the Electoral Commission for the purpose of conducting an election; and
3. Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections.

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

Enabling a 'partial' trial

The proposed approach is to amend the Local Electoral Act 2001 to allow regulations to be promulgated under the Local Electoral Regulations 2001 to authorise a voting method to be trialled with a subset of electors within a local authority's area. This will give local and central government partners the flexibility to design a trial of a voting method (or combination of methods) that makes the best use of available resources and mitigates the risks which would otherwise be posed by trialling the voting method over a local authority area.

Subsequent regulations are required to authorise a voting method to be trialled over particular subsets of electors within a local election. The detail of these regulations will be assessed in separate Regulatory Impact Analysis reports.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

The proposal is to amend the Electoral Act 1993, to enable local authorities to access date of birth information from the Electoral Commission's enrolment database when this information is necessary to conduct an election (for example, as a second layer of authentication of electors). This proposal utilises information already held by the Electoral Commission about each elector. It would avoid the need for additional processes, cost and logistics that would otherwise be necessary for two-stage identity authentication processes for electors to securely access a voting system. There are some limitations on the effectiveness of date of birth as an authentication factor which are outlined in the options analysis in section 3.1.

A minor amendment may also be required to the Local Electoral Act to make information sharing provisions consistent.

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

A further amendment to the Electoral Act 1993, is proposed to enable local authorities to analyse participation in local elections using statistically anonymised age-group (in the form of a 5 year bracket) information provided by the Electoral Commission. This proposal is efficient as it utilises information already held by the Electoral Commission to improve

the analysis and knowledge base of local electoral participation. This will be valuable to the local government sector, central government and the academic community.

Section B: Summary Impacts: Benefits and costs

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

Enabling a 'partial' trial

The local government sector will benefit from the suggested legislative changes to allow partial trials of voting methods and enable online voting. Allowing a partial trial means the local government sector will have the flexibility to design trials that make the best use of available resources and minimise risks which may be posed by trialling a voting method over all electors in a large local authority area.

The development of proposed voting methods is enhanced through increased access to more local government capability and capacity when larger councils (with significant expertise and resourcing) can participate in partial trials, without the additional risk of a voting method failing across an entire territory.

The public will also benefit from the ability for voting methods to be trialled over subsets of voters due to the reduced risk to the integrity of the local elections concerned and potentially lower cost than a full trial.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

The local government sector will benefit from having access to electors' date of birth information as this will reduce the cost of administering any voting method that may require two-stage elector authentication.

Local government, central government and the public will benefit from having greater public confidence in the integrity of a voting method due to the two-stage authentication of voters.

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

Access to this data will improve the scope and quality of analysis of participation. The analysis will be valuable to the local government sector, central government and the academic community. Amongst other benefits, this may enable better targeting of programmes to promote participation.

In the particular context of trialling voting methods, access to the data will improve the quality of post-trial evaluation. This will benefit local and central government by informing understanding of the uptake and future improvements to the voting method in question.

There may be efficiencies in clarifying this section of the Electoral Act 1993 in that it will minimise the need for the Electoral Commission to make a case by case determination on whether local authorities meet the requirements to access this information.

Where do the costs fall?

Enabling a 'partial' trial

There are no particular costs associated with amending legislation and promulgating enabling regulations for a trial of a voting method to be over only a subset of a local authority's electors other than the departmental costs of undertaking legislative change.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

There will be some administrative costs for the Electoral Commission in providing date of birth information to local authorities. However, this is expected to be minor in the context of other information transfers occurring at the same time. One off system changes and testing to enable this field to be extracted in providing date of birth information to local authorities is estimated at \$7,500 - \$10,000.

The Electoral Commission will however have to update the disclosure statement on their registration forms at a cost; the Electoral Commission has estimated this at \$55,000.²

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

There will be some administrative costs for the Electoral Commission in providing date of birth information to local authorities. However, this is expected to be minor in the context of other information transfers occurring at the same time. One off costs of system changes and testing to enable this field to be extracted in providing date of birth information to local authorities is estimated at \$7,500 - \$10,000.

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

Enabling a 'partial' trial

There are no specific risks associated with a legislative change to allow regulations to be made enabling a partial trial of a voting method. Any risks associated with the regulations themselves will be assessed as part of the policy development of those regulations.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

There may be public reservations about sharing date of birth information with local authorities. This would need to be mitigated through clear regulations on how the information must be protected (including how and to whom it can be transferred and stored) and the uses of information (i.e. for conducting an election only). The Department has completed a Privacy Impact Analysis for this change. We consider that applying an updated Privacy Impact Assessment at key stages in the design process of any trial of a voting method that utilises such information will help identify and mitigate privacy concerns.

² The cost of a print run of the application form depends on the number of forms printed. The estimate of the costs of a print run of 500,000 forms and guidance, including the re-set up of the artwork and proofs, is \$55,000.

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

There are no particular risks associated with allowing access to this information as it is in an aggregated “age-group” form. Under the Electoral Act 1993, this information can already be made available “for the purposes of research conducted by that person on a topic that relates to a scientific matter,,, [or]... human health,” and the extension of this to explicitly include local authorities conducting electoral participation evaluation is not expected to carry any greater risk. This assessment is confirmed by the Department’s Privacy Threshold Assessment finding that there are no substantial privacy risks associated with the change.

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?

Enabling a ‘partial’ trial

The Department is confident that the current regulatory framework needs to be amended as outlined above in order to be able to develop enabling regulations for a trial of a voting method over part of a local authority’s area or a subset of electors. We are confident this will reduce the risks associated with trialling a voting method over a full district in specific instances, and will enable continued access to the resources of larger councils in such situations.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

Given the time constraints it has not been possible to carry out research into whether a two-stage authentication process for a voting method would give the general public greater confidence in the integrity of the electoral system. Such analysis could however be undertaken by the central and local government partners in relation to a proposal to enable a voting method that utilised this feature.

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

The Department conducted a literary review of recent international experiences in voting. Age-demographic data is commonly used as part of evaluation methodologies to show trends over time and to evaluate effectiveness of and participation in a voting method.

Quality Assurance Reviewing Agency:

Department of Internal Affairs

Quality Assurance Assessment:

Reviewer Comments and Recommendations:

Impact Statement: Modernising voting - trial of online voting

Section 1: General information

Purpose

The Department of Internal Affairs 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 key policy decisions to be taken by Cabinet.

Key Limitations or Constraints on Analysis

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 sector representatives that work towards a trial of online voting will be undertaken in parallel to the Modernising Voting Review. This will enable lessons learnt 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 the end of 2018 (to give the sector sufficient confidence to proceed). The legislative amendments 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.

Responsible Manager (signature and date):

Raj Krishnan

General Manager Policy

Policy Regulations and Communities

Department of Internal Affairs

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Local Government New Zealand (LGNZ), the Society of Local Government Managers (SOLGM) and the Minister of Local Government have agreed (subject to Cabinet agreement) to a partnership project to modernise voting in local elections. The programme will involve two projects which will run concurrently:

- online voting pilot; and
- general review of the Local Electoral Act 2001 and the Local Electoral Regulations 2001 (any legislative changes to be enacted to apply to the 2022 elections) with a view to modernising voting in local elections.

While the need for these proposed amendments has been identified in relation to a possible trial of online voting, the proposed changes will be useful in relation to the development and trialling of a range of voting methods, or variations of voting methods, in a variety of situations in the future. The proposals are designed to be of general application to maximise benefits over time.

For any trial of online voting, enabling regulations will be needed to authorise online voting as a voting method for the participating councils (and subsets of electors). A separate RIA process on the specific proposal will be undertaken at that point.

2.2 What regulatory system or systems are already in place?

Enabling a 'partial' trial

Under the Local Electoral Act 2001 and the Local Electoral Regulations 2001, territorial authorities are responsible for conducting local elections in their districts, including elections to regional councils, district health boards (DHBs), local boards, community boards, and licensing trusts within that district.

Territorial authorities may adopt any authorised voting method for their elections (see section 139 below), and that decision applies also to other bodies' elections conducted in conjunction with the territorial authority district. Voting methods are authorised through regulations, and currently booth and postal voting are the only authorised voting methods under the Local Electoral Regulations 2001. In addition to this difficulty, arguably, the Local Electoral Act 2001 does not allow for a different voting method to be authorised or adopted for a subset of electors in relation to a particular election within a territory.

While the Local Electoral Act 2001 specifies that the "voting method" includes "any form of electronic voting" (section 5). Section 139(1)(c) of the Act provides that use of voting methods either generally in elections, or specifically in an election, is to be authorised by regulations. Section 139(2) of the Act provides that such regulations cannot be made "...unless the Minister [of Local Government] advises that he or she is satisfied that the voting method to be authorised for use will be able to operate in a manner consistent with the principles described in section 4 [of the Act]." The Minister must consult relevant persons and bodies before providing that advice.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

The Electoral Act 1993 provides for the Electoral Commission to supply information from the electoral roll to local authorities for the purpose of administering an election.

Under Section 113(1) of the Electoral Act if an electoral official of a local authority (as defined in Section 5 of the Local Electoral Act 2001) wishes to obtain specified information for the purposes of any election, by-election, or poll that is required by or under any Act, the electoral official is entitled to obtain from the Electoral Commission a computer-compiled list or electronic storage medium containing that information.

Section 113(10) sets out what information is supplied to local authorities and this does not include date of birth information.

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

Section 112 of the Electoral Act 1993 authorises the Electoral Commission to supply a list of electors who fall within particular age groups for research purposes (relating to a scientific or human health matter). We understand that the Electoral Commission considers such requests on a case by case basis, and have not yet had any requests originating from local authorities. The Commission has advised that in its opinion, while the scope of the provision is uncertain, it is unlikely to cover the scenario of a local authority seeking the information in order to analyse electoral participation for its own information.

2.3 What is the policy problem or opportunity?

Enabling a 'partial' trial

The Local Electoral Act 2001 authorises territorial authorities³ to adopt any sanctioned voting method for elections in their district, and enables regulations to be made authorising the use of a new voting method at specified elections. However, neither the regulation making provisions nor the territorial authority's discretion allow the adoption of different voting methods for different subsets of electors within a district. In relation to the current programme to modernise local elections, and in the future, there may be a number of times when it is useful to trial a voting method or combination of voting methods before they are made nationally available for use in local elections.

The participation of larger councils, such as Auckland Council, in any proposed trial is considered essential by the local government sector representatives, for cost and capability reasons. However, a full trial across the Auckland Council district would involve approximately one third of registered electors and if a fundamental problem occurred, the logistics involved in re-running the election would be significant. It is therefore considered desirable that, when appropriate, councils be able to be authorised to conduct trials within specified subdivisions (wards and/or local board areas) or specified groups of electors (remote or disabled voters). This would limit the actual and perceived risks if a trial were to fail or not work as intended.

The current proposal is to amend the Local Electoral Act 2001 to allow regulations to authorise the adoption of a voting method for a specified subset of electors at an election, for the purposes of trialling that voting method, and to authorise local authorities to adopt that

³ Including unitary authorities like Auckland Council.

voting method accordingly. These regulations would be subject to their own analysis and advice (RIS) before recommending their promulgation to Cabinet.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

Local authorities are provided with electoral roll information from the Electoral Commission for the purposes of administering their elections. To date, electors' date of birth information has not been necessary to enable local authorities to administer the elections and the Electoral Act 1993 does not currently authorise the Electoral Commission to provide this to local authorities as part of the information provided to administer local elections.

As part of work on the option of an online voting method, it has been identified that having the option of a second authentication factor is a way of encouraging public confidence in the integrity of a new voting method, particularly during a trial.

Date of birth information has been identified as the only identity information held by both the Electoral Commission and the elector that is not required to be included on the published roll or used for postal delivery. Using unpublished information makes it more secure and reliable for authentication purposes. The issue has been identified in the context of current proposals for an online voting trial but potentially has wider application for identity authentication for other voting methods.

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

There is limited information on voter participation at local elections. As part of robust management of a trial of new voting methods, effective monitoring and evaluation will be crucial. This analysis should include information about voting behaviour categorised by age groups. For this to be possible the local authorities need access to age group information held by the Electoral Commission, and to be able to use this for the purposes of analysing participation. The Commission's opinion is that there is some uncertainty about the scope of the authority in section 112 of the Electoral Act 1993 to extend to the scenario of a local authority seeking the information in order to analyse electoral participation.

In the context of a trial it is expected requests for this information will come from all participating councils, the Electoral Commission would have to evaluate each local authority's request for this information individually.

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

See the comments above under "Key Limitations or Constraints on Analysis."

No other constraints on the scope for decision making have been identified in relation to the legislative changes proposed in this RIS.

2.5 What do stakeholders think?

Enabling a 'partial' trial

Local Government New Zealand (LGNZ) and the New Zealand Society of Local Government Managers (SOLGM) see Auckland Council's participation as crucial to the success of the design and implementation of the trial of online voting due to the expertise and resources the Council can contribute to the project. They support enabling a 'partial' trial as a way to

balance risk versus benefit in the case of large councils.

The Ministry of Health has been consulted (as DHB elections will be included in any trial area) and they are comfortable with the partial trial proposal.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

LGNZ and SOLGM see this change as important for building public and central government confidence in the integrity of an online voting trial system. Auckland Council representatives (and previous Ministers) have strongly advocated for a second authentication factor.

The Ministry of Justice and the Electoral Commission did not have any particular objection to this proposal but are interested to ensure adequate Privacy Impact Assessment is conducted. The Electoral Commission noted that they would be concerned if sharing date of birth information had the effect of deterring the public from enrolling or keeping their enrolment details up to date.

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

LGNZ and SOLGM see this change as critical to enable effective evaluation of the online voting trial and local electoral participation more generally.

The Ministry of Justice and the Electoral Commission did not have any particular objection to this proposal but are interested to ensure adequate Privacy Impact Assessment is conducted. The Department's Privacy Threshold analysis has however identified there is no need for a full impact assessment as the information is aggregated by the age group rather than date of birth. This was discussed with the Electoral Commission.

The Electoral Commission noted that currently academics can request age demographic information for the purposes of scientific research, as is allowed under the Act. However, they noted that the legislative provisions for scientific research⁴ access are not clear, and would not extend to internal performance evaluation purposes. They indicated that a clear provision stating who can access this information, in what form and for what purpose would be beneficial.

Section 3: Options identification

3.1 What options are available to address the problem?

Enabling a 'partial' trial

Option 1: Confirm in the primary legislation that regulations can be made enabling local authorities to offer a voting method to a specified subset of voters for the purposes of a trial of that voting method (preferred option)

This change would mean that regulations could be promulgated for a trial of a voting method to be offered to a specified subset of voters within a local authority's area. The subsets of voters that may be considered are:

- geographical subsets (e.g, all electors within one or more local board areas or wards and/or overseas electors); and
- user category subsets (e.g, disabled or remote electors).

⁴ Section 112 of the Electoral Act 1993

This is the best option to give the flexibility to mitigate the risks associated with trialling a voting method over a large local authority electoral population while obtaining the resource and capability benefits of including a large local authority in a trial.

The New Zealand general elections offer electronic access and submission of voting papers for overseas voters.

This approach has been successfully used in the last three New South Wales state government elections where online voting was offered only to remote and disabled voters, and others who had difficulty voting through conventional means (for example, those with literacy difficulties).

Further, this option provides an opportunity to trial the effectiveness of a voting method that is only offered to a subset of electors. It is possible that in the future local or central government may want to offer a voting method to some voters or electors, even if nationwide rollout does not proceed (similar to the New South Wales approach). A partial trial would provide useful evaluative information about such an approach.

Option 2: Confirm in the primary legislation that regulations can be made enabling local authorities to offer a voting method to a specified subset of voters

This option would be the same as Option 1 above, however, it would allow for a voting method to be offered to a subset of voters in any election, rather than just for the purpose of a trial.

The benefits of offering this outside of a trial are weaker as they are no longer aimed at limiting risk on a trial basis and would not outweigh the risks of distorting (or being seen to distort) elections by offering potentially 'unequal' voting methods indefinitely.

Option 3: Status quo – regulations can only be made to authorise voting method trials over a local authority's full area

Only being able to trial a voting method over a full local authority's area puts constraints on the trial design, making it difficult to mitigate the risks posed by trialling a method with a large local authority. This may rule large local authorities out of participating in a trial, which would preclude access to their expertise and resources.

If a 'partial' trial was not an option, a trial could still proceed. However, the proposed legislative amendment provides the flexibility for better trial design and access to larger councils' resources and experience for a more successful trial.

In the context of online voting, for example, the Department's view is that the voting method should not be trialled on all Auckland Council electors because of the large number of votes that would be affected by a failure in the online voting system, and the logistics involved in re-running the election if there was a significant failure. The local government sector representatives' view is that Auckland Council's participation in a trial is critical to its success.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

Option 1: Require the Electoral Commission to provide date of birth information to local authorities if it is required for the purpose of conducting an election (preferred option)

This option would allow local authorities access to date of birth information from the Electoral Commission to use in administering an election, for example as an individual identifier to

authenticate an elector to vote online. Date of birth is a piece of information unique to an elector that is currently collected by the Electoral Commission and is not also printed on the voting papers (such as name and address).

This option would utilise information already held by both the Electoral Commission and the elector when the administration of an election required a second level of authentication to authenticate the elector (for example, to log into an online voting system). This option has lower associated costs than other authentication options such as pre-registration or two-step mail-outs.

There are some risks with using this option as an authentication factor. Date of birth information may be known to family members and friends, available from other sources online, and it is included in the information that is mailed to electors as part of the update campaign run prior to local and general elections. However, this method is the best option identified to date to provide a second authentication factor without requiring electors to pre-register (which could be a barrier to participating in the election).

This option would require more compliance from a privacy perspective, as updated privacy impact analysis would need to be conducted when designing any voting method's system that would use or store this information, and the enabling regulations for that voting method.

Option 2: Status quo - No legislative change

This option would mean that local authorities would require future voting methods in local authority elections to be designed in such a way as to have single level authentication of electors (e.g. the elector is sent an access code with their voting papers) or to consider non-regulatory options for a second level of authentication.

While single level authentication may be sufficient (and equivalent to the current postal method), two-stage authentication was a requirement of the previous work towards a 2016 trial of online voting. Consultation with the local government sector suggested that it may be in the interest of local authorities to provide a second level of authentication, particularly in the context of a trial, to give central government, local government and the general public greater confidence in the integrity of the voting system.

The best option for a non-regulatory second level of authentication would be to provide electors with the information required to access the voting mechanism in two individually posted sets of papers.⁵ This approach would significantly increase the cost of conducting the election. It would also be vulnerable to the decline of the postal services and would not significantly improve authentication or security as the mail-outs are both sent to the same address.⁶

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

Option 1: Clarifying, for the avoidance of doubt, that the Electoral Commission can supply age group information to local authorities for the purpose of analysing participation in local elections (preferred option)

Following an election, councils would be able to analyse voter participation using age group

⁵ Electors are not required to provide email addresses as part of registration with the Electoral Commission so it is not feasible at this time to provide an option for emailing out a second level of authentication.

⁶ This is a current driver for a shift to a new voting method and postal services are expected (by local government representatives) to be unsustainable method of distributing and returning voting papers by 2022.

information. This analysis would contribute to building a knowledge base of voter participation by age bracket, which would provide valuable information for local authorities to evaluate trends in participation. This analysis may be valuable to undertake targeted campaigns at increasing participation of specific age groups if they were identified as declining, or to understand commonalities across age groups once trends were established.

This data would be able to be provided, on request, regardless of whether there was a trial of a voting method or not. However, for a trial of a voting method this would provide insights into the up-take of the voting method by age group to assist in evaluating the success, or otherwise, of the trial.

Providing this information in 5 year age brackets, rather than specific date of birth, reduces perceived risk or any concern that this information may identify individual voter's behaviour. Consultation on this option is noted above in relation to stakeholders' views.

Option 2: Enable the Electoral Commission to provide date of birth information to local authorities for the purpose of analysing participation in local elections

This option has the same advantages as above, however this option comes with increased risk that the change will be perceived by the public as encroaching into elector's privacy, or providing more private information than is required for the purpose. This would increase the privacy impact of the option and would require more in depth impact analysis and mitigation.

Option 3: Status quo - No legislative change

There is limited local electoral participation information available currently. This does not facilitate the creation of baseline information or future analysis into trends in participation.

For a trial of new voting methods, local authorities would be limited in the data they could use to evaluate effectiveness of any trials and trends over time.⁷ The academic community may be able to carry out some evaluative work for the purposes of published research.⁸ However, trial councils themselves would not be able to access the same data for their own evaluation purposes.

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

- **Trust and confidence** – the option aims to maintain trust and confidence in electoral processes, the electoral result and handling of private information;
- **Effective** – the option achieves the desired outcomes and addresses the problems identified;
- **Clear and transparent** – people affected can understand what is required of them and the basis of decisions;
- **Efficient** - compliance costs are minimised and are no more than necessary to achieve the outcomes sought; and
- **Equitable** - the proposed option is fair and consistently applied to electors.⁹

⁷ In the future (as a baseline will need to be established).

⁸ This would be subject to the Electoral Commission's interpretation of the Local Electoral Act 1993 and the researcher's request.

⁹ These criteria are based on principles in s4 of the Local Electoral Act 2001.

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

Local government sector representatives discussed options for authenticating voter identity in the context of an online voting trial with Ministers in the previous administration. During these discussions it was agreed that pre-registration or use of RealMe would not be considered for the purposes of a trial because this would create an additional barrier to participation that would detract from the objectives of a trial. While both options would need to be considered in the design of any voting method, the proposed amendment will allow the use of date of birth information to be considered alongside them.

The local government sector representatives and the Department continue to be of the view that pre-registration or RealMe are not appropriate for a trial. However, the Department is keeping up with proposed changes to RealMe authentication options and this method may be viable for online voting in the future.

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Section 4: Impact Analysis

Enabling a 'partial' trial

	Option 1 (partial trial of voting methods)	Option 2 (partial use of voting methods generally)	Option 3: Status quo
Trust and confidence	++	-	0
Effective	++	++	0
Clear and transparent	++	-	0
Efficient	++	++	0
Equitable	-	--	0
Overall assessment	7	0	0

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

	Option 1 (enable DOB information transfer for the purpose of administering a local election)	Option 2: Status quo
Trust and confidence	++	0
Effective	++	0
Clear and transparent	+	0
Efficient	++	0
Equitable	+	0
Overall assessment	8	0

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

	Option 1 (age group information for analysis)	Option 2 (DOB information for analysis)	Option 3: Status quo
Trust and confidence	0	-	0
Effective	++	++	0
Clear and transparent	++	+	0
Efficient	++	++	0
Equitable	0	0	0
Overall assessment	6	4	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?

Enabling a 'partial' trial

Option 1: Confirm in the primary legislation that regulations can be made enabling local authorities to provide a voting method to a subset of voters for the purposes of a trial of that voting method

On balance this option will reassure the public that the risks of a voting method are being managed if the system were to fail in some way. This option will help local authorities to work towards a more sustainable approach to administering local elections in the light of the declining postal system, without introducing unnecessary risk to public trust and confidence in the election or results.

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

Option 1: Enable the Electoral Commission to provide date of birth information to local authorities if it is required for the purpose of conducting an election

This option would enable local authorities to administer elections with voting methods that require elector authentication without significantly increasing implementation costs.

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

Clarifying, for the avoidance of doubt, that the Electoral Commission can supply age group information to local authorities for the purpose of analysing participation in local elections

This option would efficiently provide for local authorities to be able to analyse participation in local elections to build a knowledge base that will contribute to understanding more detail about trends in local electoral participation. This data will also be useful to evaluate the uptake of any voting methods provided/trialled in future by age group.

This option also will remove inefficiencies and potential inconsistencies in the Electoral Commission having to assess local authority's requests for this information on a case by case basis.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties	Comment	Impact	Evidence certainty
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Enabling a 'partial' trial

Additional costs of proposed approach, compared to taking no action

Regulated parties (local authorities)		Nil	High
Regulators (DIA)	Policy and legislative process support	In-kind	High
Wider government	None	Nil	High
Other parties (SOLGM, LGNZ)	None	Nil	High
Total Monetised Cost			High
Non-monetised costs		Low	High

Expected benefits of proposed approach, compared to taking no action

Regulated parties	Progress towards a viable new voting method	Medium	Medium
Regulators	Future-proofed legislation allowing for greater flexibility in design of trials of voting methods	Low	High
Wider government	None	-	High
Other parties	Progress towards a viable voting method trial	Medium	Medium
Total Monetised Benefit	-	-	-
Non-monetised benefits		Medium	

Enabling local authorities to access date of birth information from the enrolment database for the purpose of conducting an election

Additional costs of proposed approach, compared to taking no action

Regulated parties (local authorities)	None identified at this stage	Nil	Medium
Regulators	Policy and legislative support	In-kind	High

(DIA and Ministry of Justice)			
Wider government (Electoral Commission)	Administrative costs in providing additional data	Low	Low
Wider government (Electoral Commission)	Costs of system changes and tests to providing additional data (one off)	7,500-10,000	Medium
Wider government (Electoral Commission)	Costs of updating the disclosure statement in the registration form (one off)	55,000	Medium
Other parties (LGNZ, SOLGM)	None	Nil	High
Total Monetised Cost		62,500-65,000	Medium
Non-monetised costs		Low	Low

Expected benefits of proposed approach, compared to taking no action

Regulated parties	Greater range of options for authentication including lower cost option Able to choose an authentication option which would encourage public confidence in a new voting method	High	Medium
Regulators	Future-proofed legislation for future design of voting methods	Medium	Medium
Wider government	Nil	Low	Medium
Other parties	Progress towards a viable new voting method	High	Medium
Total Monetised Benefit	-	-	-
Non-monetised benefits		Medium	Medium

Enabling local authorities to access age group information from the enrolment database for the purpose of analysing participation in local elections

Additional costs of proposed approach, compared to taking no action			
Regulated parties (local authorities)	None identified	Nil	Medium
Regulators (DIA and Ministry of Justice)	Policy and legislative support	In-kind	High
Wider government (Electoral Commission)	Administrative costs in providing additional data	Low	Medium
Wider government (Electoral Commission)	Costs of system changes and tests to providing additional data which may be required, depending on the legislative mechanism for the request (one off)	7,500	Medium
Other parties (LGNZ, SOLGM)	None	Nil	High
Total Monetised Cost		7,500	Medium
Non-monetised costs		Low	Low

Expected benefits of proposed approach, compared to taking no action			
Regulated parties	Advances in knowledge base of participation analysis	High	Medium
Regulators	Advances in knowledge base of participation analysis at a local government level	Medium	Medium
Wider government	Advances in knowledge base of participation analysis at a local government level (may have transferable interest)	Low	Medium
Wider government (Electoral Commission)	Administrative efficiencies applying the legislation	Low	Low
Other parties	Provides for a knowledge base that researchers may be able to utilise	High	Medium
Total Monetised Benefit	-	-	-

Non-monetised benefits		Medium	Medium
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5.3 What other impacts is this approach likely to have?

No impacts in addition to those outlined above.

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

Yes

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

Following enactment of the legislative changes, regulations would be developed to enable a trial of a voting method using date of birth information for authentication of the elector and/or for a local authority conducting a partial trial. Further regulatory impact analysis and consultation will be conducted prior to recommending enabling regulations for any voting method that would use these changes.

The provision of date of birth information from the Electoral Commission to local authorities is expected to occur in parallel with other electoral roll information. How this information is to be managed will be worked through in parallel to Privacy Impact Analysis at key stages in the design of the voting method that requires the information to administer the election. The initial Privacy Impact Analysis and early mapping of this process is provided with this RIS.

Following an election, local authorities will be able to request elector's age group information to analyse participation. This will be an elective undertaking by each individual council.

6.2 What are the implementation risks?

Enabling partial trials introduces an additional layer of complexity to a voting system which will need to be managed through the testing and assurance processes when the method is being designed.

There are risks associated with the transfer of the date of birth information, however, this is already an existing risk for local election processes as the electors name and address is provided to local authorities. Additional risk in relation to a voting method's use of the information will need to be managed through the security measures and analysed with updated Privacy Impact Analysis at key stages in the design.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The legislative changes to enable regulations for a partial trial are not expected to have a particular impact other than allowing enabling regulations to be promulgated. A detailed monitoring and evaluation programme is expected to be a part of any trial of a new voting

method.

There is no proposal to specifically monitor the impact of clarifying that local authorities may access age group information for the purposes of administering an election or analysing participation.

7.2 When and how will the new arrangements be reviewed?

Lessons learnt from the trial of a voting method may be used to alter the design of any subsequent trials or rollout of a voting method.

As a general practice (although this did not occur for the 2016 local elections) there is a select committee inquiry after each local election to identify any issues or opportunities for improvements. Having a trial of a voting method would increase the likelihood a select committee inquiry would be undertaken.

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Privacy Impact Assessment: Full report

Local authorities' use of date of birth information

March 2018

New Zealand Government

INTERNAL AFFAIRS



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Glossary of terms

Term	Definition
Local authorities	A territorial authority or regional council; also includes any other elected or partly-elected body (other than a local board or a community board) to which the Local Electoral Act 2001, or any of its predecessors, is applied or has been made to apply by any other enactment. This can include city councils, district councils, and unitary authorities.
Local Elections	Election to any office in, under, or in connection with any local authority, local board, community board, or other body required by law to be filled by election in any local government area. This includes triennial elections, by-elections, district health board elections, and polls held by local authorities. Parliamentary elections are excluded.
Electoral officer	A person appointed under section 12(1) of the Local Electoral Act 2001; and includes any person who exercising all or any of the duties and powers of an electoral officer.
Electoral official	An electoral officer, a deputy electoral officer, and any person authorised to exercise any power or perform any duty of an electoral officer under section 12(2).
Elector	Any person entitled under any law in force to vote at an election or poll, as the case may be, held under the Local Electoral Act 2001.
Electoral roll	The forms of application for registration kept by the Electoral Commission of persons registered as electors of a district.
Database of registered electors (or enrolment database)	The information held by the Electoral Commission provided by electors when they enrol.
Roll, in relation to the Electoral Commission	An electoral roll, a main roll, or a supplementary roll, as the case may be; includes a composite roll printed under section 107 of the Electoral Act 1993.
Roll or roll of electors, in relation to any local authority	Any list or roll made in a manner provided by law that contains the names of the persons entitled to vote at an election or poll.
Voting method	Any of the following methods of voting that are prescribed for use at an election or poll: <ul style="list-style-type: none"> (a) the method of voting commonly known as booth voting; (b) the method of voting commonly known as postal voting; (c) any form of electronic voting; (d) any method of voting involving a combination of more than 1 of the methods of voting referred to in paragraphs (a) to (c); and (e) any other method of voting (however described).

Related documents

Threshold analysis: [3W2DU3RAJ5R2-666574291-210](#)

Information collected by the Electoral Commission <http://www.elections.org.nz/voters/enrol-check-or-update-now/what-information-do-i-need-give>

Enrolment form with disclosure statement: <http://www.elections.org.nz/enrolment-form>

Project summary

This privacy impact assessment (PIA) is being conducted at the stage of policy development for proposed legislative amendments to the Electoral Act 1993. The legislative amendments would require the Electoral Commission to provide electors' date of birth information to local authorities for the purpose of administering local elections. The subject matter of this PIA is one of a set of three categories of legislative change currently being proposed in respect of a programme of modernisation of local body elections. The other two relate to the implementation of online voting trials for a subset of electors in local elections, and access to electors' age category information by local bodies for the purpose of analysing participation in local elections.

The Electoral Commission collects electors' information when that person registers as an elector and is entered into the database of registered electors, or makes amendments to this information as provided under the Electoral Act 1993. An application for registration as an elector must state:

- the person's full name;
- the person's date of birth;
- the place of residence in respect of which registration is claimed, specified in a manner that enables it to be clearly identified;
- the person's postal address, if different from the residence address given;
- the person's occupation, if any;
- the honorific (if any) by which the person wishes to be addressed;
- whether or not the person is a Māori; and
- any other particulars that are prescribed in regulations.

Under Section 113(1) of the Electoral Act if an electoral official of a local authority (as defined in section 5 of the Local Electoral Act 2001) wishes to obtain specified information for the purposes of any election, by-election, or poll that is required by or under any Act, the electoral official is entitled to obtain from the Electoral Commission a computer-compiled list or electronic storage medium containing that information. The specified information, which shall be provided to an electoral officer or electoral official or designated body, is defined in section 113(10) and includes:

- the elector's name, including first names, surname, and preferred honorific (if any);
- the elector's residential address and postal address (if different);
- the elector's occupation (if any);
- the elector's electoral district (whether Māori or General);
- statistical meshblock details; and
- a description of each—
 - region or constituency of a region;
 - territorial authority district;
 - ward;
 - community board area; or
 - other local authority and, where appropriate, local authority subdivision,—in respect of which the elector appears to be entitled to vote.

This proposal would amend section 113(10) of the Electoral Act 1993 to include the elector's date of birth in the specified information an electoral official can access, for the purpose of running an election. It would also amend the provisions under section 42 and/or 38(4) of the Local Electoral Act

2001 to exclude this information from the provisions requiring the information to be published with the electoral roll (in alignment with the Electoral Act 1993). This PIA identifies privacy risks associated with this information use and outlines the processes for managing these risks.

The aim of this proposal is to address key barriers to the future efficient and effective administration of local elections. These key barriers were identified as part of the Department of Internal Affairs' work in partnership with local government representatives to modernise voting in local elections, and in particular progress work towards a trial of online voting. While the need for the proposed amendments has been identified in relation to a possible trial of online voting, they are likely to be useful in relation to other potential future voting methods and in a variety of situations.

As part of the reforms to modernise local elections, new voting methods such as online voting, may be trialled. To enable trials of new voting methods, other legislative amendments are proposed and new regulations will need to be promulgated. Additional PIAs relating to the use of date of birth information will be prepared as any proposals to develop new voting methods progress.

Scope

This PIA assesses the impact, additional risks and mitigation associated with the proposed legislative change to require the provision of electors' date of birth information held by the Electoral Commission to local authorities. The PIA does not assess current arrangements for the transfer of information between the Electoral Commission and local authorities, or between local authorities and approved third parties.

This PIA acknowledges that there are risks associated with the design of a voting method that relies on the date of birth information, notes where a voting method may increase associated risks, and comments on any potential mitigation in the design of the legislative change. However, there is an expectation that updated PIAs will be conducted at key stages in the development of enabling regulations, systems and processes for new voting methods to determine the particular risks associated with the method's design.

The process

The Department of Internal Affairs (the Department) has conducted this analysis with information provided during investigations into online voting in local government elections. This includes advice from local government sector representatives the New Zealand Society of Local Government Managers (SOLGM) and Local Government New Zealand (LGNZ), the Ministry of Justice, and the Electoral Commission.

Personal information

The personal information involved is electors' date of birth, which is proposed to be available alongside other personal information which can already be provided to the electoral officials for local authorities by the Electoral Commission, on request for use in administering local elections under the Electoral Act 1993. This information is currently collected from electors and held by the Electoral Commission.

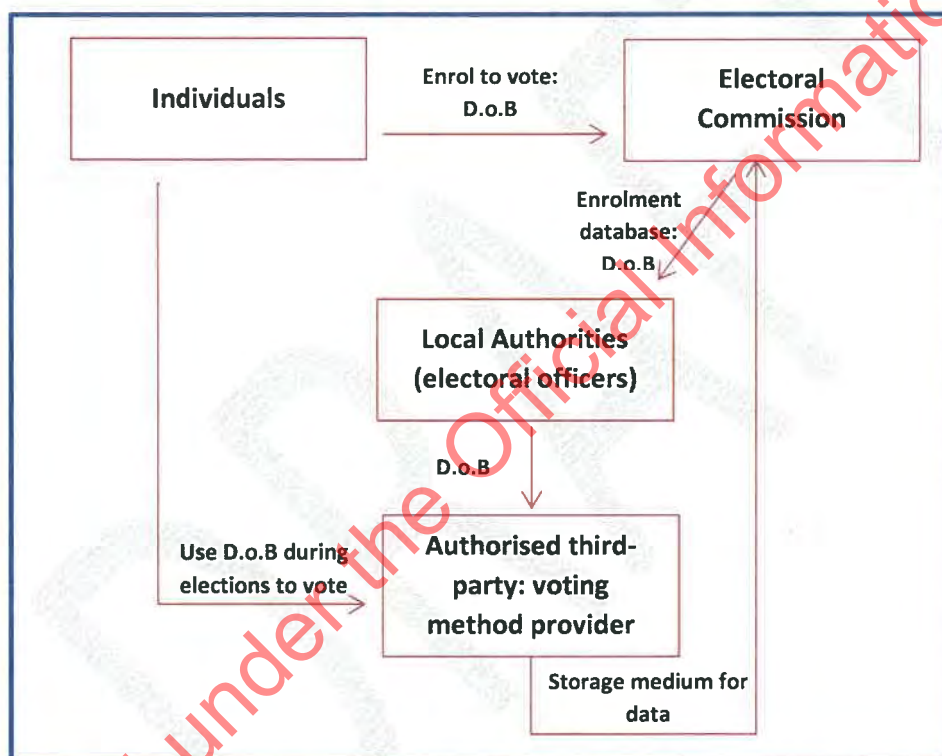
Under the proposed changes, where a date of birth was required to administer local elections, such as two-factor authentication of an electors' identity, local authorities' electoral officials would be

able to receive date of birth information from the Electoral Commission as a computer compiled list or electronic storage medium in the same way as other enrolment database information can be received on request. This information may be supplied to, and used by, a local authority's electoral official or authorised third parties for the purpose of the relevant election.

Processes also exist under the Local Electoral Act that reference the process above to ensure that each territorial authority has the information it needs to compile a roll of electors for its district prior to each triennial election. While related this is a separate function from the transfer and use of date of birth details described in this PIA.

As is the case with the other provisions for transferring enrolment database information between the Electoral Commission and electoral officials, any electronic storage medium supplied by the Electoral Commission must be returned to the Electoral Commission as soon as practicable after use.

The flow of information is depicted below:



Privacy assessment

There are four key areas where the proposals risk being non-compliant with the privacy principles. See **Appendix A** for the assessment of all 12 principles. The Department considers these risks to be necessary and reasonable, and that appropriate mitigations can be put in place (as discussed in section 5 below).

Principle 1 - Purpose of the collection of personal information (only collect it if you really need it)

The Department has determined date of birth is the most effective and efficient means of supporting authentication of an elector. Date of birth information does have some limitations as a robust authentication factor, as family and friends may have access to this information, it may be available from other sources online, and it is included in the information that is mailed to electors as part of

the update campaign run prior to local and general elections. For these reasons it may not be appropriate to use this as the sole authentication factor.

However, being able to use this factor, probably as part of a two-factor authentication process, reduces the barriers to voting through future voting methods while ensuring public trust and confidence in the electoral system. Amendments will be designed so that local authorities can only be provided this information when it was necessary to administer an election, such as for implementation of two way authentication of identity.

Principle 2 – Source of personal information (get it directly from the individual where possible)

The Electoral Commission already collects a complete set of electors' information for the enrolment database, this information (minus the elector's date of birth) is then temporarily provided to local authorities to prepare local rolls, or can be requested by local authorities for the purposes of administering an election.

If local authorities were to generate their own new record of electors' date of birth from the individual themselves this would duplicate this record and introduce an additional place for storing this personal information. This also introduces the potential for errors when mapping date of birth to the electoral roll and would generate privacy concerns under the information mapping provisions. This would also mean electors may have to check with both the Electoral Commission and their local authority to ensure their information is correct.

This action will be authorised by an amendment to the Electoral Act 1993-see section 7(4) of the Privacy Act.

Principle 5 – Storage and security of personal information (take care of it when you have it)

The storage and use arrangements for the information transferred would be similar to those in place for the current electoral roll information. Under section 113(1) the information would have a very strict disposal authority attached. If it is to be used only for the purpose of a specific election/poll then it should not be retained or reused after this.

The increased privacy risks would be in how this information was used by a voting method. For example, as a means of two-factor identity verification for online voting this information may need to be encrypted into an online voting portal. This risk would need to be assessed on a case by case basis during the development of voting methods and addressed by enabling regulations or guidelines as appropriate.

Principle 11 – Disclosure of information

Date of birth information has not previously been disclosed by the Electoral Commission. The addition of date of birth to information that is normally disclosed increases the likelihood of an individual being identified as a result of an accidental partial release.

This action will be authorised by an amendment to the Electoral Act 1993, see section 7(4) of the Privacy Act.

Risk assessment

The four risk areas described above have been rated as:

Risk area	Likelihood	Consequence	Rating
Unnecessary collection of personal information	Unlikely	Low	Low
Collection from a source other than the individual	Unlikely	Low	Low
Failure of security resulting in loss of information	Unlikely	Medium/High	Medium
Unauthorised disclosure of the information	Unlikely	Severe	Medium

The mitigations discussed in this document will need to be complemented by case-by-case analysis of the design of enabling regulations and voting methods that will use date of birth information. Below is a summary of the key risks and the proposed mitigation. These have been broken into two categories.

Information management

This is a substantial change to the current policy regarding the Electoral Commission's use and provision of date of birth information. To date this information has not been shared with local authorities. The risk associated with the transfer of personal information may be perceived to be higher with date of birth being added to the package of personal information that may be provided on request for the purpose of running an election. A breach would be detrimental to the individual concerned and a large scale breach could potentially have serious consequences.

Local authorities often contract external providers as Electoral Officers to administer their elections. This is likely to be more common with future voting methods, such as online voting, as local authorities look to contract providers with specialised expertise in administering the new voting methods. Similar arrangements for the use and transfer of information will need to be in place as is the case for the enrolment database information currently provided to local authorities and utilised by third parties.

Storage and use

As is the case with other information (temporarily) transferred from the Electoral Commission to local authorities, the storage medium for this information is to be returned to the Commission as soon as practicable after the election. Further, there are clear provisions for the use of the information while with local authorities, and proposed amendments will be consistent with this. For example, section 89 of the Local Electoral Act 89 provides a process for electoral records to be secured and destroyed after the vote count is completed.

As above, the use of date of birth information to administer local elections under future voting methods may involve the storage of the information in a new way. For example, electors' date of birth may need to be encrypted into an online voting system for it to be used to verify the elector,

and could potentially be held offshore. This potential change in use has the ability to change the storage arrangements of the information, and as such it may increase the risk of a breach of the information. Privacy Impact Assessment updates would need to be completed at key stages in the design of a voting method that were to use date of birth information to identify risks and mitigation in the storage and use of this information.

Summary

Below is a table summarising the key risks and mitigations of those areas the Department has identified as of significant/potential privacy risk. See Appendix A for the assessment of all 12 privacy principles and the Brief Privacy Assessment for more information.

Privacy Risk	Risk probability	Risk impact	Risk mitigated by	Assessment of residual risk
<p>R-001: Information management</p> <p>The risk associated with the transfer of personal information may be perceived to be higher with date of birth being added to the package of personal information provided for the purpose of running an election. A breach would be detrimental to the individual concerned and a large scale breach could potentially have serious consequences. Local authorities are also likely to contract third parties who would handle and use this information.</p>	Low	High	The legislative amendment and enabling regulations will need to be clear on the arrangements for the use and transfer of date of birth information, as is the case for the enrolment database information currently provided to local authorities (and authorised third parties).	Low
<p>R-002 Storage and use</p> <p>The use of date of birth information to administer local elections may involve the storage of the information in a new way. This potential change in use has the ability to change the storage arrangements of the information, and as such it may increase the risk of a breach of the information.</p>	Low	High	<p>Specifying in the legislation that, as is the case with other information transferred from the Electoral Commission to local authorities, the storage medium for this information is to be returned to the Commission as soon as practicable after the election. Further, there will need to be clear provisions for the use of the information while with local authorities.</p> <p>Regulations enabling future voting methods will need to be made on the advice of PIA updates specific to the storage and use on this information.</p>	Medium

Action plan

As discussed, there are some risks to individual's privacy. Mitigations to support the proposed changes primarily depend on clear legislative design around the purpose and use of the information.

On balance, the proposals themselves do not introduce substantial risks to individual's privacy provided changes are managed carefully with privacy mitigations in mind. However, the potential use of the date of birth information by future voting methods may introduce higher risks that would impact individual's privacy. As such, updated PIAs will be undertaken at the relevant stages for future voting methods proposing to use date of birth information and the relevant new regulations.

Authorisation

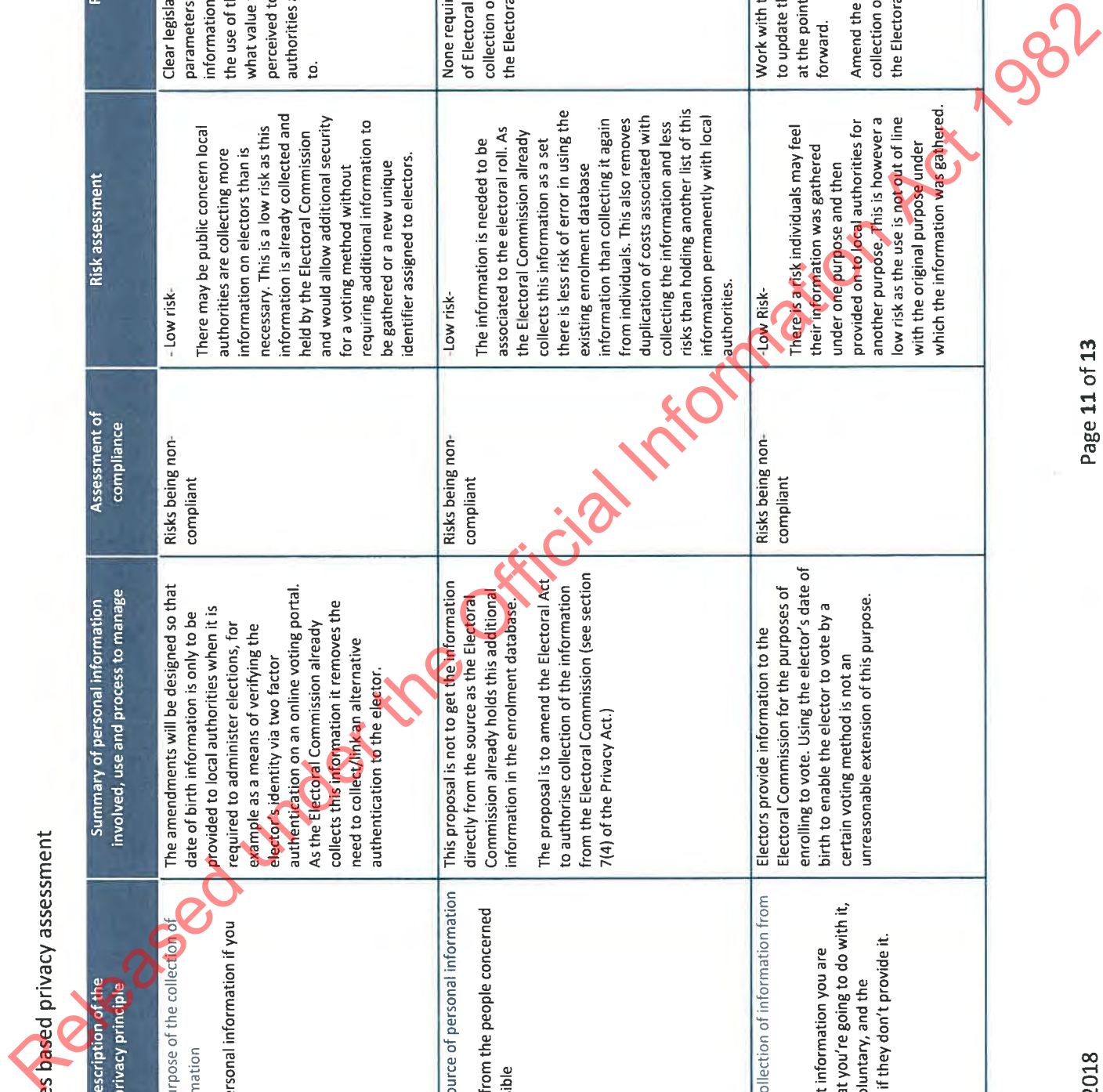
The Business Owner is ultimately responsible for ensuring that this PIA has the appropriate scope, and that the recommendations are actioned. The Principal Advisor Privacy should be consulted before the document is finalised to ensure that the PIA addresses the necessary privacy considerations.

Authorised by	Signature	Date
Raj Krishnan General Manager Policy		
Kevin Linnane Principal Advisor Privacy		

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Appendix A: Principles based privacy assessment

#	Description of the privacy principle	Summary of personal information involved, use and process to manage	Assessment of compliance	Risk assessment	Risk mitigation
1	Principle 1 - Purpose of the collection of personal information Only collect personal information if you really need it	The amendments will be designed so that date of birth information is only to be provided to local authorities when it is required to administer elections, for example as a means of verifying the elector's identity via two factor authentication on an online voting portal. As the Electoral Commission already collects this information it removes the need to collect/link an alternative authentication to the elector.	Risks being non-compliant	- Low risk- There may be public concern local authorities are collecting more information on electors than is necessary. This is a low risk as this information is already collected and held by the Electoral Commission and would allow additional security for a voting method without requiring additional information to be gathered or a new unique identifier assigned to electors.	Clear legislative boundaries on the parameters for the request of this information by local authorities and the use of the information will limit what value the information can be perceived to have for local authorities and the uses it can be put to.
2	Principle 2 – Source of personal information Get it directly from the people concerned wherever possible	This proposal is not to get the information directly from the source as the Electoral Commission already holds this additional information in the enrolment database. The proposal is to amend the Electoral Act to authorise collection of the information from the Electoral Commission (see section 7(4) of the Privacy Act.)	Risks being non-compliant	-Low risk- The information is needed to be associated to the electoral roll. As the Electoral Commission already collects this information as a set there is less risk of error in using the existing enrolment database information than collecting it again from individuals. This also removes duplication of costs associated with collecting the information and less risks than holding another list of this information permanently with local authorities.	None required beyond amendment of Electoral Act to authorise collection of the information from the Electoral Commission.
3	Principle 3 – Collection of information from subject Tell them what information you are collecting, what you're going to do with it, whether it's voluntary, and the consequences if they don't provide it.	Electors provide information to the Electoral Commission for the purposes of enrolling to vote. Using the elector's date of birth to enable the elector to vote by a certain voting method is not an unreasonable extension of this purpose.	Risks being non-compliant	-Low Risk- There is a risk individuals may feel their information was gathered under one purpose and then provided on to local authorities for another purpose. This is however a low risk as the use is not out of line with the original purpose under which the information was gathered.	Work with the Electoral Commission to update the disclosure statement at the point of collection moving forward. Amend the Electoral Act to authorise collection of the information from the Electoral Commission.



Appendix A: Principles based privacy assessment

#	Description of the privacy principle	Summary of personal information involved, use and process to manage	Assessment of compliance	Risk assessment	Risk mitigation
4	Principle 4 – Manner of collection of personal information Be fair and not overly intrusive in how you collect the information	No changes will be made to the Electoral Commission's collection process of this information. Using existing information is also less intrusive to individuals than alternative means of authenticating an elector.	Complies	No new risk	None required
5	Principle 5 – Storage and security of personal information Take care of it once you've got it and protect it against loss, unauthorised access, use, modification or disclosure and other misuse.	The transfer, storage and return of information from the Electoral Commission to local authorities will be conducted in the same way as existing information flows. There may be changes to the storage and use of the information based on the voting method. The development of a voting method will require safeguards to protect the information.	Risks being non-compliant	-Medium Risk The primary risk to the security of individual information stems from the potential future storage and security of this information under future voting methods.	Development of voting methods will require separate PIAs, or risk assessments as appropriate, at key stages on a case-by-case basis. Safeguards, for example may include encryption for online portals.
6	Principle 6 – Access to personal information People can see their personal information if they want to	No changes will be made to the Electoral Commission's process for accessing this information.	Complies	No new risk	None required
7	Principle 7 – Correction of personal information They can correct it if it's wrong, or have a statement of correction attached	No changes will be made to the Electoral Commission's process for correcting this information.	Complies	No new risk	None required
8	Principle 8 – Accuracy etc. of personal information to be checked before use Make sure personal information is correct, relevant and up to date before you use it	No changes will be made to the Electoral Commission's process for checking this information.	Complies	No new risk	None required Electoral cycles often include a public awareness campaign to check ones information is correct with the electoral commission. If the voting mechanism were to utilise date of birth information this may be part of the implementation plan.

Appendix A: Principles based privacy assessment

#	Description of the privacy principle	Summary of personal information involved, use and process to manage	Assessment of compliance	Risk assessment	Risk mitigation
9	Principle 9 – Not to keep personal information for longer than necessary Get rid of it once you're done with it	No changes will be made to the current provision to return the storage medium for the information to the Electoral Commission's as soon as practicable after use. Current statutory provisions relating to securing and destroying electoral records will apply.	Complies	No new risk	None required
10	Principle 10 – Limits on use of personal information Use it for the purpose you collected it for, unless one of the exceptions applies	The provision of date of birth information will be specified as only for the purpose of administering local elections, this is in line with the purpose it was collected.	Complies	Low risk- (see principle 1 and 3)	(see principle 1 and 3)
11	Principle 11 – Limits on disclosure of personal information Only disclose it if you've got a good reason, unless one of the exceptions applies	Electors' information will not be disclosed beyond authorised persons for the specified uses. The proposal is to amend the Electoral Act to authorise collection of the information from the Electoral Commission, see section 7(4) of the Privacy Act.	Complies	No new risk	None required beyond amendment of Electoral Act to authorise collection of the information from the Electoral Commission.
12	Principle 12 – Unique identifiers Only assign unique identifiers where permitted	The use of date of birth removes the need to assign electors a unique identifier.	Complies	No new risk	None required

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MP for Hauraki-Waikato

Minister for Māori Development

Minister of Local Government

Associate Minister for the Environment

Rt Hon Jacinda Ardern
Chair
Cabinet

Tēnā koe Prime Minister

Request for the Cabinet Business Committee to have Power to Act on two Cabinet papers

I intend to take the following two Cabinet papers to the Cabinet Business Committee on 12 March 2018:

- *Modernising voting and improvements to the regulatory framework for local elections; and*
- *Local Government (Community Well-being) Amendment Bill: Approval to proceed.*

The projects' priorities and timeframes mean it is necessary for the proposed legislative amendments to be introduced in Parliament as soon as possible. This expedited process is needed to:

- enable the local government sector and the Department of Internal Affairs, working in partnership, to work towards a trial of online voting as soon as possible;
- give the Auckland Council sufficient time to undertake a representation review that takes into account the proposed amendment to the Local Government (Auckland Council) Act 2009; and
- provide clarity to local authorities as to the Government's intended direction in relation to the local government portfolio.

Accordingly I request your agreement that the Cabinet Business Committee has Power to Act on these two Cabinet papers.

I look forward to your response to my request.

Heoi anō

Hon Nanaia Mahuta
Minister of Local Government

Impact Summary: Proposal to remove membership requirement on Auckland Council

Section 1: General information

Purpose

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

Key Limitations or Constraints on Analysis

3. The time available to prepare this analysis is constrained by the need for a prompt decision. This proposal is intended to be part of the Local Electoral Matters Omnibus Bill, scheduled to be introduced in March 2018.
4. While the range of potential options is limited, the Department is confident that all reasonable options have been identified. The preferred option is to align Auckland Council (the Council) with other New Zealand councils by removing the section of the Local Government (Auckland Council) Act 2009 (LGACA) that specifies the number of members on the governing body of the Council. This proposal seeks to provide the Council with the same opportunities to manage its representation arrangements as other New Zealand councils.
5. The Department has made an assumption that a low ratio of councillors to residents (known as a representation ratio), where one councillor represents a large number of residents, will negatively impact these residents, but there is limited evidence to demonstrate a causal link. The following points may contribute to the effect of a decreasing representation ratio:
 - As the population increases and the number of councillors remains the same, councillors will have less time to focus on their constituents. This may mean communities do not get to have their voices heard. Submissions to the Local Government Commission on Auckland Council's initial representation arrangements raised concerns that large wards may mean representatives are too remote to effectively engage with local communities.
 - Councillors' accessibility to constituents may be reduced, and they may become less effective at knowing the details of local issues.
 - There may be an effect on the quality and diversity of representation. It has been observed¹ that it is harder for new and less well-known candidates to campaign across larger electorates. The cost of campaigning may be prohibitive, excluding

¹ By a Christchurch City Councillor following a Local Government Commission ruling which reduced the number of Christchurch City councillors from 24 to 12 in 2004.

people on lower incomes from applying. 85 per cent of Auckland council members were re-elected in the 2016 local elections.

6. The Department assumes that the restriction on the number of councillors is a potential barrier to gaining sufficient support for creating a Māori ward because it would require a reduction in the number of councillors elected generally.
7. Our understanding of the policy reasons behind the status quo is limited because the Auckland Governance Legislation Committee did not discuss their reason for choosing the number of 20 councillors. The rationale on which the number of councillors is based is therefore unclear. However, the number of councillors was debated at the Select Committee stage, with a minority view expressing concern that 20 councillors was insufficient.
8. If the number of Auckland councillors increases, salary and expense costs will increase with it. Councillor salary costs do not, however, make up a very high proportion of council spending. The 2017/18 salary rate for Auckland councillors is \$107,599. The Council's planned 2017/18 budget has a combined capital expenditure and operating expenditure of \$5.8 billion. Even at 9 extra councillors this represents 0.017 per cent of total yearly council spending. Travel, accommodation, and other expense costs varied between councillors in the 2016/17 financial year from the low hundreds to the low thousands.

Responsible Manager (signature and date):

Karen Hope-Cross 5 March 2018

Karen Hope-Cross
Acting General Manager Policy
Department of Internal Affairs

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

9. Auckland Council is unique in that it is the only council in New Zealand with a fixed number of councillors. As Auckland's population grows, each councillor will have to represent increasing numbers of people and an increasingly diverse population.
- Representation may therefore become less fair and effective over time.
 - The membership requirement may also be a barrier to Auckland Council choosing to create a Māori ward.

Removing this requirement, so the standard provisions under the Local Electoral Act 2001 (LEA) apply, would align the Council's representation arrangements with the rest of the country.

10. Section 8(1) of the LGACA sets the required number of members on the governing body of Auckland Council at 21, comprising the mayor and 20 councillors. This requirement was introduced at the time of establishing the Council as an amalgam of the previous regional council and seven district and city councils.

The requirement for fair and effective representation

11. While the LGACA was intended to be durable and lasting, section 8(1) limits the Council's ability to adapt to changing circumstances in the future, which may present a barrier to fair and effective representation.
12. The LEA requires local authorities to provide for the 'fair representation of electors' and 'effective representation of communities of interest'. The LEA ensures fair representation by requiring that the representation ratio of each ward within a territorial authority must be no more than 10 per cent greater or smaller than the representation ratio of the territorial authority as a whole. The LGACA provides Auckland Council with an exception to this, if the Local Government Commission considers that effective representation of communities of interest requires wards to be defined and membership to be distributed in another manner.
13. The Council has expressed concern at the uneven spread of growth across the city. The Waitemata and Gulf Ward population has increased from 79,300 at the time it was created in 2010, to 119,100 in 2017. This is an increase of 50 per cent. Other wards have had much more limited growth, with Manukau increasing by only 8 per cent, from 156,200 in 2010 to 168,900 in 2017.
14. The uneven growth impacts upon the requirement for each ward's representation ratio to be within 10 per cent of all other wards within the Council. As the Waitemata and Gulf Ward was allocated just one councillor by the Local Government Commission in 2010. Between 2010 and 2017, the representation ratio of the Waitemata and Gulf Ward has increased from 10.2 per cent greater than the Auckland ratio as a whole, to 43.7 per cent greater. Manukau, with two ward councillors, remains just 2 per cent higher than Auckland's ratio. At the other end of the scale, Rodney Ward has a representation ratio that is 22.4 per cent lower than Auckland's ratio.
15. The imbalance in the representation ratios between wards means that Rodney residents effectively have more representation than voters in other wards, while Waitemata and Gulf voters have substantially less. A vote in Rodney has significantly more value than a

vote in the Waitemata and Gulf Ward.

16. Effective representation is protected through ensuring communities of interest are sufficiently represented within the district, and that ward and local board boundaries are aligned as much as possible. While the Council can change its ward boundaries through a representation review process, local board boundaries can only be changed through a reorganisation process managed by the Local Government Commission. The alignment of boundary processes is not being considered as part of this Regulatory Impact Assessment.

The Local Electoral Act gives other New Zealand councils more scope to determine their size

17. The LEA sets the range of members of the governing body of a territorial authority at between 6 and 30, including the mayor. Territorial authorities may choose to change the number of elected councillors through a representation review under the LEA to respond to changing circumstances in the region.

Auckland's population is increasing rapidly

18. In 2010, Auckland had a population of 1,438,500. At 20 councillors, the representation ratio was 1:71,925. In 2017, with a population of 1,657,200, the representation ratio was 1:82,860. By 2023, with Auckland's population expected to reach 1,859,300, the representation ratio will be 1:92,965. If Auckland Council had the maximum of 29 councillors under the LEA, the ratio would drop to 1:64,113.
19. By 2043, Statistics NZ projections for Auckland's population will reach between 2 and 2.6 million. This would represent a ratio of councillors to constituents of between 1:100,000 and 1:130,000 if the membership requirement remains the same.
20. The council with the next lowest representation ratio is Christchurch City, with a ratio of 1:23,858. Wellington City Council has a ratio of 1:15,186.
21. It is not clear, however, that retaining the membership requirement would cause problems in the medium term. An Auckland Council Representation Review Working Party noted in 2015 that the current system with 20 councillors works well.
22. It may also be difficult for a council to gain consensus if the number of councillors is too high. A council with 30 members on the governing body may have trouble making decisions effectively and efficiently.

Local boards and representation

23. Local boards go some way towards addressing the low representation ratio. Local boards are provided for in the LGACA to deal with local community issues. The governing body and the local boards share the decision-making responsibilities of Auckland Council, with the governing body focusing on region-wide strategic decisions, and local boards representing their local communities and making decisions about local issues, facilities and activities.

Māori representation in local government

Auckland Council would struggle to create a Māori ward under the current legislation

24. The fixed membership requirement means that Auckland Council has less ability to consider using the LEA provisions to create a Māori ward than other New Zealand councils. The Council expressed interest in creating a Māori ward in 2015 and 2017, but to do so under the current system, it would need to reduce the current number of

councillors by one in order to maintain the number of councillors at 20.

25. It is not certain that the Council would be able to create a Māori ward, even if the membership requirement was removed. If the Council were to pass a resolution to establish a Māori ward, a petition of 5 per cent of electors (around 51,000 people) may demand a poll on whether the Council should establish the Māori ward or not. The Council states that the likelihood of 5 per cent of electors making a valid petition for demanding a poll is unknown, but notes that the experience of other councils when trying to set up a Māori ward is that a poll overturns the council's resolution.

The Local Electoral Act process for creating Māori wards

26. The LEA allows councils to resolve to divide their district into one or more Māori wards for electoral purposes. The LEA includes a formula for calculating Māori representation based on the Māori electoral population relative to the entire electoral population, with regard to the available number of seats on the council. The number and boundaries of the wards are calculated under this formula to provide effective representation to Māori living in the district, with consideration given to ratios of members of Māori wards, and with regard to matters such as communities of interest and iwi affiliations.

27. A council's resolution to create a Māori ward is subject to the right of five per cent or more of relevant electors to demand a poll on whether or not the division of the district into Māori wards should go ahead.

28. The formula in the LEA to calculate Māori wards is rounded to the nearest whole number. This means that if the Māori population is not large enough, the council cannot divide the district into Māori wards.

29. Auckland Council currently has no Māori wards. The LGACA instead provides for Māori participation through the Independent Māori Statutory Board (IMSB), an independent body with appointed members. Its purpose is to assist the Council to make decisions, perform functions, and exercise powers by promoting cultural, economic, environmental, and social issues of significance for mana whenua groups and mataawaka of Tāmaki Makaurau. The IMSB also ensures that the Council acts in accordance with the statutory provisions referring to the Treaty of Waitangi.

30. Using the formula in the LEA, Auckland would be entitled to 1.36 Māori wards, rounded to one ward. If the maximum number of councillors increases, the number of Māori wards Auckland is entitled to would increase to two Māori wards. Under the formula the number of Māori wards would not increase to three, even at the maximum of 29 councillors under the LEA.

31. The Royal Commission into Auckland Governance recommended three permanent Māori wards. More than half of the submissions that the Royal Commission received about Māori representation and participation supported at least three Māori wards.

32. As this issue is unlikely to be considered substantial enough for a standalone bill and may not be appropriate for inclusion in a statutes amendment bill, the Local Electoral Matters Omnibus Bill provides an opportunity to address this issue.

2.2 Who is affected and how?

33. The affected parties are Auckland Council, and Auckland communities, including Māori living in Auckland.
34. The Council has already indicated its interest in amending the membership requirement. In 2015, Auckland Council approached the Department about removing the section of the LGACA that sets the membership requirement at 21, including the mayor. The previous government did not wish to investigate increasing this number at that time. The Council resolved to approach the government about the same issue in September 2017 but the Department has not yet received a formal request.
35. The IMSB has met with the Prime Minister, Minister of Local Government, and Associate Minister of Local Government. At this meeting the Prime Minister suggested investigating the removal of this requirement.

2.3 Are there any constraints on the scope for decision making?

36. The solution to the identified issues needs to be made as an amendment to the LGACA.
37. This amendment does not propose to address additional issues that the Council (or Local Government New Zealand) has raised concerns about previously, such as the process for creating a Māori ward under the LEA, or the variation between the process for redrawing ward boundaries and local board area boundaries in the Local Government Act 2002 and the LEA.
38. This amendment is intended to form part of an omnibus bill, which also includes a proposal for more efficient and effective trials of voting methods and analysis into participation into local elections.

Released under the Official Information Act 1982

Section 3: Options identification

3.1 What options have been considered?

39. The criteria used to assess the options are:

- a. Auckland Council and its communities can make their own decisions about the Council's structure and composition.
- b. The Council has sufficient flexibility to adapt to future population and demographic change.
- c. The Council has the same opportunities as other New Zealand councils to respond to change.
- d. The Council has more flexibility to pursue Māori wards.
- e. The Council has fair and effective representation.
- f. The Council can continue to make decisions and reach quorum.

Option one: Status quo

40. Auckland Council would retain the requirement to have 20 councillors.

41. This option would inhibit the Council from making structural changes to reflect changes in the population as the city grows and limit its options to provide Māori representation.

42. Given the Māori ward process in the LEA is subject to a poll, it is unlikely the Council will be able to create a Māori ward if it involves losing one ward councillor. While the Council has indicated its interest in creating a Māori ward, councillors are not incentivised to do so while the membership requirement is in place, as they are personally affected by the need to reduce the number of councillors to accomplish this.

43. Councillors would have to represent an increasingly large number of people, which may limit their effectiveness at representing their communities.

44. The Council would continue to have fewer options to determine the structure that works best for them compared to the rest of New Zealand.

45. This option meets criteria 'f' only.

Option two: Remove the membership requirement from the Local Government (Auckland Council) Act

46. The Council would be subject to the same membership limits as other territorial authorities as outlined in the LEA. This would give the Council more flexibility in responding to future population and demographic changes. This option does not mean the Council must increase councillor numbers, but gives them the same options as other councils to use the LEA processes to consider it.

47. This option would also allow more flexibility in investigating the option of Māori wards, although the process would still be subject to a poll of relevant voters and would not necessarily be successful.

48. However, at Auckland's projected growth estimates, the representation ratio is still likely to get very low, even with the maximum 30 councillors.

49. This option meets all the criteria, although as noted, projected population growth still means councillors will need to represent a large number of constituents in their wards even with the maximum number of councillors. However, this situation is partially offset by the use of local boards to increase representation at a local level.

Option three: Set a new membership requirement

50. Increasing the requirement to a new fixed figure would give Auckland Council more flexibility in choosing to pursue a Māori ward without reducing the number of general ward councillors.

51. A new set number of councillors would not provide a lot of flexibility around adapting to change in the future. A new fixed requirement does not give the Council a high degree of control over its structure and may therefore lead to issues matching wards to councillor numbers. This option may not give the Council sufficient flexibility to decide the appropriate balance between fair and effective representation and efficient decision-making.

52. This option increases the extent to which the Council would meet the criteria above the status quo, but does not meet criteria 'c' and only partially meets 'b' and 'd'.

Option four: Set a new maximum membership limit

53. This option would give the Council increased flexibility over changes occurring in the region in future and the ability to include Māori ward proposals without reducing the number of general ward councillors.

54. This option could be used to keep the Council's membership below the limit in the LEA while still increasing flexibility. However, there are no other councils in New Zealand with this kind of restriction, and there is limited evidence to show that restrictions are necessary. No other New Zealand council has increased the number of councillors to the maximum size permitted by the LEA.

55. This option could also be used to set a limit higher than the range outlined in the LEA. Auckland has a large population relative to other New Zealand councils, and as noted above, the representation ratio is likely to decrease further. If the number of councillors was aligned with the council with the next lowest representation ratio, Auckland would have approximately 70 councillors. This may be viewed as granting special privileges to Auckland, and is likely to be controversial. Auckland Council has not indicated any interest in increasing its councillors above 29, and a number in excess of 29 is unlikely to provide for efficient decision-making.

56. This option would increase the extent to which the Council would meet the criteria more than option three, but does not meet criteria 'c' and only partially meets 'b' and 'd'. If the maximum number of councillors was set too high, this option may not meet criteria 'f'.

3.2 Which of these options is the proposed approach?

57. The Department's proposed approach is Option two. Auckland Council's membership requirement is effectively an anomaly among New Zealand councils. This amendment would grant Auckland the same opportunities as other councils under the LEA, providing the Council with the flexibility to respond and adapt to population and demographic change, and addressing the difficulties the Council faces in creating a Māori ward related to the membership requirement.
58. The Royal Commission into Auckland Governance recognised that Māori constitute a unique community of interest with special status as a partner under the Treaty of Waitangi. The Local Government Act 2002 acknowledges the Crown's obligations to Māori under the Treaty of Waitangi and requires local government to provide for Māori representation in council decision-making.
59. The barrier this requirement created to the Council considering Māori wards may have been unintentional. The Cabinet decision [CAB Min (09) 30/9 refers] not to provide for Māori wards in the Auckland Council representation noted that the LEA provides a process for local authorities to establish Māori wards. However, the decision did not appear to consider the additional difficulties the fixed membership requirement would present to this process.

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Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties <i>(identify)</i>	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action

Regulated parties	Auckland Council will incur ongoing increased salary costs related to any additional numbers of councillors.	\$107,599 per additional councillor
Regulators	N/A	N/A
Wider government	N/A	N/A
Other parties	N/A	N/A
Total Monetised Cost	N/A	N/A
Non-monetised costs	<i>Costs associated with additional councillors</i>	\$107,599 per additional councillor

Expected benefits of proposed approach, compared to taking no action

Regulated parties	N/A	N/A
Regulators	N/A	N/A
Wider government	N/A	N/A
Other parties	N/A	N/A
Total Monetised Benefit	N/A	N/A
Non-monetised benefits	N/A	N/A

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4.2 What other impacts is this approach likely to have?

60. The approach aims to bring the Council's representation arrangements into line with every other council in New Zealand.
61. There is a risk of a large increase in the number of councillors. It may also result in a decrease in the number of councillors if reducing the number below 20 would provide a fairer spread of councillors across wards. However, all other councils in New Zealand have the option to increase their governing body membership to 30 and none of them have done so. The next largest council, Christchurch City Council, has 16 members. This risk is managed through the representation review process which provides for submission on a draft proposal and objections to the final proposal for change. The Local Government Commission reviews any proposal that receives an objection.
62. There is a communications risk related to the ongoing role of the IMSB if the Council resolves to create a Māori ward. We are not proposing to remove the provisions regarding the IMSB from the LGACA. The Council has indicated there was a high level of public interest in what role the IMSB would continue to have within the Council when the option of Māori wards was discussed previously. The IMSB supports the creation of Māori wards while preserving the role of the IMSB in decision-making. The IMSB would also have input to the process of resolving to create new Māori wards.
63. The change may have a positive impact on community satisfaction and voter turnout as increased numbers of councillors have more time to spend on local issues, although this is potentially unquantifiable. The Council monitors community satisfaction and collects figures regarding voter turnout, but it is unlikely any change in results could be directly linked to changes in Council representation.
64. This approach aims to correct an area of incompatibility with the Government's expectations for the design of regulatory systems. It aims to make the treatment of the Council under the local government regulatory system more consistent, more equitable, and to allow the Council to be more flexible in its choice of arrangements.

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Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

65. The Department has received feedback on the proposal from Auckland Council and the IMSB, as well as the Ministry of Justice and Te Puni Kōkiri.
66. The Council raised the issue in 2015, seeking a change to the requirement for 21 members on the governing body, including the mayor. In 2017 the Council resolved that it supported establishing a Māori ward in principle but would not do so until a member elected from a Māori ward could be an additional member.
67. We have confirmed with Auckland Council officers that the Council strongly supports this proposal, and the Council has provided supporting information to the Department.
68. The IMSB supports increasing Māori representation through the consideration of Māori wards, while also keeping the IMSB as an effective method to ensure Māori participation on the Council.
69. The IMSB has commented: “The Independent Māori Statutory Board in Auckland was created by an act of Parliament. The Board supports having both a Māori ward and a Board, not one or the other. The Board considers that Māori wards are an investment into the future partnership and leadership of regions and is a tangible demonstration of how local government shows respect and regard for the Treaty of Waitangi and how they can give effect to this.”
70. In the past, the IMSB has recommended the creation of at least one Māori ward for the purpose of electing Council members, in addition to the IMSB itself. At a meeting with the Prime Minister and both Local Government Ministers on 6 December 2017, the IMSB noted that the IMSB was not a replacement for representation at the Council table, and that councillors were not incentivised to consider the issue of Māori representation as they would personally be negatively affected. The IMSB also noted that in their conversations with iwi groups there was still a strong interest in adding Māori wards.
71. We have sought permission to provide the IMSB and Auckland Council with an exposure draft of the provisions included in a bill.
72. Te Puni Kōkiri is supportive of the proposal to remove the membership requirement (the Department’s preferred option), to improve the durability and flexibility of the Council’s representation arrangements, increase effective representation through councillor to constituent populations, and address the difficulties the membership requirement poses on the potential establishment of Māori wards.
73. The Ministry of Justice has no concerns with the proposal.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

74. This approach would amend the Local Government (Auckland Council) Act 2009. The proposal is intended to be part of an omnibus bill for electoral reform. A separate regulatory impact assessment has been completed for the separate proposals of this bill focused on modernising voting to support more efficient and effective trials of voting methods and analysis into participation at local elections.
75. The Council will be responsible for undertaking a representation review that would determine any changes to the number of Auckland councillors. The Council is required to carry out a representation review by 8 September 2018 at the latest. We are working with the Council to ensure any representation review considers the possibility of additional seats, given the legislation change is expected to be in effect by August 2018.
76. The Council must use a separate process under the LEA to resolve to establish a Māori ward and will not be able to complete this process prior to the 2019 local authority elections.
77. The representation review process will give the Council sufficient time to implement the changes and the opportunity to consult with affected communities before any changes are made to the Council's structure.

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Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

78. The Department does not consider it a high priority to monitor an amendment given it brings Auckland Council into line with the rest of New Zealand territorial authorities.
79. The Council is required to produce accountability and planning documents for its residents, detailing costs and expenditure annually. As with other councils in New Zealand, communities decide whether their council's performance is satisfactory and have the opportunity to comment on council proposals, with oversight from the Local Government Commission.
80. If the results of a representation review are challenged, the process is referred to the Local Government Commission, which will determine the council's membership and basis of election.

7.2 When and how will the new arrangements be reviewed?

81. Auckland Council may review the arrangements through mandatory 6-year representation reviews (or optional 3-year reviews) which have mandated submission periods to hear from residents and ratepayers. The process for establishing a Māori ward under the LEA also provides for engagement with the public.
82. The Council and the community are best placed to know how well their representation is working and can raise their concerns with the Council post-implementation.

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Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: **Final draft Cabinet paper – Modernising voting and improvements to the regulatory framework for local elections**

Date: 8 March 2018

Key issues

The *Modernising voting and improvements to the regulatory framework for local elections* Cabinet paper is attached.

The outstanding issue of meeting the Electoral Commission's costs arising from the amendments to the Electoral Act 1993 is still to be resolved. The attached Cabinet paper notes that discussions are ongoing and that you will provide an oral update at the Cabinet Business Committee meeting.

The Privacy Commissioner has advised that he cannot support the recommendation for local authorities to have access to date of birth information for the purpose of conducting an election. We have included this comment in the attached Cabinet paper, and a proposed response for your consideration. However, you may wish to consider directing officials to work through this issue with the Office of the Privacy Commissioner and the Electoral Commission before the paper is submitted for Cabinet consideration.

Action sought

Provide officials with any comments on the attached final draft Cabinet paper; and

EITHER

- i. **agree** that the Department lodge the Cabinet paper: *Modernising voting and improvements to the regulatory framework for local elections* with the Cabinet Office;

OR

- ii. **direct** officials to work with the Electoral Commission and the Office of the Privacy Commissioner to resolve the outstanding issues with the Cabinet paper as soon as possible.

Timeframe

8 March 2018

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Kay Baxter	Policy Manager	04 495 9331		✓
Raj Krishnan	General Manager Policy	04 494 0572	021 593 973	

Return to	Amanda Shaw, Level 9, 45 Pipitea Street
Cohesion reference	3W2DU3RAJ5R2-666574291-257
Ministerial database reference	LG201800345

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Purpose

1. This briefing provides:
 - 1.1 a final draft of the Cabinet paper *Modernising voting and improvements to the regulatory framework for local elections* for your approval; and
 - 1.2 talking points on this Cabinet paper for the Cabinet Business Committee (CBC) meeting on 12 March 2018.

Background

2. The *Modernising voting and improvements to the regulatory framework for local elections* Cabinet paper:
 - 2.1 provides an overview of the proposed Modernising Voting work programme; and
 - 2.2 proposes that a Bill be introduced to make changes to the Electoral Act 1993, the Local Electoral Act 2001 and the Local Government (Auckland Council) Act 2009.
3. On 2 March 2018, we provided you with a draft of the Cabinet paper for your review, and noted that we were working through an outstanding issue in relation to the Electoral Commission's costs.
4. On 5 March 2018, we provided you with the final versions of the two Regulatory Impact Statements and the Privacy Impact Assessment report for the legislative amendments proposed in the Cabinet paper. Officials will lodge these documents with the Cabinet Office once you have approved the Cabinet paper.

Final draft Cabinet paper

5. A final draft of the Cabinet paper is attached (**Appendix A**). Suggested talking points to support your presentation of this paper to the Cabinet committee are also attached (**Appendix B**).
6. The issue of funding for the Electoral Commission's estimated \$70,000 of implementation costs remains outstanding. The Cabinet paper notes at paragraph 55 that you will report back at the CBC meeting on the outcome of ongoing discussions between the Department and the Electoral Commission.

Consultation

Office of the Privacy Commissioner

7. The Privacy Commissioner has advised that he does not support the proposed amendment to allow local authorities to access date of birth information for the purposes of conducting an election. The Commissioner does not consider that a sufficiently strong case has been made for why this information is required in order to authenticate electors and recommends that officials be directed to carry out further work on options for identity authentication of voters.

8. We have included the Commissioner's comments at paragraph 67 of the Cabinet paper, and have included a proposed response for your consideration at paragraph 68 (with corresponding recommendations 10 and 11). The response notes that the objective of the proposed legislative amendment is to increase the number of available options for authentication of electors which can be considered as enabling regulations are developed.
9. You may wish to defer submitting the Cabinet paper while officials work through these issues with the Electoral Commission and the Office of the Privacy Commissioner. This would result in a delay of at least one week for introduction of the legislation and may not meet your expectations for the legislative development timeframe.
10. If you wish to proceed with lodgement of the Cabinet paper for consideration at CBC on 12 March 2018, we will continue to engage with the Office of the Privacy Commissioner and the Electoral Commission as we develop the draft Local Electoral Matters Bill (the Bill). However, due to the time constraints it may not be possible to resolve these concerns prior to the proposed consideration at the Cabinet Legislation Committee on 22 March 2018.

Electoral Commission

11. We have consulted with the Electoral Commission (which administers the Electoral Act 1993 on a day-to-day basis) during development of the Cabinet paper. The Electoral Commission is concerned that insufficient time has been allowed for meaningful consultation with the Office of the Privacy Commissioner on the privacy issues with sharing age data, and in particular, electors' dates of birth. The Electoral Commission has noted that they would not want any concerns about how the data will be used to deter people from registering on the electoral roll.
12. The Ministry of Justice is responsible for the Electoral Act 1993. Ministry of Justice officials have been involved in discussions with the Electoral Commission and are comfortable with the amendments proposed in the Cabinet paper.

Ministry of Health

13. The Ministry of Health has not provided any comments on the draft Cabinet paper. However, we have kept them informed of developments in Modernising Voting Review discussions throughout given that triennial local elections include District Health Board (DHB) elections, and DHBs share the costs of the election with the other entities involved. Ministry of Health officials' particular areas of interest are:
 - 13.1 whether there will be any additional cost to DHBs arising from any online voting trials(s); and
 - 13.2 the proposal to review delivery of DHB election services as part of the Modernising Voting Review (and the possibility that this may lead to local authorities no longer being responsible for DHB elections).
14. Questions of cost sharing would need to be explored as part of work with local government sector representatives on funding options for a trial but the Department and the sector representatives are very conscious of current cost pressures on DHBs.

Auckland Council and the Independent Māori Statutory Board

15. Auckland Council and the Independent Māori Statutory Board have been consulted on the proposed changes to the Local Government (Auckland Council) Act 2009 and support the proposed approach.

Next steps

16. We will provide your office with notes on discussions with the Electoral Commission on funding options on Friday 9 March 2018 to support your oral update to CBC with progress on this issue.
17. We are currently consulting with relevant departments and stakeholders (as authorised by you) on the draft Bill, and we will continue to work with the Office of the Privacy Commissioner and the Electoral Commission on the privacy concerns raised.
18. We will provide you with a draft Cabinet Legislation Committee paper (LEG paper), and the draft Bill, on Monday 12 March 2018. The LEG paper will need to be lodged with Cabinet Office by 10am Thursday 15 March 2018.

Recommendations

19. We recommend that you:

a) **Provide** officials with any comments on the attached final draft Cabinet paper; and

b) **EITHER**

i. **agree** that the Department lodge the Cabinet paper: *Modernising voting and improvements to the regulatory framework for local elections* with the Cabinet Office **Yes/No**

OR

ii. **direct** officials to work with the Electoral Commission and the Office of the Privacy Commissioner to resolve the outstanding issues with the Cabinet paper as soon as possible. **Yes/No**

Copy to Associate Minister

20. Please indicate if you would like a copy of this briefing to be forwarded to the Associate Minister of Local Government. **Yes/No**


Raj Krishnan
General Manager Policy

Hon Nanaia Mahuta
Minister of Local Government

_____/_____/_____

**Appendix A: Modernising voting and improvements to the regulatory framework
for local elections final draft Cabinet paper**

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Office of the Minister of Local Government

Chair
Cabinet Business Committee

Modernising voting and improvements to the regulatory framework for local elections

Proposal

1. This paper is written in two parts:
 - 1.1 First, the paper proposes central government undertake a work programme to modernise voting in local elections in partnership with representatives of the local government sector (the Modernising Voting Review) and seeks the Committee's agreement to:
 - 1.1.1 the scope of the Modernising Voting Review;
 - 1.1.2 the approach to working with local government sector representatives in partnership on the Modernising Voting Review and on online voting trials as part of that Review; and
 - 1.1.3 legislative changes to support the trialling and analysis of voting methods through an omnibus local electoral bill.
 - 1.2 Second, the paper seeks agreement to a legislative amendment to the Auckland Council representation arrangements for addition to the omnibus local electoral bill.

Executive summary

2. The Government has an important stewardship role in ensuring the framework for local elections is fit for purpose and future proofed. I propose my officials partner with local government sector representatives to undertake a programme of work to review the local electoral framework with a view to modernising and future proofing the system.
3. While civic participation needs to be wider than engagement between citizens and councils, and that engagement must itself be wider than electoral representation, improving public confidence and involvement in election processes can make an important contribution to civic participation outcomes overall.
4. Civic participation spans a broad range of activities. Engagement between citizens and councils is one component of civic participation and this includes involvement in local elections. The Modernising Voting Review is an opportunity to set a framework for improved civic participation in local elections, particularly by improving accessibility for those electors with physical disabilities, or who are overseas or travelling. As part of this partnership approach, I am proposing to progress work towards trial(s) of online voting in local elections as a key element of the Modernising Voting Review.

5. The exploratory work to scope the Modernising Voting Review and trial(s) of online voting has identified some minor legislative amendments that need to be made ahead of any trial of new voting methods and completion of the Modernising Voting Review. I am seeking Cabinet's approval to issue drafting instructions for these legislative amendments through an omnibus local electoral bill. The proposed legislative changes would:
 - 5.1 enable regulations to be made authorising a local authority to adopt a voting method for a specified subset of electors at an election for the purposes of trialling a voting method;
 - 5.2 allow local authorities to access date of birth information from the database of registered electors held by the Electoral Commission when required for the purposes of conducting an election; and
 - 5.3 clarify that local authorities may access age group information for individual electors for the purpose of analysing participation in local elections.
6. Part two of this paper proposes an additional change for inclusion in the omnibus local electoral bill. This proposal is to remove the current 20 councillor requirement on the number of councillors making up the governing body of the Auckland Council, so that the same representation rules apply to Auckland Council as for all other territorial authorities.

Part One: Modernising voting in local elections

Background

Civic participation is interdependent with effective local democracy which itself is dependent on accessible and trusted electoral processes

7. Participation by citizens in formal and informal collective activities and governance of their communities is essential to both the effective identification and pursuit of public goals, and to the well-being of communities in terms of social cohesion and identity. Local democratic processes are both symbolic and tangible opportunities for individuals to join in the governance of their communities, and to share in determining the nature and direction of the collective outcomes sought.
8. Trusted, efficient and attractive voting processes are essential to maintaining public engagement and confidence in local elections, which in turn are essential to acceptance and support of the legitimacy of the mandate for local government decisions. While civic participation needs to be wider than engagement between citizens and councils, and that engagement must itself be wider than electoral representation, improving public confidence and involvement in election processes can make an important contribution to civic participation outcomes overall.

Local authorities are responsible for conducting local elections and polls

9. The local elections cover city and district councils, regional councils and district health boards. Territorial authorities run the elections for all the relevant bodies within their area during triennial elections. In some parts of New Zealand, elections are also held for local or community boards, licensing trusts and other bodies.

10. There is no ministerial involvement in the running of local elections. However, central government is responsible for maintaining the regulatory framework for local elections and has a responsibility to maintain public confidence in the electoral system. This involves ensuring the framework:
 - 10.1 maintains the integrity of local electoral systems and democratic processes;
 - 10.2 allows electors a reasonable and equal opportunity to participate; and
 - 10.3 promotes public acceptance of the legitimate mandates of elected councils.

Previous select committee inquiries have identified areas for improvement

11. The Justice and Electoral Committee (the Committee) has, by convention, inquired into the conduct of each local authority election, and examined the law and the administrative procedures surrounding the elections.¹ In recent years, submissions on the inquiries, and the Committee's reports, have highlighted that although local elections generally function well, changes to the Local Electoral Act 2001 would improve the administration of local elections.

Policy

12. Central government stewardship of the local electoral system is needed to ensure its sustainability and that it continues to be fit for purpose over time. The local electoral framework is becoming out of touch with how electors, candidates and other bodies interact, or wish to interact, with local government.
13. As online transactions, such as online banking and even passport applications, become a normal feature of people's everyday lives, paper-based and booth voting are becoming out of step with the imaginable future of conducting elections. This is of particular interest to the local government sector as postal voting shows increasing limitations in a modern environment.
14. Central government's stewardship responsibilities include maintaining a strong partnership with local government as the practitioners of local elections. The local government sector depends heavily on central government setting in place the enabling regulatory environment for them to administer local elections efficiently and effectively.

I propose a Modernising Voting Review to investigate opportunities to strengthen the framework for local elections

15. Previous select committee inquiries into local elections, and discussions with local government representatives, have highlighted a number of issues with the regulatory framework for local elections that warrant further attention.²

¹ This convention began in 2001, leading into the enactment of the Local Government Act 2002. The Committee's "Inquiry into the 2016 local elections" lapsed when the House rose prior to the general election and was not reinstated by the new Justice Committee.

² The Committee's 2010 report recommended that the Government consider a trial of online voting in local elections, and the 2013 report recommended that any trial be conducted successfully before online voting is introduced nationwide.

16. The Modernising Voting Review is an opportunity to set a framework for improved civic participation in local elections. There are also opportunities to improve accessibility, for example, for electors with physical disabilities, overseas and travelling electors, and those with a preference for using digital technologies. The purpose of the review is to modernise the local authority electoral system and put in place a more enduring platform for voting in local elections, including the application of new technologies.
17. The proposed objectives and scope of the Modernising Voting Review, developed in consultation with Local Government New Zealand and the New Zealand Society of Local Government Managers, are attached as **Appendix A**. I intend to report back to Cabinet on finalised Terms of Reference for the Modernising Voting Review as part of the Cabinet report back referred to in paragraph 21 below.
18. A key driver for the local government sector is to move towards a more sustainable and cost-effective means of conducting local elections in the future. This is in part due to the increasing unsuitability of traditional postal services to support postal voting in terms of both reducing service levels and increasing costs. To progress this sustainable future, new voting methods (or combination of methods) need to be explored.

Progress towards trial(s) of online voting is a key element of the Modernising Voting Review for the local government sector

19. Taking a partnership approach to working with the local government sector will be crucial to the success of the Modernising Voting Review. The local government sector has a particular interest in progressing online voting as a future voting method, the first step of which is a trial in upcoming local elections or by-elections. Sector representatives have expressed an interest in progressing this as a joint central/local government programme and investment.
20. The timing constraints of the electoral cycle and external pressures on the local government sector mean work towards a trial of online voting will be best undertaken in parallel to the Modernising Voting Review. Therefore I am proposing to prioritise investigation of trial(s) of online voting in parallel to the Modernising Voting Review. This will enable lessons learnt during any such trials to be fed back into the Modernising Voting Review.
21. I will report back to Cabinet by June 2018 with more detail on the proposed approach to an online voting trial, including the respective roles of central and local government, and any financial implications. Before a trial(s) of online voting can proceed I will also need to seek Cabinet agreement to regulations to authorise trials of online voting. I understand from officials that it is feasible for a trial or trials to occur between the 2019 and 2022 triennial local elections, such as in a by-election, referendum or mock election.

Legislative amendments to be prioritised

22. Work to date with local government sector representatives has highlighted a small number of legislative amendments that would enable a better design of a trial(s) of voting methods.

23. All three amendments described below will enable the development and analysis of a range of alternative voting methods, and the two proposed amendments to the Electoral Act 1993 are of potential benefit for the running of local elections generally. Experience gained from conducting trials of alternative voting methods will then be contributed to the Modernising Voting Review and a potential package of amendments to the local electoral regulatory framework as a result of the Review.
24. I propose these amendments be made as part of an omnibus local electoral bill. Part two of this paper discusses a further amendment proposed for inclusion in the omnibus local electoral bill.

Legislative change so that regulations can be made for a partial trial

25. When considering options for trialling voting methods, Local Government New Zealand and the New Zealand Society of Local Government Managers see Auckland Council's involvement as critical to a trial's success because of the resources the Council can bring to this type of project. The Department of Internal Affairs considers that Auckland Council is too large for full participation in a trial to be appropriate. Such a trial would involve approximately one third of registered electors. If a fundamental problem occurred, the logistics involved in re-running the election would be significant.
26. As a compromise, local government sector representatives would like to be able to conduct partial trial(s) at Auckland Council elections. A partial trial might involve electors in particular areas such as wards, and/or specified categories of a local authority's electors (for example, disabled or overseas electors).
27. A new voting method can be approved by creating regulations under the Local Electoral Act 2001, without needing to make changes to the Act. However, the limits of the regulation-making power mean that regulations cannot enable a "partial" trial of online voting.
28. Therefore I recommend amendments to the Local Electoral Act 2001 to enable regulations to be promulgated authorising a local authority to adopt a voting method for a specified subset of electors at an election, for the purposes of trialling a voting method.
29. To minimise the need for future amendments, I propose that this amendment not be limited to trials for a specified voting method or be fixed in time. This is because it is conceivable that trials for other voting method(s) may be required in the future. This approach will enable flexibility in the design of a trial to make the best use of available resources and mitigate risk which would otherwise be posed, in some cases, by trialling a voting method (or combination of methods) over a full local authority area.

Access to date of birth information for the purpose of conducting an election

30. Local authorities rely on electoral roll information provided by the Electoral Commission for the purposes of conducting their elections. The specified information local authorities receive under section 113 of the Electoral Act 1993 is limited. Electors' date of birth information is not provided to local authorities to administer the elections.

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31. Enabling local electoral officers and supporting staff to access electors' date of birth information would provide more options for developing robust voter authentication mechanisms when considering new voting methods. Date of birth information has been identified as a piece of identity information held by both the Electoral Commission and the elector that is not on the published roll or printed on the voting papers mailed out.
32. Therefore I recommend that amendments be made to the Electoral Act 1993 to allow local authorities to access date of birth information from the database of registered electors held by the Electoral Commission for the purposes of conducting an election. The date of birth information would, however, not be able to be included in the information on the published roll available for public inspection. This may require minor consequential amendments to the Local Electoral Act 2001 and/or the Local Electoral Regulations 2001.
33. To minimise the need for future amendments, I propose that this amendment not be limited to specified voting methods. The local authority would, however, need to demonstrate that they need to access this information for the purposes of a voting method at an election, including for the purpose of a trial.

Access to age group information for the purpose of analysing participation

34. There is limited information on voter participation at local elections. Effective monitoring and evaluation will be crucial parts of robust management and trialling of new voting methods. This analysis should include information about voting behaviour categorised by age groups. For this to be possible the local authorities need access to age group information held by the Electoral Commission, and to be able to use this for the purposes of analysing participation.
35. Section 112 of the Electoral Act 1993 allows age group information to be supplied, at a fee, for the purpose of research that relates to a scientific matter or human health. It is not clear that local authorities researching electoral participation would be assessed as a scientific matter, and the merits of each application would have to be assessed on a case by case basis by the Electoral Commission. For efficiency in applying section 112 of the Electoral Act 1993, I am proposing to amend this section to clearly provide for this.
36. I consider that this proposed change is of potential benefit to all local authorities conducting local elections, and will improve the quality of analysis of local electoral participation by those involved in running local elections. For this reason, I recommend clarifying that age group information could be supplied to any person wishing to analyse participation in a local election, on request, and not just local authorities trialling a new voting method.
37. Therefore I recommend that amendments be made to the Electoral Act 1993 to clarify that local authorities may access age group information for individual electors for the purpose of analysing participation in local elections.

Part Two: Auckland Council Representation

Background

Auckland Council membership requirement

38. Under section 8 of the Local Government (Auckland Council) Act 2009 the governing body of Auckland Council must comprise a mayor and 20 members elected in accordance with the Local Electoral Act 2001.
39. The statutory requirement for exactly 20 councillors is unique to Auckland. For all other territorial authorities the Local Electoral Act 2001 sets the range for the number of members of the governing body, including the mayor, at between 6 and 30. For regional councils the membership range is between 6 and 14.
40. The Royal Commission on Auckland Governance recommended the Council have 23 councillors, including three permanent Māori seats. On 24 August 2009, Cabinet decided that Māori seats should not be provided for in the legislation, leaving the Council with 20 councillors as is now set out in the legislation.
41. Councils must carry out a representation review at least once every six years. Representation arrangements that must be reviewed include:
 - 41.1 whether councillors are elected on a ward basis, or at large;
 - 41.2 the name and boundaries of each ward and the number of councillors to be elected in each ward;
 - 41.3 whether local board members are elected on a subdivision basis or for the local board area as a whole; and
 - 41.4 the number of members in each local board.
42. Auckland Council must commence formal consultation on its first representation review by 8 September 2018.

Policy

Auckland Council has requested an amendment to the councillor requirement as it makes it more difficult to create a Māori ward

43. Under the Local Government (Auckland Council) Act 2009, the requirement for 20 councillors means Auckland Council would have to reduce the number of general councillors to 19 in order to create a Māori ward. This reallocation would require ward boundaries to be reviewed, and the number of councillors representing each ward to be reconsidered. The Local Government Commission would also need to undertake a reorganisation process if Auckland's local board boundaries were to be aligned with the updated ward boundaries.
44. On 28 September 2017, Auckland Council resolved to seek an amendment to this statutory requirement so that a councillor elected from a Māori ward could be additional to the current requirement for 20 councillors.

The 20 member requirement results in a very low councillor to population ratio

45. I do not consider that there is a good basis for Auckland Council having a set membership requirement that is lower than other local authorities. Auckland Council has the lowest ratio of elected councillors to their constituent population in New Zealand, at 1 councillor to 82,860 people. The next lowest is Christchurch City Council, with 1 councillor to 23,858 people. Having a low ratio of councillors to constituents may undermine the councillors' ability to effectively represent their areas.
46. Over the next 25 years, this ratio will continue to decrease. Statistics NZ estimates Auckland's population by 2043 will grow to between 2 and 2.6 million, depending on migration trends. This would represent a ratio of councillors to constituents of between 1:100,000 and 1:130,000 respectively at the current membership requirement.
47. Auckland Council is the only council in New Zealand to have a fixed number of councillors and the fixed membership requirement makes Auckland Council less flexible in its governance arrangements.

Removing the unique requirement provides desirable flexibility, in line with other councils

48. I have considered the following three options for removing or changing the membership requirement:
 - 48.1 remove the membership requirement (Auckland Council would be subject to the standard membership limits in the Local Electoral Act 2001);
 - 48.2 set a new (higher) membership requirement (for example, exactly 25); or
 - 48.3 set a new maximum membership limit (for example, up to 25).
49. On balance I consider that the most appropriate approach is to remove the membership requirement, as this would align Auckland Council with all other New Zealand councils and would give it the flexibility to respond to changing circumstances. This option could lead to a significant increase in the number of councillors, up to 29. However, Auckland Council would need to carry out a representation review process before any increase could be made. This would necessarily involve community consultation, and decisions would also be referred to the Local Government Commission if an appeal or objection is received on the Council's final proposal.
50. I seek your agreement to remove the unique membership requirement for the Auckland Council governing body from the Local Government (Auckland Council) Act 2009 as part of the omnibus local electoral bill.

Consultation

51. This paper was prepared by the Department of Internal Affairs in consultation with Local Government New Zealand and the New Zealand Society of Local Government Managers. It also incorporates feedback from Auckland Council and the Independent Māori Statutory Board.
52. The following agencies were provided draft versions of this paper for consultation: The Treasury, the Department of the Prime Minister and Cabinet, Te Puni Kōkiri, the Ministry of Health, the Ministry of Justice, the Electoral Commission, Statistics New Zealand, and the Parliamentary Counsel Office.

Financial implications

Modernising voting review and proposed legislative changes

53. The costs of conducting the review are largely staff time and consultation and engagement costs which can be met from within departmental baselines.
54. The Electoral Commission has estimated the costs of system changes and testing to enable the provision of date of birth and age group information to be between \$7,500 and \$15,000.
55. The Electoral Commission would also have to update the disclosure statement on their enrolment application form and guidance to specify that date of birth information would be provided to local authorities. The cost of this, for a print run of 500,000 is estimated to be \$55,000.
56. At the time of writing this paper, the Department of Internal Affairs and the Electoral Commission are still discussing options for funding these costs. I will report back orally on the outcome of these discussions at the Committee's meeting on 12 March 2018.

Auckland Council member numbers

57. There are no financial implications arising from the proposals in this paper. Any costs to local government will be addressed through the representation review process.

Human rights and gender implications

58. There are no human rights or gender implications arising from the proposals in this paper.

Disability perspective

59. The development of modernised voting in local elections, such as online voting, could assist the visually impaired and other disabled people to vote independently. Disability advocacy groups will be consulted as part of the development of any online voting trial.

Legislative implications

60. I seek agreement to implement the policy proposals in this paper in an omnibus local electoral bill to amend the Local Electoral Act 2001, Electoral Act 1993 and Local Government (Auckland Council) Act 2009. In December 2017, I submitted a bid for time on the 2018 Legislation Programme, with a priority category 2. An updated bid was also provided to the Leader of the House on 5 March 2018.
61. The proposed amendments to the Local Electoral Act 2001 and the Electoral Act 1993 will be binding on the Crown. The Local Government (Auckland Council) Act 2009 does not explicitly bind the Crown and the proposed amendment is not sufficiently significant or substantive to warrant a review of that position.
62. To expedite the drafting process, the Attorney-General agreed to instruct the Parliamentary Counsel Office to begin drafting for the omnibus local electoral bill in advance of policy approvals from this Committee. I seek authority to make any adjustments to policy decisions consistent with the overall policy intent that are revealed to be necessary during the drafting process.

IN CONFIDENCE

63. I also note that the draft bill will be developed in consultation with the Electoral Commission and representatives of Local Government New Zealand, the New Zealand Society of Local Government Managers, Auckland Council, and the Independent Māori Statutory Board. Draft legislation will be provided to these parties in accordance with the Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown.

Regulatory impact analysis

64. The regulatory impact analysis requirements apply to the proposals outlined in this paper.
65. The Department of Internal Affairs' Regulatory Impact Analysis Panel has reviewed the regulatory impact statements for the proposed amendments and has determined these statements meet the quality assurance criteria.

Privacy impact analysis

66. The Department of Internal Affairs carried out a Brief Privacy Analysis on the proposals to allow local authorities to access age group and date of birth information. The Brief Privacy Analysis determined that the provision of age group information does not introduce substantial new risks to an individual's privacy.
67. A Privacy Impact Assessment Report was recommended, and completed by the Department of Internal Affairs on the proposal to allow local authorities to access date of birth information. The Report concluded that, based on current information, the proposal itself does not introduce substantial risks to an individual's privacy. However, the potential use of date of birth information by future voting methods may introduce higher risks of a breach to an individual's privacy. Therefore an updated Privacy Impact Assessment is recommended during the development of the proposal for future voting methods that require date of birth information.
68. The Privacy Commissioner is supportive of modernising the voter system. It is the Privacy Commissioner's role to assess new or novel uses of personal information. The proposed distribution of date of birth information for local elections to local authorities is a new use of that personal information. The Commissioner considers that the case has not been made for the collection and use of date of birth information as it provides little additional assurance of identity and therefore he does not support recommendation 8.1. Further, providing this information to a large number of localities with varying security practices constitutes an extra risk to the individual. The Privacy Commissioner recommends that Ministers instruct officials to enquire more widely as to the options for better achieving the identity authentication of voters, including among other options the use of RealMe.
69. I note that, to date, using RealMe has not been a preferred option because it requires pre-registration which may be a barrier and hinder effective evaluation of a trial. However, RealMe and other authentication factors remain as options that could be considered as part of trial development. The purpose of the proposed amendment is to increase the authentication options available when designing a robust and effective trial of a voting method. Authentication requirements would be considered when the enabling regulations are developed.

Publicity

70. Local Government New Zealand and the New Zealand Society of Local Government Managers are likely to communicate with staff from the councils which are interested in participating in online voting trials about the decisions in this paper.
71. It is likely that I will issue a media statement at the time of introduction of the omnibus local electoral bill. I also propose to approve proactive release of this Cabinet paper.

Recommendations

72. The Minister of Local Government recommends that the Committee, with Power to Act:
 1. **note** that the Minister of Local Government is proposing a work programme to modernise the local authority electoral system and put in place a more enduring platform for voting in local elections, including the application of new technologies (the Modernising Voting Review);
 2. **note** the Modernising Voting Review is an opportunity to set a framework for improved civic participation in local elections, particularly by improving accessibility for electors with visual impairments, and overseas and travelling electors;
 3. **note** the Modernising Voting Review will be conducted as a partnership between the Department of Internal Affairs, the New Zealand Society of Local Government Managers and Local Government New Zealand;
 4. **note** that proposed objectives for the Modernising Voting Review have been developed with the New Zealand Society of Local Government Managers and Local Government New Zealand, but that I intend to report back to Cabinet with the finalised Terms of Reference for this Review by June 2018;
 5. **note** investigation into a trial of online voting at local elections is a local government sector priority and a key part of the Modernising Voting Review;
 6. **note** I will return to Cabinet to seek agreement to proposals for a trial(s) of online voting, including to the content of regulations to authorise online voting trials and consideration of the financial implications of any such trial;
 7. **agree** that the Local Electoral Act 2001 will be amended to enable regulations to be promulgated authorising a local authority to adopt a voting method for a specified subset of electors at an election, for the purposes of trialling a voting method;
 8. **agree** that the Electoral Act 1993 will be amended to:
 - 8.1 allow local authorities to access date of birth information from the database of registered electors for the purposes of conducting an election; and
 - 8.2 clarify that local authorities and other persons can be supplied age group information for individual electors for the purpose of analysing participation in local elections;
 9. **note** the date of birth information provided to local authorities would be precluded from inclusion on the published rolls that local electoral officers must make available for public inspection;

IN CONFIDENCE

10. **note** that the Privacy Commissioner considers that the case has not adequately been made for the collection and use of date of birth information for local elections, and recommends that the Committee instruct officials to enquire more widely into options for better achieving the identity authentication of electors;
11. **note** that the Minister considers that the proposed amendment in recommendation 8.1 is justified in order to provide the option for date of birth to be considered as one possible authentication factor when enabling regulations for a voting method are developed;
12. **note** that for all local authorities (other than Auckland Council) the Local Electoral Act 2001 sets the range for the number of members of the governing body at between 6 and 30 (for territorial authorities) and between 6 and 14 (for regional councils);
13. **note** that Auckland Council is the only council in New Zealand that has a fixed membership requirement and that this requirement makes the Council less flexible in being able to adapt governance arrangements to changing circumstances including population growth;
14. **agree** that the Local Government (Auckland Council) Act 2009 be amended to remove the requirement that the governing body of Auckland Council must comprise a mayor and 20 members so that the standard provisions under the Local Electoral Act 2001 will apply instead;
15. **note** that, with the agreement of the Attorney-General, the Minister of Local Government has issued drafting instructions to the Parliamentary Counsel Office in accordance with recommendations 7-9 and 14 above for these legislative amendments to be included in an omnibus local electoral bill;
16. **authorise** the Minister of Local Government to make decisions on any subsequent minor issues arising from legislative drafting that align with the overall policy intent of the proposals;
17. **note** the amendments proposed under recommendations 7-9 above will be binding on the Crown;
18. **note** that the Electoral Commission, Local Government New Zealand, the New Zealand Society of Local Government Managers, Auckland Council and the Independent Māori Statutory Board will be consulted on the draft bill;
19. **note** that funding for the Electoral Commission's costs in implementing the changes to the Electoral Act 1993 is still under discussion between the Department of Internal Affairs and the Electoral Commission; and
20. **note** that I intend to approve proactive release of this Cabinet paper, and to issue a media statement at the time of introduction of the omnibus local electoral bill.

Authorised for lodgement

Hon Nanaia Mahuta
Minister of Local Government

Appendix A: Objectives and scope of the Modernising Voting Review

1. The proposed objectives of the Modernising Voting Review are to:
 - 1.1 support local democracy by ensuring all electors have a reasonable and equal opportunity to vote in local elections;
 - 1.2 develop a sustainable platform for the efficient conduct of local elections;
 - 1.3 improve the voter experience in local elections;
 - 1.4 undertake a small-scale pilot(s) of online voting to test public support and technical considerations for a possible wider rollout of online voting in local elections; and
 - 1.5 make efficiency gains in the administration of local elections.
2. The following matters would be in scope of the Modernising Voting Review:
 - 2.1 improving accessibility for identified groups of voters (for example, overseas voters, voters with English as a second language, and voters with disabilities);
 - 2.2 developing and testing online voting options, including wider changes required to support online voting;
 - 2.3 improving the arrangements for electoral officers' access to electoral rolls – particularly supplementary rolls and deletions, and unpublished rolls;
 - 2.4 considering options for continuous enrolment for the ratepayer franchise (currently those who own property in a local authority's district, but live outside the district, have to re-enrol for every election);
 - 2.5 reviewing delivery of district health board election services;
 - 2.6 considering alternative options for the length of the voting period and the timing of polling day; and
 - 2.7 making minor legislative changes to improve the workability of the Local Electoral Act 2001.
3. The following matters would be out of scope of the Modernising Voting Review:
 - 3.1 voting systems - Single Transferable Vote (STV) and First Past the Post (FPP);
 - 3.2 candidate nomination qualifications;
 - 3.3 activities by local authorities to encourage voter participation;
 - 3.4 electoral representation, including Māori representation; and
 - 3.5 frequency of electoral cycle.

Appendix B: Suggested talking points for Cabinet Business Committee

Overview

1. In this paper I seek your agreement to progress an omnibus local electoral bill containing amendments to three Acts¹. (A summary of those legislative amendments is **attached** to these talking points.)
2. Part One of the Cabinet paper introduces the Modernising Voting work programme. This work programme is still under development, in partnership with the local government sector. However, I recommend that we prioritise a small number of legislative amendments to enable development and analysis of alternative voting methods.
3. Part Two of the Cabinet paper seeks to remove the unique requirement that Auckland Council must have a fixed number of councillors. Instead the more flexible default position for all other local authorities would apply.

Modernising Voting and online voting trials

4. The Modernising Voting Review is an opportunity to work in partnership with the local government sector towards mutually beneficial outcomes. This Review also fits well with central government's regulatory stewardship role.
5. The proposed objectives and scope of the Review are at **Appendix A** of the Cabinet paper. The Review is an opportunity to both:
 - 5.1 make technical and operational improvements to the regulatory framework which the sector has been seeking for some time; and
 - 5.2 take a bigger picture approach to build a more enduring platform for local elections in the future.
6. One of the matters in scope for the Review is to develop and test online voting options. This work has been prioritised because:
 - 6.1 the local government sector representatives and I agree that this is the most urgent issue; and
 - 6.2 the outcome of trials can inform the proposed changes from the Review.

Online voting

7. Sector representatives have identified that proceeding with a trial of online voting is a priority for them, due to:
 - 7.1 increasing public expectations of digital services;
 - 7.2 escalating challenges for postal voting²; and
 - 7.3 obligations to look for opportunities to improve access to elections for particular categories of electors (eg, overseas, remote and disabled).
8. Sector representatives have been keen to conduct an online voting trial at the 2019 local elections and sought a central government funding contribution to support this.

¹ Local Electoral Act 2001, Electoral Act 1993, and Local Government (Auckland Council) Act 2009.

² Supporting postal voting in local elections is putting an increasing strain on the postal network at those peak times. Based on current mail volumes, delivering the postal ballots represents a 30% increase in mail volume for that week. However, the greater challenge is ensuring that returned papers are received in time.

9. Current fiscal restraints mean it was not feasible to provide government funding from Budget 2018, and it is unlikely that the sector will be able to raise the funds and capability required in the remaining time before the 2019 local elections.
10. However, I would be interested in any views you have on whether the option of a central government funding contribution should be explored for future Budget years.
11. Missing the 2019 timeframe does not mean trials have to be deferred until 2022. By-elections or mock elections are an option. 19 local authorities have indicated interest in participating in a trial.
12. I intend to report back to Cabinet on the proposed approach to an online voting trial(s) including the respective central/local government roles, and any financial implications.
13. DIA officials will work with Stats NZ to understand any "lessons learnt" from the 2018 Census, and to inform work towards an online voting trial.

Legislative amendments

14. The proposed legislative amendments (summary **attached**) have arisen as a result of discussions about an online voting trial. However, the Electoral Act 1993 amendments have the potential to be of wider benefit for conducting local elections.
15. I note the comments of the Privacy Commissioner at paragraph 67 of the Cabinet paper in relation to access to date of birth information. I consider that it is a justifiable approach to include date of birth authentication as one of the options that can be considered when developing a new voting method. However, I have directed officials to work closely with the Office of the Privacy Commissioner and the Electoral Commission to ensure that potential privacy implications are appropriately managed.

Auckland Council representation

16. The current requirement that Auckland Council must have exactly 20 councillors (plus a mayor) means that:
 - 16.1 the Council has a very high constituent to population ratio compared to other councils (see paragraph 44 in the Cabinet paper); and
 - 16.2 if a Māori ward was created, the number of general councillors would have to be reduced and the local ward boundaries revised.
17. There is a balance to be struck between ensuring adequate representation of constituents and keeping membership manageable for effective governing.
18. Removing Auckland's fixed member requirement would mean the default range of between 6 and 30 councillors would apply. Any change to Auckland's representation would require a representation review, which includes a public consultation and objection process.

Next steps

- 22 March 2018 - Cabinet Legislation Committee consideration
- 26 March 2018 – Cabinet confirmation
- Week starting 2 April – First reading
- Approximately June 2018 – Report back to Cabinet on finalised Terms of Reference for the Review, and a proposed approach to an online voting trial
- November 2018 (timing tbc) – Cabinet considers proposed new regulations for online voting trials.

Legislation	Proposed amendment	Comments
Local Electoral Act 2001	<p>Partial trial: Enable regulations to be made so that a voting method can be offered to a specified subset of electors at an election</p> <p><i>This would allow regulations to be made so that, for example, Auckland Council can offer online voting alongside postal voting to specified categories of electors such as overseas electors, disabled electors, or electors within a particular ward (or a combination of these) and does not have to trial across the full district.</i></p>	<p>This proposed legislative amendment only allows such regulations to be made. The specific regulations themselves will need Cabinet and Executive Council approval.</p> <p>These regulations would only be able to be made for the purposes of trialling a voting method (ie, of short-term effect).</p>
Electoral Act 1993	<p>Date of birth information: Allow local authorities to access date of birth information from the database of registered electors for the purposes of conducting an election.</p> <p><i>This would allow, for example, local authority to use date of birth information as one factor to authenticate electors using an electronic voting system.</i></p> <p>Age group information: Allow local authorities to access age group information for individual electors for the purpose of analysing participation in local elections.</p> <p><i>This would, for example, allow local authorities to effectively evaluate a trial of a new voting method using age group demographics</i></p> <p><i>It would also be useful for local authorities' evaluation of electoral participation generally.</i></p>	<p>In order to access the date of birth information the local authorities would need to demonstrate that this is necessary to conduct the election (this information is not currently required for postal voting).</p> <p>The normal statutory provisions for collection and use of electoral data would apply.</p> <p>Note Privacy Commissioner's concerns.</p> <p>There is already a provision in the Electoral Act 1993 for this information to be accessed for scientific research.</p> <p>This change clarifies that the information can also be accessed by local authorities and others to analyse electoral participation.</p> <p>The proposed change will have general effect and not be limited to voting method trials.</p>
Local Government (Auckland Council) Act 2009	<p>Auckland Council representation: Remove the requirement that the governing body of Auckland Council must comprise a mayor and 20 members.</p>	<p>Removing Auckland Council's fixed member requirement would mean that the default range of between 6 and 30 councillors would apply.</p> <p>Timing:</p> <ul style="list-style-type: none"> If the legislative changes are enacted by August 2018 the Council would be able to take the amendments into account as part of their 2018 Representation Review proposal¹. If the amendments are enacted later than this, the next opportunity for a Representation Review would be in 2021.

¹ A representation review containing the council's proposals must be publicly notified by the council no later than 8 September 2018.



Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: Working paper on the Auckland Council membership requirement

Date: 15 March 2018

Key issues

This briefing attaches a draft working paper on the requirement for Auckland Council to have exactly 20 members, plus the Mayor, on its governing body. Also included are draft letters to the leaders of New Zealand First and the Green Party inviting their comments on the issues and proposed approach outlined in the working paper.

Action sought

Review the attached letters and working paper, and
forward the attached letters and working paper to the Rt Hon Winston Peters and Hon James Shaw

Timeframe

At your convenience

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Nick Law	Policy Manager	027 594 1719		✓
Gina Smith	Acting Director Policy	04 495 9414	027 200 6580	
Return to	Lisa Mackay, Level 9, 45 Pipitea Street			
Cohesion reference	3W2DU3RAJ5R2-1905231989-710			
Ministerial database reference	LG201800388			

Purpose

1. This briefing attaches a draft working paper on Auckland Council's fixed membership requirement, and letters to the Rt Hon Winston Peters and Hon James Shaw seeking their views on amending this requirement.

Background

2. You have asked the Department of Internal Affairs (the Department) to prepare a working paper on the requirement for Auckland Council to have exactly 20 councillors to share with your Coalition and Confidence and Supply partners.
3. The Cabinet paper *Modernising voting and improvements to the regulatory framework for local elections* notes you intend to circulate this paper in April 2018.

The attached working paper outlines the rationale for removing Auckland Council's fixed membership requirement

4. Auckland Council is the only New Zealand council with a fixed membership requirement. The working paper outlines the justification for amending this requirement on the basis that it makes it harder for Auckland Council to meet the requirements for effective and fair representation under the Local Electoral Act 2001.
5. Auckland Council strongly supports the proposed changes to the membership requirement. Auckland Council must commence formal consultation on its first representation review by 8 September 2018. It may be possible for Auckland Council to be able to include a review of the number of Auckland councillors if this amendment could be included in the next available legislative vehicle.

Recommendations

6. We recommend that you:

a) **review** the attached letters and working paper; and

Yes/No

b) **forward** the attached letters and working paper to the Rt Hon Winston Peters and Hon James Shaw, should you agree.

Yes/No

Copy to Associate Minister

8. Please indicate if you would like a copy of this briefing to be forwarded to Yes/No
the Associate Minister of Local Government.



Gina Smith
Acting Director Policy



Hon Nanaia Mahuta
Minister of Local Government

26 / 03 / 2018

Released under the Official Information Act 1982

Appendix A: Working paper

Released under the Official Information Act 1982

Working paper: Auckland Council representation

Background

1. Under section 8 of the Local Government (Auckland Council) Act 2009 (LGACA), the governing body of Auckland Council must comprise a mayor and 20 members elected in accordance with the Local Electoral Act 2001 (LEA).
2. The statutory requirement for exactly 20 councillors is unique to Auckland. For all other territorial authorities the Local Electoral Act 2001 sets the range for the number of members of the governing body, including the mayor, at between 6 and 30. For regional councils the membership range is between 6 and 14.
3. The Auckland Council has requested a review of the fixed membership requirement as it raises issues of equity and access to democracy. Removing this requirement would give Auckland Council the same opportunities to determine their representation arrangements as all other councils in New Zealand.
4. Under the LEA, Councils must carry out a representation review at least once every six years. Representation arrangements that must be reviewed include:
 - a. whether councillors are elected on a ward basis, or at large;
 - b. the name and boundaries of each ward and the number of councillors to be elected in each ward;
 - c. whether local board members are elected on a subdivision basis or for the local board area as a whole; and
 - d. the number of members in each local board.
5. Community consultation is a mandatory part of the representation review. Decisions are referred to the Local Government Commission if an appeal or objection is received on the Council's final proposal.
6. Under the LGACA, Auckland Council must carry out a representation review prior to the local authority elections in 2019. This is the first representation review since the amalgamation. Formal consultation must commence on this representation review by 8 September 2018.
7. There is a limited window of opportunity to make an amendment to the membership requirement which would allow the Council to change the number of councillors, if the representation review indicated that outcome.

The requirement for fair and effective representation

8. The LEA requires local authorities to provide for the 'effective representation of communities of interest' and 'fair representation of electors'.

Effective representation of communities of interest

9. Effective representation of communities of interest is interpreted to mean that significant communities of interest should be represented by the same councillor or councillors, rather than being divided between multiple wards, and disparate communities of interest should not be grouped together in a single ward. Ward and local board boundaries should also be aligned as closely as possible to preserve the groupings of these communities.
10. While the term 'community of interest' is not defined in the LEA, relevant factors may include size and geography, demographic and socio-economic characteristics, shared local facilities and services, local history, and iwi groups.
11. The territorial authority uses these criteria to determine what type of representative arrangements would provide most effective representation for its communities, including whether councillors should be elected at large, in wards, or a mixture of both, and where any ward boundaries should be located.

Fair representation

12. Fair representation is defined as requiring that the representation ratio of each ward within a territorial authority to be no more than 10 per cent greater or smaller than the representation ratio of the territorial authority as a whole. The broad intention of this provision is to ensure that the value of a vote in any given ward is roughly the same as a vote in any other ward in a council's district.
13. The LEA provides for exceptions to the requirement for fair representation if compliance with the 10 per cent threshold would reduce the effective representation of communities of interest. This may occur if the ratio would require dividing a community of interest into two or more wards or including two or more disparate and unrelated communities of interest within one ward. Exceptions are also permitted, if required, to effectively represent an isolated community. Any proposals that do not comply must be referred to the Local Government Commission for review.

Representation in Auckland

14. In Auckland, the LGACA initially required the Local Government Commission to establish single-member wards for the former districts of Franklin and Rodney to recognise them as distinct communities of interest.
15. Auckland's fixed membership requirement will make it increasingly difficult to adjust ward boundaries to reflect changing communities of interest, without major compromise of the fair representation requirement. Over time, this will result in a greater disparity in the value of votes in different wards in Auckland, as well as greater involvement of the Local Government Commission in making decisions that should be made at a local level.
16. Auckland's growth has been unevenly spread across the city, which has also had an impact on the fairness of the current representation arrangements. The Waitemata and Gulf Ward populations have increased by 50 per cent between 2010 and 2017. Other wards have had much more limited growth, with Manukau increasing by only 8 per cent.

17. Between 2010 and 2017, the representation ratio of the Waitemata and Gulf Ward has increased from 10.2 per cent higher than the overall Auckland ratio, to 43.7 per cent higher. At the other end of the scale, Rodney Ward has a representation ratio that is 22.4 per cent lower than Auckland's overall ratio. The imbalance in the representation ratios between wards means that a vote in Rodney currently has significantly more value than a vote in the Waitemata and Gulf Ward.
18. A table outlining the variation in growth across the Auckland region following the passing of the LGACA is included as **Appendix A**.
19. While Auckland Council can change its ward boundaries through a representation review process, local board boundaries can only be changed through a reorganisation process managed by the Local Government Commission. This increases the likelihood that ward and local board boundaries will not align following the Council's representation review, potentially compromising the effective representation of communities of interest.

Auckland Council has a low overall representation ratio, but local boards partially address this issue

20. The fixed membership requirement means Auckland Council has an overall representation ratio of one councillor to 82,860 constituents. This is a far higher ratio than any other council in New Zealand. The council with the next highest representation ratio is Christchurch City, with a ratio of 1:23,858. Wellington City Council has a ratio of 1:15,186.
21. By 2023, with Auckland's population expected to reach 1,859,300, the representation ratio with 20 councillors will be 1:92,965. If Auckland Council had the maximum of 29 councillors under the LEA, the ratio would drop to 1:64,113.
22. However, the LGACA provides for local boards to deal with local community issues, which goes some way towards addressing comparatively low representation on the governing body. The governing body and the local boards share the decision-making responsibilities of Auckland Council, with the governing body focusing on region-wide strategic decisions, and local boards representing their local communities and making decisions about local issues, facilities and activities.

Auckland Council strongly supports a change to this requirement

23. On 28 September 2017, Auckland Council resolved to seek an amendment to this statutory requirement, as it raises issues of equity and access to democracy. Auckland Council also sought a change this requirement in 2015.
24. The Council has also expressed interest in investigating the creation of a Māori ward using the process in the LEA. To do so under the current membership requirement, however, would mean reducing the number of general councillors to 19. Removing or amending the membership requirement would not necessarily mean the Council would be successful in creating a Māori ward, should it choose to pursue this option. If the Council were to resolve to create a Māori ward it would still be subject to a poll, if the Council resolved to hold one or it was demanded by 5 per cent of voters.

Potential options to address this issue

Option one: Status quo

25. Auckland Council would retain the requirement to have 20 councillors.
26. This option may inhibit the Council from changing representation arrangements to reflect population growth. As communities of interest in Auckland develop and change, it will be unlikely to be possible to ensure that these communities have effective representation, without further compromising the requirement for fair representation. This is likely to lead to a greater disparity in the value of votes in wards across Auckland, as well as further involvement of the Local Government Commission to make decisions at the local level.
27. Auckland Council would also continue to have fewer options to determine the structure that works best for them in comparison to other New Zealand councils.

Option two: Remove the membership requirement from the Local Government (Auckland Council) Act

28. The Council would become subject to the same membership limits as other territorial authorities as outlined in the LEA. This would give the Council more flexibility in responding to future population and demographic changes. This option does not mean the Council must increase councillor numbers, but gives them the same options as other councils to use the LEA processes to consider it.
29. Projected population growth still means councillors will need to represent a large number of constituents in their wards even with the maximum number of councillors. However, this situation is partially offset by the use of local boards to increase representation at a local level.

Option three: Set a new fixed membership requirement

30. Increasing the requirement to a new fixed figure would not provide a lot of flexibility around adapting to change in the future. A new fixed requirement would not give the Council a high degree of control over its structure and may therefore lead to issues matching wards to councillor numbers. This option may not give the Council sufficient flexibility to decide the appropriate balance between fair and effective representation and efficient decision-making.

Option four: Set a new maximum membership limit

31. This option would give the Council increased flexibility over changes occurring in the region in future and to respond to an increasingly diverse population.
32. This option could set a higher limit (and potentially a lower limit) than the range outlined in the LEA. Auckland has a large population relative to other New Zealand councils, and as noted above, the representation ratio is likely to increase further. If the number of councillors was aligned with the council with the next highest representation ratio, Auckland would have approximately 70 councillors. This may be viewed as granting special privileges to Auckland, and is likely to be controversial. Auckland Council has not

indicated any interest in increasing its councillors above 29, and a number in excess of 29, without concurrent changes in operating frameworks and processes, is unlikely to provide for efficient decision-making.

Preferred option

33. My preferred approach is Option two. Auckland Council's membership requirement is effectively an anomaly among New Zealand councils. This amendment would grant Auckland the same opportunities as other councils under the LEA, providing the Council with the flexibility to respond and adapt to population and demographic change.

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Appendix A

WARD	Members	Population 2010	Pop per member 2010	Population 2017	Pop per member 2017	Population increase
Rodney Ward	1	54,100	54,100	64,300	64,300	19%
Albany Ward	2	137,800	68,900	169,800	84,900	23%
North Shore Ward	2	143,200	71,600	156,800	78,400	9%
Waitakere Ward	2	158,700	79,350	176,500	88,250	11%
Whau Ward	1	76,400	76,400	84,700	84,700	11%
Albert-Eden-Roskill Ward	2	154,900	77,450	172,200	86,100	11%
Waitemata & Gulf Ward	1	79,300	79,300	119,100	119,100	50%
Orakei Ward	1	81,100	81,100	91,500	91,500	13%
Maungakiekie-Tamaki Ward	1	73,000	73,000	79,700	79,700	9%
Howick Ward	2	128,100	64,050	150,200	75,100	17%
Manukau Ward	2	156,200	78,100	168,900	84,450	8%
Manurewa-Papakura Ward	2	131,500	65,750	148,900	74,450	13%
Franklin Ward	1	64,200	64,200	74,600	74,600	16%
Total	20	1,438,500	71,925	1,657,200	82,860	15%

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Appendix B: Draft letters

Rt Hon Winston Peters
Deputy Prime Minister
Parliament Buildings
Wellington

Tēnā koe e te Pirimia Tuarua

I am writing to you to seek your views on amending the requirement for Auckland Council to have exactly 20 members, plus the Mayor, on its governing body. This requirement is unique to Auckland Council.

On 28 September 2017, Auckland Council resolved to seek an amendment to this statutory requirement, as it raises issues of equity and access to democracy. The statutory requirement results in a very low councillor to constituent ratio compared to other local authorities.

This letter attaches a working paper on options to address this issue through an amendment to the Local Government (Auckland Council) Act 2009. I would like to discuss the issues outlined in this paper with you and members of your caucus as you deem appropriate.

I look forward to hearing from you.

Heoi anō

Hon Nanaia Mahuta
Minister of Local Government

Hon James Shaw
Minister for Climate Change, Minister of Statistics, and Associate Minister of Finance
Parliament Buildings
Wellington

Tēnā koe James

I am writing to you to seek your views on amending the requirement for Auckland Council to have exactly 20 members, plus the Mayor, on its governing body. This requirement is unique to Auckland Council.

On 28 September 2017, Auckland Council resolved to seek an amendment to this statutory requirement, as it raises issues of equity and access to democracy. The statutory requirement results in a very low councillor to constituent ratio compared to other local authorities.

This letter attaches a working paper on options to address this issue through an amendment to the Local Government (Auckland Council) Act 2009. I would like to discuss the issues outlined in this paper with you and members of your caucus as you deem appropriate.

I look forward to hearing from you.

Heoi anō

Hon Nanaia Mahuta
Minister of Local Government

Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: **Final draft Cabinet paper – Modernising voting and improvements to the regulatory framework for local elections**

Date: 15 March 2018

Key issues

The *Modernising voting and improvements to the regulatory framework for local elections* Cabinet paper is attached.

Officials have met with the Office of the Privacy Commissioner and the Electoral Commission to work through concerns around the recommendation for local authorities to have access to date of birth information for the purpose of conducting an election.

Despite strengthening provisions for the secure storage, use and destruction of the date of birth information, the Privacy Commissioner has advised that he cannot support the recommendation for this information to be shared as there are existing alternatives to elector authentication available.

We have included this comment in the attached Cabinet paper and updated the paper to provide for Cabinet Ministers to make a decision whether to include this amendment in the proposed legislation.

The Cabinet paper also no longer seeks a recommendation to amend the Local Government (Auckland Council) Act 2009 and instead notes you will distribute a working paper on this issue in the coming weeks.

Action sought

Provide officials with any comments on the attached final draft Cabinet paper; and
Agree that the Department lodge the Cabinet paper: *Modernising voting and improvements to the regulatory framework for local elections* with the Cabinet Office.

Timeframe

15 March 2018

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
John Sutton	Principal Policy Analyst	04 494 0648	021 593 975	✓
Gina Smith	Acting Director, Policy	04 495 9414	027 200 6580	

Return to	Josephine Clarke, Level 9, 45 Pipitea Street
Cohesion reference	3W2DU3RAJ5R2-666574291-272
Ministerial database reference	LG201800392

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Purpose

1. This briefing provides:
 - 1.1 a final draft of the Cabinet paper *Modernising voting and improvements to the regulatory framework for local elections* for your approval; and
 - 1.2 updated talking points on this Cabinet paper for the Cabinet Economic Development Committee meeting on 21 March 2018.

Background

2. On 8 March 2018, we provided you with a draft of the Cabinet paper for your review. At this point we noted that we were working through an outstanding issue in relation to the Electoral Commission's costs and concerns raised by the Privacy Commissioner.

Consultation and changes to the Cabinet paper

The Cabinet paper no longer seeks to amend Auckland Council's membership

3. At your office's request we have removed the recommendation to amend the Local Government (Auckland Council) Act 2009, to address the Auckland Council fixed membership requirement, from the Cabinet paper. The paper now raises the Auckland Council membership issue and notes you will circulate a working paper on options to address this in the coming weeks.

The outstanding financial implications have been resolved

4. Following discussions with the Ministry of Justice and the Electoral Commission the Cabinet paper has been updated to note that the Department of Internal Affairs will absorb the minor costs associated with the legislative amendments. This is provided the Department is successful in this year's Budget bids. The Treasury was also consulted on this recommendation.

Enabling access to date of birth information

5. Officials met with the Office of the Privacy Commissioner and the Electoral Commission to discuss outstanding privacy concerns for enabling access to date of birth information.
6. Although the Office of the Privacy Commissioner agrees that date of birth is not substantially sensitive information, it has an interest in the amendment as it would enable the transfer and use of information previously not shared by the Electoral Commission. Given the existence of alternative means of voter authentication, such as pre-registration, the Privacy Commissioner remains unconvinced this amendment is necessary. The Privacy Commissioner's comments have been updated following this additional consultation and are included in paragraph 41 of the Cabinet paper.
7. The Electoral Commission provided a comment to be inserted into the Cabinet paper at paragraph 42. Alongside this comment, the Electoral Commission noted a concern that the legislation send a clear message to the local government sector about how the data will be used. This is primarily to address potential concerns the public may have around the use of the information that may deter enrolment. However, the Electoral Commission also noted concerns around a lack of sensitivity for how some local authorities have handled electors' information in the past.

The Department and local government sector representatives consider this amendment necessary for greater flexibility in online voting trial design

8. Although there are other options for authenticating electors, these all require an element of additional communication with electors or pre-registration. The amendment is intended to provide more options for consideration in the design of online voting trial(s). If the objectives of a *trial* of online voting is to test voter appetite for and comfort with online voting, a key design principle may be that electors should not face additional administrative/compliance hurdles to utilising the online option.
9. The process for recommending regulations would evaluate elector authentication and make recommendations based on the objectives of the trial and best solution available at the time. These regulations will address the secure protection and use of the information if date of birth is determined to be necessary.

The Cabinet paper now provides the date of birth amendment as an optional decision

10. Given the reservations of the Privacy Commissioner, the Cabinet paper now provides advice on the option of including the legislative amendment to provide date of birth information and seeks Cabinet's decision whether to include this option in the legislative amendments.
11. To support Cabinet Ministers' consideration of this option we have included additional content on alternatives for elector authentication, and the advantages of allowing date of birth to be considered among these options during the design process for online voting trial(s).
12. The Cabinet paper includes security provisions for accessing and using date of birth information should this be approved under regulations for online voting trial(s). These provisions would only be needed if Cabinet approves the use of date of birth information from the Electoral Commission. The paper also notes that the Department will work with the Electoral Commission and the Society of Local Government Managers to develop a set of agreed guidelines to safely handle electors' information. The Department considers this important given the Electoral Commission's reservations around how local authorities treat electoral information.

Next steps

13. A final draft of the Cabinet paper is attached (**Appendix A**). Suggested talking points to support your presentation of this paper to the Cabinet committee are also attached (**Appendix B**).
14. We will provide you with a draft Cabinet Legislation Committee paper (LEG paper), and the draft Bill, on Monday 19 March 2018. The LEG paper will need to be lodged with Cabinet Office by 10am Thursday 22 March 2018.
15. We will provide you with advice on the objectives and role of elector authentication alongside future advice on the design trials of online voting. We will continue to work with the Electoral Commission and the Office of the Privacy Commissioner on the drafting of the Bill to set provisions for the secure storage, use and deletion of date of birth information, if this amendment is agreed by Cabinet.

Recommendations

16. We recommend that you:

- a) **Provide** officials with any comments on the attached final draft Cabinet paper; and
- b) **agree** that the Department lodge the Cabinet paper: Modernising voting and improvements to the regulatory framework for local elections with the Cabinet Office **Yes/No**

Copy to Associate Minister

17. Please indicate if you would like a copy of this briefing to be forwarded to the Associate Minister of Local Government. **Yes/No**



Gina Smith
Acting Director, Policy

Hon Nanaia Mahuta
Minister of Local Government

_____/_____/_____
/ /

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**Appendix A: Modernising voting and improvements to the regulatory framework
for local elections final draft Cabinet paper**

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Office of the Minister of Local Government

Chair

Cabinet Economic Development Committee (DEV)

Modernising voting and improvements to the regulatory framework for local elections

Proposal

1. This paper is written in two parts:

1.1 First, the paper proposes central government undertake a work programme to modernise voting in local elections in partnership with representatives of the local government sector (the Modernising Voting Review) and seeks the Committee's agreement to:

- 1.1.1 the scope of the Modernising Voting Review;
- 1.1.2 the approach to working with local government sector representatives in partnership on the Modernising Voting Review and on online voting trials as part of that Review; and
- 1.1.3 legislative changes to support the trialling and analysis of voting methods through an omnibus local electoral bill.

1.2 Second, the paper seeks agreement to investigate amending the fixed representation requirement of the Auckland Council governing body.

Executive summary

- 2. The Government has an important stewardship role in ensuring the framework for local elections is fit for purpose and future proofed. I propose my officials partner with local government sector representatives to undertake a programme of work to review the local electoral framework with a view to modernising and future proofing the system.
- 3. While civic participation needs to be wider than engagement between citizens and councils, and that engagement must itself be wider than electoral representation, improving public confidence and involvement in election processes can make an important contribution to civic participation outcomes overall.
- 4. Civic participation spans a broad range of activities. Engagement between citizens and councils is one component of civic participation and this includes involvement in local elections. The Modernising Voting Review is an opportunity to set a framework for improved civic participation in local elections, particularly by improving accessibility for those electors with physical disabilities, or who are overseas or travelling. As part of this partnership approach, I am proposing to progress work towards trial(s) of online voting in local elections as a key element of the Modernising Voting Review.

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5. The exploratory work to scope the Modernising Voting Review and trial(s) of online voting has identified some minor legislative amendments that need to be made ahead of any trial of new voting methods and completion of the Modernising Voting Review. I am seeking Cabinet's approval to issue drafting instructions for these legislative amendments through an omnibus local electoral bill. The proposed legislative changes would:
 - 5.1 enable regulations to be made authorising a local authority to adopt a voting method for a specified subset of electors at an election for the purposes of trialling a voting method;
 - 5.2 allow local authorities to be supplied with date of birth information from the database of registered electors held by the Electoral Commission when required for the purposes of conducting an election; and
 - 5.3 clarify that local authorities may be supplied with age group information for individual electors for the purpose of analysing participation in local elections.
6. Part two of this paper proposes to investigate possible changes to the current unique requirement for the governing body of the Auckland Council to have 20 members, plus the mayor.

Part One: Modernising voting in local elections

Background

Civic participation is interdependent with effective local democracy which itself is dependent on accessible and trusted electoral processes

7. Participation by citizens in formal and informal collective activities and governance of their communities is essential to both the effective identification and pursuit of public goals, and to the well-being of communities in terms of social cohesion and identity. Local democratic processes are both symbolic and tangible opportunities for individuals to join in the governance of their communities, and to share in determining the nature and direction of the collective outcomes sought.
8. Trusted, efficient and attractive voting processes are essential to maintaining public engagement and confidence in local elections, which in turn are essential to acceptance and support of the legitimacy of the mandate for local government decisions. While civic participation needs to be wider than engagement between citizens and councils, and that engagement must itself be wider than electoral representation, improving public confidence and involvement in election processes can make an important contribution to civic participation outcomes overall.

Local authorities are responsible for conducting local elections and polls

9. The local elections cover city and district councils, regional councils and district health boards. Territorial authorities run the elections for all the relevant bodies within their area during triennial elections. In some parts of New Zealand, elections are also held for local or community boards, licensing trusts and other bodies.

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10. There is no ministerial involvement in the running of local elections. However, central government is responsible for maintaining the regulatory framework for local elections and has a responsibility to maintain public confidence in the electoral system. This involves ensuring the framework:
 - 10.1 maintains the integrity of local electoral systems and democratic processes;
 - 10.2 allows electors a reasonable and equal opportunity to participate; and
 - 10.3 promotes public acceptance of the legitimate mandates of elected councils.

Previous select committee inquiries have identified areas for improvement

11. The Justice and Electoral Committee (the Committee) has, by convention, inquired into the conduct of each local authority election, and examined the law and the administrative procedures surrounding the elections.¹ In recent years, submissions on the inquiries, and the Committee's reports, have highlighted that although local elections generally function well, changes to the Local Electoral Act 2001 would improve the administration of local elections.

Policy

12. Central government stewardship of the local electoral system is needed to ensure its sustainability and that it continues to be fit for purpose over time. The local electoral framework is becoming out of touch with how electors, candidates and other bodies interact, or wish to interact, with local government.
13. As online transactions, such as online banking and even passport applications, become a normal feature of people's everyday lives, paper-based voting is becoming out of step with the imaginable future of conducting elections. This is of particular interest to the local government sector as postal voting shows increasing limitations in a modern environment.
14. Central government's stewardship responsibilities include maintaining a strong partnership with local government as the practitioners of local elections. The local government sector depends heavily on central government setting in place the enabling regulatory environment for them to administer local elections efficiently and effectively.

I propose a Modernising Voting Review to investigate opportunities to strengthen the framework for local elections

15. Previous select committee inquiries into local elections, and discussions with local government representatives, have highlighted a number of issues with the regulatory framework for local elections that warrant further attention.²

¹ This convention began in 2001, leading into the enactment of the Local Government Act 2002. The Committee's "Inquiry into the 2016 local elections" lapsed when the House rose prior to the general election and was not reinstated by the new Justice Committee.

² The Committee's 2010 report recommended that the Government consider a trial of online voting in local elections, and the 2013 report recommended that any trial be conducted successfully before online voting is introduced nationwide.

16. The Modernising Voting Review is an opportunity to set a framework for improved civic participation in local elections. There are also opportunities to improve accessibility, for example, for electors with physical disabilities, overseas and travelling electors, and those with a preference for using digital technologies. The purpose of the review is to modernise the local authority electoral system and put in place a more enduring platform for voting in local elections, including the application of new technologies.
17. The proposed objectives and scope of the Modernising Voting Review, developed in consultation with Local Government New Zealand and the New Zealand Society of Local Government Managers, are attached as **Appendix A**. I intend to report back to Cabinet on finalised Terms of Reference for the Modernising Voting Review as part of the Cabinet report back referred to in paragraph 21 below.
18. A key driver for the local government sector is to move towards a more sustainable and cost-effective means of conducting local elections in the future. This is in part due to the increasing unsuitability of traditional postal services to support postal voting in terms of both reducing service levels and increasing costs. To progress this sustainable future, new voting methods (or combination of methods) need to be explored.

Progress towards trial(s) of online voting is a key element of the Modernising Voting Review for the local government sector

19. Taking a partnership approach to working with the local government sector will be crucial to the success of the Modernising Voting Review. The local government sector has a particular interest in progressing online voting as a future voting method, the first step of which is a trial in upcoming local elections or by-elections. Sector representatives have expressed an interest in progressing this as a joint central/local government programme and investment.
20. The timing constraints of the electoral cycle and external pressures on the local government sector mean work towards a trial of online voting will be best undertaken in parallel to the Modernising Voting Review. Therefore I am proposing to prioritise investigation of trial(s) of online voting in parallel to the Modernising Voting Review. This will enable lessons learnt during any such trials to be fed back into the Modernising Voting Review.
21. I will report back to Cabinet by June 2018 with more detail on the proposed approach to an online voting trial, including the respective roles of central and local government, and any financial implications. Before a trial(s) of online voting can proceed I will also need to seek Cabinet agreement to regulations to authorise trials of online voting. I understand from officials that it is feasible for a trial or trials to occur between the 2019 and 2022 triennial local elections, such as in a by-election, referendum or mock election.

Legislative amendments to be prioritised

22. Work to date with local government sector representatives has highlighted a small number of legislative amendments that would enable a better design of a trial(s) of voting methods.

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23. All three amendments described below will enable the development and analysis of a range of alternative voting methods, and are of potential benefit for the efficient running of local elections generally. Experience gained from conducting trials of alternative voting methods will then be contributed to the Modernising Voting Review and a potential package of amendments to the local electoral regulatory framework as a result of the Review. I propose these amendments be made as part of an omnibus local electoral bill.

Legislative change so that regulations can be made for a partial trial

24. When considering options for trialling voting methods, Local Government New Zealand and the New Zealand Society of Local Government Managers see Auckland Council's involvement as critical to a trial's success because of the resources the Council can bring to this type of project. The Department of Internal Affairs considers that Auckland Council is too large for full participation in a trial to be appropriate. Such a trial would involve approximately one third of registered electors. If a fundamental problem occurred, the logistics involved in re-running the election would be significant.
25. As a compromise, local government sector representatives would like to be able to conduct partial trial(s) at Auckland Council elections. A partial trial might involve electors in particular areas such as wards, and/or specified categories of a local authority's electors (for example, disabled or overseas electors).
26. A new voting method can be approved by creating regulations under the Local Electoral Act 2001, without needing to make changes to the Act. However, the limits of the regulation-making power mean that regulations cannot enable a "partial" trial of online voting.
27. Therefore I recommend amendments to the Local Electoral Act 2001 to enable regulations to be promulgated authorising a local authority to adopt a voting method for a specified subset of electors at an election, for the purposes of trialling a voting method.
28. To minimise the need for future amendments, I propose that this amendment not be limited to trials for a specified voting method or be fixed in time. This is because it is conceivable that trials for other voting method(s) may be required in the future. This approach will enable flexibility in the design of a trial to make the best use of available resources and mitigate risk which would otherwise be posed, in some cases, by trialling a voting method (or combination of methods) over a full local authority area.

Supplying age group information for the purpose of analysing participation

29. There is limited information on voter participation at local elections. Effective monitoring and evaluation will be crucial parts of robust management and trialling of new voting methods. This analysis should include information about voting behaviour categorised by age groups. For this to be possible the local authorities need access to age group information held by the Electoral Commission, and to be able to use this for the purposes of analysing participation.

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30. Section 112 of the Electoral Act 1993 allows age group information to be supplied, at a fee, for the purpose of research that relates to a scientific matter or human health. It is not clear that local authorities researching electoral participation would be assessed as a scientific matter, and the merits of each application would have to be assessed on a case by case basis by the Electoral Commission. For efficiency in applying section 112 of the Electoral Act 1993, I am proposing to amend this section to clearly provide for this.
31. I consider that this proposed change is of potential benefit to all local authorities conducting local elections, and will improve the quality of analysis of local electoral participation by those involved in running local elections. For this reason, I recommend clarifying that age group information could be supplied to any person wishing to analyse participation in a local election, on request, and not just local authorities trialling a new voting method.
32. Therefore I recommend that amendments be made to the Electoral Act 1993 to clarify that local authorities may be supplied with age group information for individual electors for the purpose of analysing participation in local elections.

Supplying date of birth information for the purpose of conducting an election

33. While officials are working with local government sector representatives to design online voting trial(s), I am seeking Cabinet decision on whether to make legislative amendments to ensure the broadest range of options for voter authentication is available for consideration.
34. There are a range of options for how a voting method may be designed to include elector authentication without legislative change, for example pre-registration that utilises a range of identifiers such as drivers' licence or passport numbers. There is also work underway across government and in the private sector to develop online identity authentication and shared secret code tools that may be available in the long term.
35. These methods of identity authentication, however, require additional alignment with the electoral roll and/or communication between the elector and the electoral service provider or identity authentication provider, ahead of the election. Care would also need to be taken to assure electors the authentication solution would not track electoral behaviour across elections.
36. For the purpose of a trial of a voting method, the additional step to authenticate an elector may be a barrier to uptake of the voting method. This may skew the perceived public appetite for the voting method based on uptake. This is particularly likely while the voting method is offered in addition to existing voting methods.

Date of birth provides another option for authenticating electors during a trial of a voting method

37. An option for authenticating an elector without pre-registration or prior communication with electors is to use information currently held *in combination* with an access code posted to the elector. Date of birth information is a piece of identity information held by both the elector and the Electoral Commission that is not on the published roll or printed on the voting papers. As such it would be an efficient means of authenticating electors.

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38. The information local authorities receive from the Electoral Commission to administer the elections under section 113 of the Electoral Act 1993 is limited, and does not include electors' date of birth information. Legislative amendment to enable local electoral officers and supporting staff to be provided electors' date of birth information, when required to conduct an election, would provide more options for developing voter authentication mechanisms as part of trial(s) of new voting methods.

Date of birth information has limitations for authentication

39. Date of birth is not a particularly secure piece of information. For example an individual's date of birth is often known by a number of people, especially family members. Date of birth is also contained in the information sent to electors by the Electoral Commission to confirm roll information as part of periodic update campaigns.
40. Therefore this option is only likely to be desirable for the purpose of a trial(s) of new voting methods where the design intention includes avoiding additional barriers to uptake which would be created by other authentication solutions. When development of a voting method has moved beyond the initial trial stage, this objective will be less important and regulations implementing the voting method could contemplate a wider range of authentication approaches to achieve a more robust and enduring solution. Decisions on any voter authentication solution would be made in the light of equivalence with the current postal system, which includes a level of trust in elector actions.

Privacy concerns around enabling the use of date of birth

41. To date, date of birth information has not been able to be disclosed by the Electoral Commission to any agency or local authority for any purpose under the Electoral Act 1993. The Privacy Commissioner comments as follows:

The Privacy Commissioner is supportive of modernising the voter system. It is the Privacy Commissioner's role to assess new or novel uses of personal information. The proposed distribution of date of birth information for local elections to local authorities is a new use of that personal information.

The Commissioner considers that the case has not been made for the amendment proposed because:

a) collection and use of date of birth information for trial purposes provides little additional assurance of identity; and

b) date of birth information is unlikely to be used in the final online voting solution;

The Commissioner therefore does not support recommendation 9.1.

The Privacy Commissioner notes that internationally online voting models generally require more stringent identity verification than a code + date of birth and therefore recommends that Ministers instruct officials to enquire more widely as to the options for better achieving the identity authentication of voters, including among other options the use of RealMe.

42. The Electoral Commission has provided the following comment on supplying date of birth information for the purpose of conducting an election:

The Commission supports modernising voting methods and looks forward to working with the local authority sector on increasing participation and modernising voting, including authentication methods.

We think the best way to increase uptake and ensure a successful online trial is to take a measured approach where both accessibility and the integrity of the election are considered. This approach is the best way to minimise the likelihood of an incident occurring that would significantly set back efforts to modernise local body and parliamentary elections.

The Electoral Commission agrees with the conclusion of the Privacy Commissioner that authentication using a voter's date of birth is not particularly robust. Enrolment information is provided under compulsion. We would defer to the Privacy Commissioner on his view on whether the benefit and impact justify the supply of date of birth information for local body elections.

43. I note that, to date, RealMe has not been a preferred option in the context of a trial because it requires pre-registration, which may be a barrier and hinder effective evaluation of a trial. However, RealMe and other authentication factors remain as options that could be considered as part of trial development. Authentication requirements would be considered in detail when the enabling regulations are developed. That consideration would include weighing the benefits and risks of different options, including what additional information safeguards and processes might be necessary.
44. I am seeking Cabinet's decision of whether legislative change be made to the Electoral Act 1993 to allow local authorities to be supplied with date of birth information to increase the authentication options available when designing a robust and effective trial of a voting method. To minimise the need for future amendments, I propose any such amendment not be limited to specified voting methods.
45. The date of birth information would only be provided authorised by regulations made under section 139(1)(c) of the Local Government Act 2001 authorising the voting method. This would also include specific provisions requiring any such regulations to prescribe requirements for the secure storage, use and destruction of the information are in place. Further, new provisions will preclude date of birth information being able to be included on the published roll available for public inspection. A similar prohibition will be made to the Local Electoral Regulations 2001.
46. If Cabinet agrees to provide local authorities with date of birth information, I will direct my officials to work with Electoral Commission officials and the New Zealand Society of Local Government Managers to develop agreed protocols for the management of date of birth and other elector information by local electoral officials. This will provide assurance electors' information is respected and securely handled.

Part Two: Auckland Council Representation

Background

Auckland Council membership requirement

47. Under section 8 of the Local Government (Auckland Council) Act 2009 the governing body of Auckland Council must comprise a mayor and 20 members elected in accordance with the Local Electoral Act 2001.
48. The statutory requirement for exactly 20 councillors is unique to Auckland. For all other territorial authorities the Local Electoral Act 2001 sets the range for the number

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of members of the governing body, including the mayor, at between 6 and 30. For regional councils the membership range is between 6 and 14.

Policy

Auckland Council has requested an amendment to align its representation arrangements with all other councils in New Zealand

49. On 28 September 2017, Auckland Council resolved to seek an amendment to this statutory requirement, as it raises issues of equity and access to democracy. The statutory requirement results in a very low councillor to constituent ratio compared to other local authorities.
50. I intend to investigate options on how to address this issue with a view to amending the Local Government (Auckland Council) Act 2009. I propose to circulate a working paper on this to Ministers in April 2018.

Consultation

51. This paper was prepared by the Department of Internal Affairs in consultation with Local Government New Zealand and the New Zealand Society of Local Government Managers. It also incorporates feedback from Auckland Council and the Independent Māori Statutory Board.
52. The following agencies were provided draft versions of this paper for consultation: The Treasury, the Department of the Prime Minister and Cabinet (Policy Advisory Group), Te Puni Kōkiri, the Ministry of Health, the Ministry of Justice, the Electoral Commission, Statistics New Zealand, the Office of the Privacy Commissioner and the Parliamentary Counsel Office.

Financial implications

Modernising voting review and proposed legislative changes

53. The costs of conducting the review are largely staff time and consultation and engagement costs which can be met from within departmental baselines.
54. The Electoral Commission has estimated the costs of system changes and testing to enable the provision of date of birth and age group information to be between \$7,500 and \$15,000.
55. The Electoral Commission would also have to update the disclosure statement on their enrolment application form and guidance to specify that date of birth information would be provided to local authorities. The cost of this, for a print run of 500,000 is estimated to be \$55,000.
56. The Department of Internal Affairs' appropriations are constrained and the Local Government Appropriation for 2018/19 is currently fully subscribed. The Department has submitted a number of departmental budget bids for 2018/19. However, the Department will reprioritise baseline in 2018/19 to meet the estimated one-off \$70,000 marginal cost to be incurred by the Electoral Commission for this local government electoral initiative.

Auckland Council member numbers

57. Financial implications arising from the Auckland Council representation consideration in this paper will be met from within the Department of Internal Affairs' baseline funding.

Human rights and gender implications

58. There are no human rights or gender implications arising from the proposals in this paper.

Disability perspective

59. The development of modernised voting in local elections, such as online voting, could assist the visually impaired and other disabled people to vote independently. Disability advocacy groups will be consulted as part of the development of any online voting trial.

Legislative implications

60. I seek agreement to implement the policy proposals in this paper in an omnibus local electoral bill to amend the Local Electoral Act 2001 and Electoral Act 1993. In December 2017, I submitted a bid for time on the 2018 Legislation Programme, with a priority category 2. An updated bid was also provided to the Leader of the House on 5 March 2018.
61. The proposed amendments to the Local Electoral Act 2001 and the Electoral Act 1993 will be binding on the Crown.
62. To expedite the drafting process, the Attorney-General agreed to instruct the Parliamentary Counsel Office to begin drafting for the omnibus local electoral bill in advance of policy approvals from this Committee. I seek authority to make any adjustments to policy decisions, consistent with the overall policy intent, that are necessary during the drafting process.
63. I also note that the draft bill will be developed in consultation with the Electoral Commission and representatives of Local Government New Zealand, the New Zealand Society of Local Government Managers, the Office of the Privacy Commissioner, and Auckland Council. Draft legislation will be provided to these parties in accordance with the Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown.

Regulatory impact analysis

64. The regulatory impact analysis requirements apply to the proposals outlined in this paper.
65. The Department of Internal Affairs' Regulatory Impact Analysis Panel has reviewed the regulatory impact statement for the proposed amendments to the Local Electoral Act 2001 and the Electoral Act 1993 and has determined these statements meet the quality assurance criteria.

Privacy impact analysis

66. The Department of Internal Affairs carried out a Brief Privacy Analysis on the proposals to allow local authorities to be supplied with age group and date of birth information. The Brief Privacy Analysis determined that the provision of age group information does not introduce substantial new risks to an individual's privacy.
67. A Privacy Impact Assessment Report was recommended, and completed by the Department of Internal Affairs on the proposal to allow local authorities to be supplied with date of birth information. The Report concluded that, based on current information, the proposal itself does not introduce substantial risks to an individual's privacy. However, the potential use of date of birth information by future voting methods may introduce higher risks of a breach to an individual's privacy. Therefore an updated Privacy Impact Assessment is recommended during the development of the proposal for future voting methods that require date of birth information.
68. As stated in paragraph 41 above, the Privacy Commissioner is not convinced the use of date of birth is necessary and, as such, does not support this particular proposal.

Publicity

69. Local Government New Zealand and the New Zealand Society of Local Government Managers are likely to communicate with staff from the councils which are interested in participating in online voting trials about the decisions in this paper.
70. It is likely that I will issue a media statement at the time of introduction of the omnibus local electoral bill. I also propose to approve proactive release of this Cabinet paper.

Recommendations

71. The Minister of Local Government recommends that the Committee, with Power to Act:
 1. **note** that the Minister of Local Government (the Minister) is proposing a work programme to modernise the local authority electoral system and put in place a more enduring platform for voting in local elections, including the application of new technologies (the Modernising Voting Review);
 2. **note** the Modernising Voting Review is an opportunity to set a framework for improved civic participation in local elections, particularly by improving accessibility for electors with visual impairments, and overseas and travelling electors;
 3. **note** the Modernising Voting Review will be conducted as a partnership between the Department of Internal Affairs, the New Zealand Society of Local Government Managers and Local Government New Zealand;
 4. **note** that proposed objectives for the Modernising Voting Review have been developed with the New Zealand Society of Local Government Managers and Local Government New Zealand, but that I intend to report back to Cabinet with the finalised Terms of Reference for this Review by June 2018;
 5. **note** investigation into a trial of online voting at local elections is a local government sector priority and a key part of the Modernising Voting Review;
 6. **note** I will return to Cabinet to seek agreement to proposals for a trial(s) of online voting, including to the content of regulations to authorise online voting trials and consideration of the financial implications of any such trial;

IN CONFIDENCE

7. **agree** that the Local Electoral Act 2001 will be amended to enable regulations to be promulgated authorising a local authority to adopt a voting method for a specified subset of electors at an election, for the purposes of trialling a voting method;
8. **agree** that the Electoral Act 1993 will be amended to clarify that local authorities and other persons can be supplied age group information for individual electors for the purpose of analysing participation in local elections;
9. **EITHER** [supported by the Department of Internal Affairs, the Society of Local Government Managers, and Local Government New Zealand]
 - 9.1 **agree** that the Electoral Act 1993 also be amended to allow local authorities to be supplied with date of birth information from the database of registered electors where this is required for the purposes of conducting an election;

OR [supported by the Privacy Commissioner]

 - 9.2 **note** that the Privacy Commissioner considers that the case has not adequately been made for the collection and use of date of birth information for local elections; **AND**
 - 9.3 **instruct** officials to enquire more widely into options for better achieving the identity authentication of electors;
10. **note**, if Cabinet agrees to allow local authorities to be supplied with date of birth information under recommendation 9.1:
 - 10.1 the date of birth information would not be provided to local authorities unless required under regulations providing for a specified voting method which must also include requirements for the secure storage, use and destruction of that information;
 - 10.2 the date of birth information provided to local authorities would be precluded from inclusion on the published rolls that local electoral officers must make available for public inspection;
 - 10.3 the Minister will direct officials to work with Electoral Commission officials and the New Zealand Society of Local Government Managers to develop agreed protocols for the management by local electoral officials of date of birth and other elector information provided by the Electoral Commission;
11. **note** that for all local authorities (other than Auckland Council) the Local Electoral Act 2001 sets the range for the number of members of the governing body at between 6 and 30 (for territorial authorities) and between 6 and 14 (for regional councils);
12. **note** that Auckland Council is the only council in New Zealand that has a fixed membership requirement;
13. **note** that I propose to circulate a working paper on the Auckland Council membership cap with the view to potential amendments to the Local Government (Auckland Council) Act 2009 in due course;
14. **note** that, with the agreement of the Attorney-General, the Minister of Local Government has issued drafting instructions to the Parliamentary Counsel Office in accordance with recommendations 7-9 above for these legislative amendments to be included in an omnibus local electoral bill;

IN CONFIDENCE

15. **authorise** the Minister to make decisions on any subsequent minor issues arising from legislative drafting that align with the overall policy intent of the proposals;
16. **note** the amendments proposed under recommendations 7-9 above will be binding on the Crown;
17. **note** that the Electoral Commission, Local Government New Zealand, the New Zealand Society of Local Government Managers, and the Office of the Privacy Commissioner will be consulted on the draft bill;
18. **note** that the estimated one-off \$70,000 in costs to the Electoral Commission for the local electoral initiatives outlined in this paper would be met by the Department of Internal Affairs in 2018/19; and
19. **note** that I intend to approve proactive release of this Cabinet paper, and to issue a media statement at the time of introduction of the omnibus local electoral bill.

Authorised for lodgement

Hon Nanaia Mahuta
Minister of Local Government

Released under the Official Information Act 1982

Appendix A: Objectives and scope of the Modernising Voting Review

1. The proposed objectives of the Modernising Voting Review are to:
 - 1.1 support local democracy by ensuring all electors have a reasonable and equal opportunity to vote in local elections;
 - 1.2 develop a sustainable platform for the efficient conduct of local elections;
 - 1.3 improve the voter experience in local elections;
 - 1.4 undertake a small-scale pilot(s) of online voting to test public support and technical considerations for a possible wider rollout of online voting in local elections; and
 - 1.5 make efficiency gains in the administration of local elections.
2. The following matters would be in scope of the Modernising Voting Review:
 - 2.1 improving accessibility for identified groups of voters (for example, overseas voters, voters with English as a second language, and voters with disabilities);
 - 2.2 developing and testing online voting options, including wider changes required to support online voting;
 - 2.3 improving the arrangements for electoral officers' access to electoral rolls – particularly supplementary rolls and deletions, and unpublished rolls;
 - 2.4 considering options for continuous enrolment for the ratepayer franchise (currently those who own property in a local authority's district, but live outside the district, have to re-enrol for every election);
 - 2.5 reviewing delivery of district health board election services;
 - 2.6 considering alternative options for the length of the voting period and the timing of polling day; and
 - 2.7 making minor legislative changes to improve the workability of the Local Electoral Act 2001.
3. The following matters would be out of scope of the Modernising Voting Review:
 - 3.1 voting systems - Single Transferable Vote (STV) and First Past the Post (FPP);
 - 3.2 candidate nomination qualifications;
 - 3.3 activities by local authorities to encourage voter participation;
 - 3.4 electoral representation, including Māori representation; and
 - 3.5 frequency of electoral cycle.

Appendix B: Suggested talking points for Cabinet Economic Development Committee

Overview

1. In this paper I seek your agreement to progress an omnibus local electoral bill containing amendments to two Acts¹. (A summary of those legislative amendments is **attached** to these talking points.)
2. Part One of the Cabinet paper introduces the Modernising Voting work programme. This work programme is still under development, in partnership with the local government sector. However, I recommend that we prioritise a small number of legislative amendments to enable development and analysis of alternative voting methods.
3. Part Two notes an issue with the current unique requirement on Auckland Council, that the Council must have a fixed number of members (20 councillors and a mayor).

Modernising Voting and online voting trials

4. The Modernising Voting Review is an opportunity to work in partnership with the local government sector towards mutually beneficial outcomes. This Review also fits well with central government's regulatory stewardship role.
5. The proposed objectives and scope of the Review are at **Appendix A** of the Cabinet paper. The Review is an opportunity to both:
 - 5.1 make technical and operational improvements to the regulatory framework which the sector has been seeking for some time; and
 - 5.2 take a bigger picture approach to build a more enduring platform for local elections in the future.
6. One of the matters in scope for the Review is to develop and test online voting options. This work has been prioritised because:
 - 6.1 the local government sector representatives and I agree that this is the most urgent issue; and
 - 6.2 the outcome of trials can inform the proposed changes from the Review.

Online voting

7. Sector representatives have identified that proceeding with a trial of online voting is a priority for them, due to:
 - 7.1 increasing public expectations of digital services;
 - 7.2 escalating challenges for postal voting²; and
 - 7.3 obligations to look for opportunities to improve access to elections for particular categories of electors (eg, overseas, remote and disabled).
8. Sector representatives have been keen to conduct an online voting trial at the 2019 local elections and sought a central government funding contribution to support this.

¹ Local Electoral Act 2001 and Electoral Act 1993.

² Supporting postal voting in local elections is putting an increasing strain on the postal network at those peak times. Based on current mail volumes, delivering the postal ballots represents a 30% increase in mail volume for that week. However, the greater challenge is ensuring that returned papers are received in time.

9. Current fiscal restraints mean it was not feasible to provide government funding from Budget 2018, and it is unlikely that the sector will be able to raise the funds and capability required in the remaining time before the 2019 local elections.
10. However, I would be interested in any views you have on whether the option of a central government funding contribution should be explored for future Budget years.
11. Missing the 2019 timeframe does not mean trials have to be deferred until 2022. By-elections or mock elections are an option. 19 local authorities have indicated interest in participating in a trial.
12. I intend to report back to Cabinet on the proposed approach to an online voting trial(s) including the respective central/local government roles, and any financial implications.
13. DIA officials will work with Stats NZ to understand any "lessons learnt" from the 2018 Census, and to inform work towards an online voting trial.

Legislative amendments

14. The proposed legislative amendments (summary **attached**) have arisen as a result of discussions about an online voting trial. However, the Electoral Act 1993 amendments have the potential to be of wider benefit for conducting local elections.
15. I note the comments of the Privacy Commissioner at paragraph 41 of the Cabinet paper in relation to access to date of birth information. I consider that it is a justifiable approach to include date of birth authentication as one of the options that can be considered when developing a new voting method.
16. If Cabinet agrees to this amendment I will direct officials to work closely with the Office of the Privacy Commissioner and the Electoral Commission to ensure that potential privacy implications are appropriately managed during the design of online voting trials.

Auckland Council representation

17. The governing body of Auckland Council must comprise a mayor and 20 members. The statutory requirement for exactly 20 councillors is unique to Auckland.
18. On 28 September 2017, Auckland Council resolved to seek an amendment to this statutory requirement, as it raises issues of equity and access to democracy. The statutory requirement results in a very low councillor to constituent ratio compared to other local authorities.
19. There is a balance to be struck between ensuring adequate representation of constituents and keeping membership manageable for effective governing.
20. I propose to circulate a working paper, on options to address this issue, to Ministers in April 2018.

Next steps

- 29 March 2018 - Cabinet Legislation Committee consideration
- 3 April 2018 – Cabinet confirmation
- Week starting 2 April – First reading
- Approximately June 2018 – Report back to Cabinet on finalised Terms of Reference for the Review, and a proposed approach to an online voting trial
- November 2018 (timing tbc) – Cabinet considers proposed new regulations for online voting trials.

Legislation	Proposed amendment	Comments
Local Electoral Act 2001	<p>Partial trial: Enable regulations to be made so that a voting method can be offered to a specified subset of electors at an election.</p> <p><i>This would allow regulations to be made so that, for example, Auckland Council can offer online voting alongside postal voting to specified categories of electors such as overseas electors, disabled electors, or electors within a particular ward (or a combination of these) and does not have to trial across the full district.</i></p>	<p>This proposed legislative amendment only allows such regulations to be made. The specific regulations themselves will need Cabinet and Executive Council approval.</p> <p>These regulations would only be able to be made for the purposes of trialling a voting method (i.e. of short-term effect).</p>
Electoral Act 1993	<p>Age group information: Allow local authorities to access age group information for individual electors for the purpose of analysing participation in local elections.</p> <p><i>This would, for example, allow local authorities to effectively evaluate a trial of a new voting method using age group demographics. It would also be useful for local authorities' evaluation of electoral participation generally.</i></p>	<p>There is already a provision in the Electoral Act 1993 for this information to be accessed for scientific research.</p> <p>This change clarifies that the information can also be accessed by local authorities and others to analyse electoral participation.</p> <p>The proposed change will have general effect and not be limited to voting method trials.</p>
	<p>Date of birth information: Allow local authorities to access date of birth information from the database of registered electors for the purposes of conducting an election.</p> <p><i>This would allow, for example, local authority to use date of birth information as one factor to authenticate electors using an electronic voting system.</i></p>	<p>This amendment would enable consideration of a broader range of design options for a trial of online voting.</p> <p>Any decision to use of date of birth information would be considered by Cabinet at the time of recommending regulations to enable a trial of online voting.</p> <p>In order to access the date of birth information the local authorities would need to demonstrate that this is necessary to conduct the election (this information is not currently required for postal voting). The normal statutory provisions for collection and use of electoral data would apply.</p> <p>Note: Privacy Commissioner's concerns.</p>



Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: Māori electoral representation on local councils

Date: 27 March 2018

Key issues

This briefing responds to your request for advice on issues relating to the creation of Māori wards and constituencies under the Local Electoral Act 2001.

Action sought

Note the information in this briefing; and
Discuss with officials any further work you would like to be undertaken.

Timeframe

At your convenience

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
John Sutton	Principal Policy Analyst	021 593 975		✓
Rachel Groves	Policy Director	04 495 6065	027 605 7372	
Return to	Lisa Mackay, Level 9, 45 Pipitea Street			
Cohesion reference	3W2DU3RAJ5R2-1905231989-832			
Ministerial database reference	LG201800444			

Purpose

1. This briefing provides information about the framework for Māori electoral representation in local government, and responds to your specific questions about Māori wards and constituencies.

Executive Summary

2. The Local Electoral Act 2001 (LEA) provides a framework for the creation of separate Māori representation on councils. A petition of five per cent of valid electors may demand a poll, which determines whether the ward or constituency is created.
3. To date, few proposals to create separate Māori representation have been successful. A number of suggestions have been made to eliminate the poll requirement and align the process of creating Māori wards and constituencies with the process for creating general wards and constituencies as part of the representation review process.
4. The Department could carry out further work investigating options to address these issues. It is likely to be too close to the local elections in 2019 to make any changes that could take effect before the elections, but may be possible to implement for the 2022 local elections.

Background

The option of separate Māori electoral representation in local government was introduced in 2002

5. The LEA was amended in 2002 to provide councils and electors with the option of establishing Māori wards (in the case of territorial authorities) and constituencies (in the case of regional councils). This amendment followed the enactment of a local Act, the Bay of Plenty (Māori Constituency Empowering) Act 2001, and provided the option of similar arrangements for all local authorities.
6. The amendments to the LEA went through Parliament at the same time as the provisions in the Local Government Act 2002 (LGA02) promoting Māori participation in decision-making. However, neither set of provisions refers to the other.

The decision on separate Māori representation may be subject to binding polls initiated by councils or petition

7. As you are aware, the LEA provides separate processes for:
 - 7.1 considering proposals to establish separate Māori representation on local authorities; and
 - 7.2 reviewing the overall membership; ward/constituency boundaries and representation.

Proposals to establish separate Māori wards and constituencies

8. Proposals to establish separate Māori representation can be initiated by council resolution (if no subsequent petition demanding a poll is received) or as a result of a poll of all electors, which can be initiated by:
 - 8.1 council resolution; or,
 - 8.2 a petition of electors, at any time; or,

- 8.3 by a petition of electors in response to a resolution of the council.
9. If a poll is held, the result is binding for the next two elections.

Representation reviews

10. The process for representation reviews involves local authorities consulting on draft proposals, with rights of objection or appeal to the Local Government Commission (the Commission) against the local authority's final decision. A more detailed summary of the legislative requirements for each process is attached as **Appendix A**.

Few proposals have succeeded, and a number of polls are pending

11. To date, few attempts to establish separate Māori representation have been successful. A table of poll results by councils attempting to create Māori wards or constituencies through the LEA process is attached as **Appendix B**.
12. In 2012, the Waikato Regional Council created two Māori constituencies by council resolution. In this case no poll was demanded in response to the Waikato Regional Council's resolution.
13. Support for a Māori ward at the Wairoa District Council gained over 50 per cent of the vote in a poll of electors in 2016, following a narrow defeat in 2012. Wairoa is entitled to three Māori members by population, which will be implemented at the 2019 local elections.
14. There are five councils that are currently awaiting polls on proposals for Māori wards. In each of these cases, voters have demanded a poll in response to a council's resolution to create Māori wards.

Frustration with these outcomes has led to a number of proposals seeking change

15. Following an unsuccessful attempt to create a Māori ward at the New Plymouth District Council, then-Mayor Andrew Judd started a petition seeking to align the process of establishing Māori wards for district councils with the process for creating general wards. The petition was presented by the former Minister for Māori Development, Hon Te Ururoa Flavell, in May 2016. It currently sits with the Governance and Administration Committee, which has yet to report on the petition.
16. A member's Bill introduced by Marama Davidson, MP, the Local Electoral (Equitable Process for Establishing Māori Wards and Māori Constituencies) Amendment Bill, also proposed to remove the separate process for dealing with Māori ward and constituency proposals, was defeated at its first reading on 28 June 2017.
17. Local Government New Zealand wrote to Government party leaders on 22 March 2018 expressing support for the removal of the poll requirement when establishing Māori wards and constituencies.
18. All of these proposals seek the process for separate Māori representation to be the same as, and integrated with, the representation review process. This process does not require a poll, but may be referred to the Local Government Commission for final decision if objections are received.

Responses to specific questions

Is the legislative requirement that a council resolution be subject to a binding poll unfair?

19. The opportunity for electors to demand a poll on Māori wards or constituencies is based on the principles that elected officials should not make final decisions about electoral arrangements, and that communities are entitled to choose their representation arrangements. This was the approach taken when the amendments to the LEA were introduced in 2002.
20. The legislative framework for local choices about the creation of Māori wards or constituencies is based on that for the process for selecting an electoral system, between Single-Transferable Vote and First Past the Post. A similar opportunity for electors to demand a binding poll also exists in relation to major local government reorganisation proposals.
21. In this context, providing an opportunity for electors to demand a binding poll may not in itself be unfair. However the five per cent of electors threshold to demand a poll on Māori representation proposals is comparatively low, and may enable successful petitions where opposition to a proposal to create separate Māori representation is limited. In a local government reorganisation process, a petition of 10 per cent of electors is required to demand a poll on the Local Government Commission's final proposal.
22. If a poll is held, a low turnout of voters can contribute to a relatively small proportion of eligible electors overturning the original proposal. This is because the outcome of the poll is determined only by the number of votes cast for and against. For example, in the New Plymouth District Council poll on Māori wards in 2015, while the results were 17 per cent in favour to 83 per cent against, only 45 per cent of eligible voters participated. Given that those opposed to the original proposal are likely to be more motivated to vote than those who support it, this may also be perceived as unfair.

What assessment has been conducted detailing the positive contribution of Māori wards in local government decision-making?

23. We are aware of very little research on the benefits of Māori wards and constituencies. This is likely to reflect the fact that, to date, only two regional councils and no territorial authorities have established separate Māori representation, limiting the available information. The research that does exist is primarily limited to anecdotal evidence and self-reporting. Comparing the quality of decision-making by councils that do and do not have separate Māori representation is unlikely to be informative given the range of contextual factors involved in a council's decision-making that may be unrelated to the contribution of Māori representatives.
24. However, the Department is aware that some work to assess the effects of separate Māori representation has been carried out.
 - 24.1 In 2010, the New Zealand Human Rights Commission reported on the attitudes of staff and councillors at the Bay of Plenty Regional Council to the Māori seats on the Council. Feedback was positive, with the Chair noting it had been a catalyst for an improved relationship between the Council and Māori. The Chief Executive spoke of the seats as a "huge strength" that have brought significant savings to Council operations, as well as ensuring Māori communities had a voice. One councillor who was opposed to separate Māori representation in

principle noted that in practice it worked very well, although may not be appropriate for councils with smaller Māori populations. A Māori councillor commented that the seats were more effective than Māori standing committees.

- 24.2 In 2009, the Department commissioned a case study on council attitudes to Māori participation and engagement within local government. Benefits that were identified by participants in the case study from the Bay of Plenty Regional Council are attached as **Appendix C**.

What other models exist to provide for Māori participation in decision-making?

25. The LGA02 (section 81) requires councils to “establish and maintain processes to provide opportunities for Māori to contribute to the decision-making of the local authority”, and to “consider ways in which it may foster the development of Māori capacity to contribute to” those processes. A range of other local government-related Acts include principles or process requirements to ensure councils involve Māori in decision-making.
26. Councils implement these requirements in a variety of ways. These may include:
- 26.1 establishing relationship agreements to set out how councils and Māori will work together;
 - 26.2 establishing joint committees and advisory boards;
 - 26.3 providing for iwi to appoint iwi representatives on council committees with or without voting rights; and/or
 - 26.4 employing cultural advisory staff and providing iwi and/or Māori organisations with financial assistance to be involved in planning by councils.
27. Other models for participation may be established through legislation, such as the Independent Māori Statutory Board in Auckland and the current provision for Ngāi Tahu appointees to Environment Canterbury. Treaty settlement legislation also establishes a range of co-management structures and mechanisms with joint iwi and council membership.
28. The Department does not monitor the effectiveness of councils’ engagement with Māori in local government processes. However, from previous engagement with Te Puni Kōkiri on potential barriers to Māori participation in local government, we understand council practices and attitudes to providing opportunities for Māori participation are inconsistent across the country.
29. LGNZ has advised that out of the 78 councils, 81 per cent have structured arrangements with Māori. 40 per cent of councils have a relationship agreement, and 23 per cent of councils use co-governance or joint management agreements.
30. Requirements under different Acts provide for the involvement of Māori groups in different ways. For example, the Resource Management Act 1991 and Treaty settlement legislation focus on the rights of mana whenua groups to a greater extent than on Māori in general, in recognition of the relationship of Māori and their culture and traditions with their ancestral land, water and other tāonga. In contrast, the LGA02 and LEA do not differentiate between mana whenua groups and Māori whose rohe is outside the district or region.

Can Māori electors on the Māori roll participate in the decision to create a Māori ward?

31. All electors can participate in polls, including those on the Māori electoral roll. Approximately 55 per cent of Māori enrolled to vote are on the Māori roll, with the remaining 45 per cent on the general roll¹.

Does the provision of a poll create a bias that disadvantages Māori?

32. Given the inherent tendency for poll processes to favour opposition to proposals (discussed in paragraphs 17 to 20) and the history of poll results to date, it is clear that the arrangements are an obstacle to the establishment of separate Māori representation. Whether that obstacle constitutes a bias that disadvantages Māori, depends on how the opportunity for separate Māori representation is perceived:
- 32.1 If Māori wards or constituencies are seen as improving the fairness of the local government system or resulting in a benefit to Māori, then the poll requirement does disadvantage Māori. However it is not clear that separate Māori representation will always benefit Māori interests, or be wanted by the majority of Māori within a district. If separate representation is sometimes a benefit and sometimes not, the question becomes how that decision should be made and by whom.
- 32.2 If separate Māori representation is viewed as an inherently neutral electoral option available to communities, then the poll mechanism would be seen as disadvantaging Māori because it favours the opposition of proposals.
- 32.3 If Māori electors are viewed as a distinct community of interest, which may require separate wards/constituencies for effective representation, (i.e. the same considerations that apply to geographic communities of interest) then the poll mechanism is an inappropriate mechanism that disadvantages Māori. Incorporating or aligning consideration of separate Māori representation with the process for representation reviews would be the appropriate mechanism under this view.
- 32.4 However, if separate Māori representation is seen as a mechanism to enable effective participation of Māori in decision-making at the local government level, the poll mechanism does act to disadvantage Māori. If this is an important objective of such arrangements, a range of further issues need to be considered including alternative mechanisms for establishing such representation, and how separate representation should work with other mechanisms to facilitate Māori participation, both generally and by mana whenua groups.

¹ As at the most recent results of the Māori Electoral Option in 2013.

Next steps

There are a number of issues we could investigate further if desired

33. There are a number of issues and possible courses of action that officials could investigate further if you wish. If you wish to explore options in relation to Māori wards and constituencies, further work could include:
- 33.1 Research to compare perspectives and experiences in those regions with Māori constituencies with those within regions with other Māori participation mechanisms such as Auckland (Independent Māori Statutory Board), Hawke's Bay (statutory joint planning committee), Canterbury (Government appointed iwi representatives) and Wellington (voluntary joint planning committee).
 - 33.2 Investigation of options to reduce the ease with which polls can overturn council resolutions to create Māori wards/constituencies. Options might include altering the petition threshold required to trigger a poll, changing the result needed to overturn the council's decision, or limiting participation in polls to electors on (or eligible to be on) Māori rolls.
 - 33.3 Investigation of how consideration of separate Māori wards/constituencies could be integrated or aligned with the representation review process.
34. If you wanted us to explore options for improving Māori participation in local government decision-making generally, this could include consultation with the local government sector and Māori on the desirability of both:
- 34.1 stronger legislative requirements for councils to establish effective mechanisms for Māori participation in local government decision-making; and
 - 34.2 non-legislative programmes to support/promote improved practice in terms of voluntary arrangements between councils and Māori.

We would welcome the opportunity to discuss your aspirations for Māori representation further

35. Officials can discuss with you how you wish to proceed in relation to these issues, including the prioritisation and timing of any further work you want us to undertake.

Recommendations

36. We recommend that you:

- a) note the information in this briefing;
- b) discuss with officials any further work you would like to be undertaken; Yes/No

Copy to Associate Minister

37. Please indicate if you would like a copy of this briefing to be forwarded to Yes/ No
the Associate Minister of Local Government.

Rachel Groves

Rachel Groves
Policy Director

*Please send to PMO &
Hon K Davis CM*

Nanaia Mahuta

Hon Nanaia Mahuta
Minister of Local Government

28/3/2018

Released under the Official Information Act 1982

Appendix A: Current legislative processes

Separate Māori wards and constituencies (sections 19Z – 19ZH of the Local Electoral Act 2001)

- A proposal for separate Māori elected representation on a local authority may be initiated at any time by:²
 - a resolution of the local authority to establish such representation; or
 - a poll of electors of the local authority, that may be initiated by:
 - a petition signed by 5 per cent of electors in response to the resolution to establish such representation; or
 - a petition of 5 per cent of electors, at any other time; or
 - a resolution of the local authority to hold the poll.
- The result of the poll is binding for two elections. If the proposal is defeated, Māori wards or constituencies cannot be established for the next two elections. If Māori wards or constituencies are established, the same processes can be used to propose they be discontinued, but only after two elections.
- If Māori wards or constituencies are required to be established or disestablished as a result of these processes, the local authority must undertake a representation review that reflects the changed context before the relevant triennial election.

Representation reviews (sections 19H-19Y of the Local Electoral Act 2001)

- Local authorities are required to undertake a representation review at least every six years. The review determines:
 - the total number of members to be elected at the next triennial election;
 - whether they will be elected:
 - wholly at large (i.e. across the whole district or region); or
 - partly at large and partly from wards/constituencies; or
 - solely from wards/constituencies; and
 - the names, boundaries and elected membership of any wards/constituencies.
- The predominant criteria for determining ward/constituency boundaries and representation are:
 - *fair representation* – the population served by each elected ward/constituency member must generally be within 10 per cent of the average over the whole district/region;³ and
 - *effective representation of communities of interest* – ensures that distinct communities of interest are not split between several wards or constituencies.
- Local authorities are required to initiate a formal consultation process (with public submissions) by 8 September in the year before the triennial election. After the local authority has considered submissions and notified its finalised proposals, there are further rights of appeal or objection that must be determined by the Commission.⁴

² While the proposal can be initiated at any time during the electoral cycle, the date on which the outcome of the proposal is finalised determines whether it will apply from the next triennial election, or from the election after that.

³ Departures from the 10 per cent rule are allowed to provide for isolated communities and representation of distinct communities of interest.

⁴ The Commission is required to determine all appeals and objections by 10 April in the year of the election, to allow time for the preparation of electoral rolls and administrative matters.

Appendix B: Table of council poll results on creating Māori wards or constituencies

Date	Council	For	Against	% For	% Against	Outcome
May 2003	Opotiki District	678	1294	34%	66%	Lost
October 2004	Papakura District	1772	8870	17%	83%	Lost
October 2004	Taranaki Regional	4456	33154	12%	88%	Lost
October 2007	Whakatane District	2894	6727	30%	70%	Lost
April 2012	Waikato District	2520	10113	20%	80%	Lost
May 2012	Wairoa District	1210	1306	48%	52%	Lost
May 2013	Hauraki District	1015	4249	19%	66%	Lost
May 2015	New Plymouth District	4285	21053	17%	83%	Lost
October 2016	Wairoa District	1727	1468	54%	46%	Won

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Appendix C: Benefits of Māori wards identified by the Department

The 2009 case study of the Bay of Plenty Regional Council noted the following positive themes:

- Having Māori wards is recognition of Māori rights to political representation and a commitment to respecting Māori as a partner to the Treaty of Waitangi.
- Having a large Māori population encourages the need to have Māori representation at the governance level.
- Māori constituencies give greater expression to Māori aspirations and interests. With elected representatives specifically advocating on behalf of their Māori constituents, Māori had the ability to express their own world view. It was claimed that Māori world views now have a much stronger presence within all levels of council in large part because of having Māori councillors. "It has fundamentally altered the debate at the top table".
- Gave Māori the power to get within the "circle of influence" and lobby directly to the decision-makers. One councillor stated that "it's not about the numbers but about having the opportunity and the voice to build awareness and influence others around Māori issues".
- Māori have the ability to represent and advocate Māori interests among the decision makers not through memos or advisory bodies but face to face around a table of equals.
- Māori issues are much more visible within council thinking and processes. Every council decision has Māori input with Māori representation at the council table which is a major shift in the decision-making process. Having Māori councillors has "rocked the boat in a positive way".
- Māori councillors have been able to educate and influence non-Māori councillors around Māori aspirations and ways of working. Council capability in dealing with Māori issues has grown through better awareness and understanding.
- Awareness has grown amongst elected members and staff that Māori are not one homogenous group but have multiple interests operating at different levels.
- A sense that non-Māori within Council, particularly at the operational level, feel more confident and supported around engaging with Māori.
- There is a direct pathway for Māori within the community to be able to have their interests and issues raised at the highest level of council. Māori councillors are perceived to be much more accessible to Māori constituents than non-Māori councillors.
- The issue of Māori representation has shifted from the "too hard basket" to the "endless opportunities basket". This new approach is opening up new spaces of dialogue beyond just consultation and engagement to co-management and integrated planning.
- The Māori seats have helped to lower levels of frustration between Council and Māori therefore not as much energy or time is being spent on "getting around each other".



Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: **Māori representation on Environment Canterbury**

Date: 27 March 2018

Key issues	
This briefing responds to your request for advice about how Māori representation on Environment Canterbury could be provided for following the 2019 local authority elections. Potential options to include Māori representation going forward could include options such as the creation of a Māori constituency under the Local Electoral Act 2001, or legislative options such as a Local Bill or a Government Bill.	
Action sought	Timeframe
Note the options outlined in this briefing; and Indicate any further work you wish officials to undertake on this issue.	At your convenience

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
John Sutton	Principal Policy Analyst	021 593 975		✓
Rachel Groves	Policy Director	04 495 6065	027 605 7372	
Return to	Lisa Mackay, Level 9, 45 Pipitea Street			
Cohesion reference	3W2DU3RAJ5R2-1905231989-872			
Ministerial database reference	LG201800445			

Purpose

1. This briefing provides information on potential options for Māori representation on Environment Canterbury (ECan) for when it returns to having a fully-elected governing body at the 2019 local elections.

Background

2. ECan is in the process of conducting a representation review, required as part of its return to a fully-elected governing body prior to the 2019 local authority elections. There are currently no options that would ensure Māori representation on ECan is in place before the 2019 elections.
3. Ngāi Tahu, as mana whenua for the Canterbury region, has had one appointed representative on ECan since 2011, and has had two appointed representatives since 2016. This representation was prescribed in the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 and the Environment Canterbury (Transitional Governance Arrangements) Act 2016. There is no specific legislative provision for this representation to continue beyond the 2019 elections.
4. ECan has previously expressed support for maintaining Ngāi Tahu representation on the Council. ECan views Ngāi Tahu membership as essential to establishing an integrated regional resource management and earthquake recovery framework.

Māori representation under the Local Electoral Act

5. The Local Electoral Act 2001 (LEA) provides separate processes for considering proposals to establish Māori wards and constituencies, and for reviewing ward and constituency boundaries, overall membership, and representation. Further details about these processes, as well as examples of councils that have created a Māori constituency, are provided in our briefing to you titled *Māori representation and participation* [briefing LG201800444 refers].

The LEA would allow Environment Canterbury to propose a Māori constituency for the 2022 elections

6. At this stage, it is too late for ECan to propose a Māori constituency that will take effect prior to the 2019 local elections. If a Māori constituency was successfully created, the first opportunity for voters to elect a councillor would be for the 2022 local elections.
7. While the LEA process would allow for a Māori constituency, based on current Canterbury electoral population data this would only allow for one member to be elected from a Māori constituency. This is compared with Ngāi Tahu's current two appointees.

The Local Electoral Act does not provide for mana whenua representation

8. A Māori constituency under the LEA would not guarantee that any councillor who was elected from that constituency represented Ngāi Tahu, because all electors on the Māori roll would be eligible to vote irrespective of iwi affiliation. ECan has stated this would dilute mana whenua contribution to the decision-making process.
9. There are no provisions in the LEA that could require candidates or electors in Māori wards or constituencies to be mana whenua representatives. While, in theory, such arrangements could be introduced, this would require an additional enrolment

process. This is because the current process does not require electors to identify iwi affiliations. It is also unlikely that elections would be accepted as an appropriate process for selecting mana whenua representatives.

Ngāi Tahu and ECan oppose the creation of a Māori constituency under the LEA

10. Both Ngāi Tahu and ECan agree that using the current provisions of the LEA to create a Māori constituency would not be appropriate and may damage the existing relationship.
11. ECan has indicated it would only reconsider this decision if Ngāi Tahu changed their position on the creation of a Māori constituency.

Potential options to address ongoing representation

12. A table outlining the risks and opportunities associated with each of the following scenarios is attached as **Appendix A**:
 - *the status quo*: ECan would be subject to the same requirements as all other local authorities under the Local Government Act 2002, and could explore options to:
 - create a Māori constituency (subject to a poll) to take effect from the 2022 elections;
 - promote voter turnout and work with Ngāi Tahu to encourage its members to stand in the next election; or
 - appoint Ngāi Tahu nominees to some or all ECan committees, with or without voting rights, each term.
 - *A local bill* could:
 - create permanent Māori constituencies; or
 - provide for Ngāi Tahu nominees to be appointed to ECan itself; or
 - provide for Ngāi Tahu nominees to be appointed to permanent seats on one or more council committees on an ongoing basis.

Committee appointees could be given voting rights and the legislation could require that a committee be delegated full decision-making powers on specified matters.
 - *A government bill*: could achieve the same range of outcomes as a local bill. For example, to prolong the Ngāi Tahu representation arrangements provided under the current Environment Canterbury (Transitional Governance Arrangements) Act 2016.

Recommendations

13. We recommend that you:
 - a) **note** the options outlined in this briefing; and
 - b) **indicate** any further work you wish officials to undertake on this issue.

Yes/No

Copy to Associate Minister

14. Please indicate if you would like a copy of this briefing to be forwarded to the Associate Minister of Local Government. Yes/No

Rachel Groves

Rachel Groves
Policy Director

① I would like an options paper prepared for Crown Māori Relations and committee and its readiness for consultation

Copy to Mia Davis
& PMO

Nanaia Mahuta

Hon Nanaia Mahuta
Minister of Local Government

28/03/2018

② In the option for a Government Bill can the Dept. provide advise on whether there may also be another measure to secure Ngāi Tahu representation

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Appendix A: Possible scenarios for Māori representation on Environment Canterbury beyond 2019

Options	Description	Guaranteed Ngāi Tahu representation?	Risk	Opportunity
<p>Status Quo (i.e. from 2019)</p>	<p>Environment Canterbury would be subject to the same requirements under the Local Electoral Act 2001 as any other council, and could look to achieve Ngāi Tahu representation on the Council in the following options:</p> <ul style="list-style-type: none"> a) deciding to promote the creation of a Māori constituency (this would still be subject to a poll of all electors); b) promoting voter turnout and working with Ngāi Tahu to encourage its members to stand as candidates in the next local election; and c) appointing Ngāi Tahu nominees to some or all committees of the Council, with or without voting rights, each term. 	<p>No.</p>	<p>It is already too late for Environment Canterbury to initiate the LEA processes to propose a Māori constituency for the 2019 elections, so a) is not a feasible option for 2019-22.</p> <p>Without Ngāi Tahu representation from 2019, Environment Canterbury may lose momentum in establishing an integrated regional resource management and earthquake recovery framework.</p> <p>Neither a constituency (option a)) or greater electoral participation by Canterbury Māori (option b)) will guarantee that any Māori councillor elected would represent Ngāi Tahu.</p>	<p>Environment Canterbury could use this opportunity to discuss the need for Māori representation with its communities. This would contribute to ongoing discussions about the Treaty in local government. This would also build Environment Canterbury's relationship with Ngāi Tahu by working with them in anticipation of the next elections.</p> <p>Appointing Ngāi Tahu members to relevant committees (option c)) may enable participation in decision-making that is more finely tuned to the roles responsibilities of each committee (N.B. elected Māori representation would not preclude appointments to committees)</p>

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<p>Local Bill</p>	<p>A Local Bill could provide a level of flexibility to fit local circumstances. Options could include:</p> <ul style="list-style-type: none"> a) creating permanent Māori electoral representation (as is the case in the Bay of Plenty); or b) providing for Ngāi Tahu nominees to be appointed to the Council (as is the case already for the region up to 2019); or c) providing for the creation of a statutory Māori board, similar to the Independent Māori Statutory Board model in Auckland; or d) providing a permanent seat on one or more specified council committees, with or without voting rights; or e) requiring the committee(s) to be delegated full decision-making powers (as is the case in Taranaki and the Hawke's Bay). 	<p>No for option a) but Yes for other options.</p>	<p>It is too late for a Bill to be introduced and enacted in time for the representation review process for 2019 to be completed. Option a) could only apply from 2022.</p> <p>Option c) may be an unnecessarily indirect and expensive approach in a region with a single mana whenua group.</p>	<p>Environment Canterbury could use this opportunity, through consultation on a Bill, to engage its communities on the need for Māori representation. This would also allow Environment Canterbury to create a governance arrangement that is unique and more fit-for-purpose for the region.</p>
<p>Government Bill</p>	<p>This could provide the same options as a Local Bill, or could prolong Ngāi Tahu representation arrangements as provided under the current Environment Canterbury (Transitional Governance</p>	<p>No for option a) but Yes for other options.</p>	<p>As above, option a) could not be implemented in time for the 2019 elections.</p> <p>This option would perpetuate perceptions of Government intervention in the governance of the</p>	<p>This could continue to contribute to the promotion of the recovery and development of Canterbury, and existing recognition of Ngāi Tahu as a partner in the governance of the region.</p>

	Arrangements) Act 2016.		Canterbury region. It would also create a precedent for Government intervention where the lack of mana whenua representation may prevent a council from fulfilling its statutory responsibilities.	
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Local Government briefing

Hon Nanaia Mahuta
Minister of Local Government

Title: **Final Cabinet paper: Mechanisms for Māori participation in local government**

Date: 28 May 2018

Key issues	
<p>Attached is the final version of the Cabinet paper <i>Mechanisms for Māori participation in local government</i>. This briefing seeks your approval to lodge the paper for consideration by the Cabinet Crown/Māori Relations Committee on 26 June 2018.</p> <p>This briefing also provides information about the five councils that recently held polls on creating Māori wards, and information relating to the poll threshold, in response to your request of 23 May 2018.</p>	
Action sought	Timeframe
<p>Review the attached amended Cabinet paper following Ministerial consultation; and</p> <p>Approve the attached Cabinet paper for submission to CabNet.</p>	Before 10am 21 June 2018

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
Nick Law	Policy Manager	04 460 2264	027 594 1719	✓
Raj Krishnan	General Manager Policy	04 494 0572	021 593 973	

Return to	Lisa Mackay, Level 9, 45 Pipitea Street
Cohesion reference	3W2DU3RAJ5R2-1905231989-1228
Ministerial database reference	LG201800671

Purpose

1. This briefing provides a final draft of the Cabinet paper *Mechanisms for Māori participation in local government* for discussion at the Cabinet Crown/Māori Relations Committee (CMR) on 26 June 2018. Should you agree, the final Cabinet paper (**Appendix A**), A3 diagram for discussion, and supplementary background information, are ready for submission to CabNet. Draft talking points to support your discussion at CMR are attached as **Appendix B**.
2. At the Officials meeting on 23 May 2018 you requested additional information relating to the poll threshold. This information is attached as **Appendix C**.

We have reflected the feedback received during consultation in the Cabinet paper and the paper is ready for submission to CabNet

3. On 4 May 2018, we provided you with a draft of the Cabinet paper and attachments to facilitate discussion with CMR for your review and consultation. The final Cabinet paper incorporates feedback received from your Ministerial colleagues and Crown/Māori Relations portfolio agencies. Feedback was generally supportive of the content of the paper for discussion.
4. Changes that have been made to the paper as a result of feedback include:
 - High-level information about barriers to Māori participation and the benefits of increased Māori engagement in local government has been added to the supplementary information.
 - Additional information about the impact of resourcing on the effectiveness of models of Māori participation arrangements.
 - Clarification of the legislative framework to provide for Māori participation in local government.
 - Inclusion of a section noting potential future financial implications for agencies, should subsequent work go ahead.
 - Minor clarifications to information on mana whenua and non-mana whenua group participation.
 - An additional option requiring a mandatory baseline for council engagement with Māori, while providing for regional variation, has been added to the *Capability and capacity* section of the A3.
5. Issues raised during consultation that have not been incorporated include:
 - Suggestions that barriers to participation and benefits of increased engagement should be discussed in the body of the Cabinet paper, to keep the primary basis of the discussion focused on the A3. These suggestions have instead been incorporated into the appendices.
 - Additional detailed suggestions that would be relevant to a future work programme but not to initial discussions. Examples include changes outside the Local Government portfolio, linkages to the work of other agencies that is currently underway, and future consultation requirements.
 - The proportionality of Māori elected members in comparison to the Māori population. This has not been included as the use of this measure may not sufficiently portray how well Māori communities are represented.

6. You requested information on the latest polls on separate Māori representation proposals. A table outlining poll results and voter turnout for the five councils that have recently held polls has been included in the supporting information to the Cabinet paper.

You requested information on the threshold for polls

7. The thresholds for petitions that trigger polls vary across local government legislation, and in some cases have been amended over time depending on central government priorities. **Appendix C** provides information on the principles behind the current five per cent threshold to trigger a poll on a Māori ward proposal and examples of current and former poll thresholds ranging from five to 20 per cent.

Next steps for discussion of the paper

8. Should you agree to the final Cabinet paper, your office will submit the paper by 10am 21 June 2018 for consideration by CMR on 26 June 2018.
9. Should you wish to submit this paper to an earlier Cabinet committee, the table below provides submission and meeting timeframes for alternate committee meetings.

Submission deadline	Cabinet committee	Meeting date
7 June 2018	Cabinet Government Administration and Expenditure Review Committee (GOV)	12 June 2018
	Cabinet Economic Development Committee (DEV)	13 June 2018
14 June 2018	Cabinet Economic Development Committee (DEV)	20 June 2018

10. The attached Cabinet paper includes two attachments to support a discussion with CMR Ministers on Māori participation in local government. This includes an A3 diagram intended to be the core conversation piece, and supplementary background information on Māori representation and participation arrangements.

Recommendations

11. We recommend that you:

- a) **Review** the attached amended Cabinet paper following Ministerial consultation; and Yes/No
- b) **Approve** the attached Cabinet paper for submission to CabNet for 21 June 2018 for consideration by CMR on 26 June 2018. Yes/No

Copy to Associate Minister

12. Please indicate if you would like a copy of this briefing to be forwarded to the Associate Minister of Local Government. Yes/No


Raj Krishnan
General Manager Policy

please ensure a copy
Deputy PM of the paper goes to
Ministers Davis, Little, Jackson,



Hon Nanaia Mahuta
Minister of Local Government

13/06/2018

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Appendix A: Final draft Cabinet paper: *Mechanisms for Māori participation in local government*

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Office of the Minister of Local Government

Chair

Cabinet Crown/Māori Relations Committee

Mechanisms for Māori participation in local government

Proposal

1. I propose: the Cabinet Crown/Māori Relations Committee (the Committee):
 - 1.1 discuss the barriers to Māori participation in local government; and
 - 1.2 give direction as to the scope of further work to address Māori representation and improve iwi, Māori and mana whenua participation in local decision-making.

Executive Summary

2. The Crown has responsibilities to hapū, iwi and Māori as a partner to Te Tiriti o Waitangi – the Treaty of Waitangi (the Treaty). As Minister for Local Government, I am responsible for ensuring the framework for local government is robust and implemented appropriately. The recent Crown/Māori Relations hui highlighted that elements of the current mechanisms for Māori participation in local government are ineffective or inconsistently applied across Aotearoa.
3. In this paper I seek a discussion with the Committee about the current mechanisms for Māori participation in local government. There are three broad aspects of Māori participation in local government that the Committee may wish to consider:
 - 3.1 Māori (electoral) representation in local government;
 - 3.2 Māori participation in local government decision-making; and
 - 3.3 recognition of mana whenua in local governance.
4. The paper and attachments provide a high level picture of these mechanisms and supplementary information to support the Committee in its consideration. As part of this discussion I seek an indication of the Committee's interest in any further work on these issues.

Background

An effective Crown-Māori relationship requires an effective Crown-Māori-local government relationship

5. A number of obligations of the Crown are devolved to local government by Parliament. These obligations may be delegated (in which case the Crown retains residual responsibilities) or transferred, to local authorities. These arrangements can be altered at any time by Parliament.
6. The Crown has responsibilities to Māori as a partner to the Treaty. Local government is not a part of the Crown and is not a partner to the Treaty. However, in setting the statutory framework for local government, the Crown must give effect to its obligations as a Treaty partner. The Crown's Treaty responsibilities are only applied to local government to the extent they are expressed in statute.

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7. In practice the relationship between the Crown and local government is blurred, with iwi seeing local government as an extension of the Crown's Treaty partnership. Treaty settlements and other arrangements have also established new mechanisms that provide for a range of approaches for how councils engage with iwi and hapū on the management of particular natural resources.

Legislative requirements to provide for Māori participation in local decision-making

8. Alongside Treaty settlements, a number of local government-related Acts include requirements for councils to involve Māori in decision-making to ensure local authorities are acting in ways that recognise and respect the Crown's obligations under the Treaty. For example, the Local Government Act 2002 requires each council to "establish and maintain processes to provide opportunities for Māori to contribute to the decision-making of the local authority", and to "consider ways in which it may foster the development of Māori capacity to contribute to" those processes.
9. Councils implement these requirements in a variety of ways. These include:
 - 9.1 establishing relationship agreements to set out how councils and Māori will work together;
 - 9.2 establishing joint committees and advisory boards;
 - 9.3 providing for iwi to appoint iwi representatives on council committees with or without voting rights;
 - 9.4 providing iwi and/or Māori organisations with financial assistance to be involved in planning by councils; and
 - 9.5 employing cultural advisory staff.
10. Changes to the Resource Management Act 1991 in 2017 strengthened iwi participation requirements in local authority plan-making processes. Mana Whakahono ā Rohe: Iwi Participation Arrangements were added to provide a mechanism for iwi and hapū and local authorities to set out the ways in which iwi and hapū participate in resource management and decision-making. The attachment *Supplementary Background Information: Current models to provide for Māori participation in decision-making*, provides more detailed information on existing arrangements (Appendix B).

The current process for creating Māori wards and constituencies has not generally been effective in achieving Māori representation

11. The only mechanism for Māori electoral representation in local government is the creation of Māori wards or constituencies. In 2002, the Local Electoral Act 2001 was amended to provide councils and electors with the option of establishing Māori wards (in the case of territorial authorities) and constituencies (in the case of regional councils).
12. This amendment was modelled on a local Act, the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001, and provided the option of similar arrangements for all local authorities. The intention was to enable councils, or their communities, to establish separate Māori representation in response to the needs of the local community. However, proposals for Māori wards and constituencies are generally subject to a poll of all electors, which has repeatedly proved to be a barrier to implementing such representation arrangements.

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13. Fourteen out of the fifteen council resolutions to create separate Māori representation since the legislation was enacted have been defeated at a poll. The five councils that resolved in 2018 to have Māori wards received petitions of electors, triggering a poll, all of which resulted in the community voting against Māori wards. The results of such polls are binding for the next two terms (meaning another poll cannot be held for six years).
14. There have been several proposals by local government and Members of Parliament to align the process for separate Māori representation with the existing review process for other representation arrangements (for example, creating a new geographical ward). This process involves formal public consultation, but does not include a poll requirement. Councils' subsequent decisions must be referred to the Local Government Commission if appeals or objections are received. The Local Government Commission considers the objective by applying statutory criteria. There is a right of appeal to the High Court against a Local Government Commission decision on points of law only.

This is an appropriate time for a discussion about the effectiveness of the current mechanisms

15. Conversations at the Crown/Māori Relations hui showed an interest in building opportunities for Māori to participate more in local governance. Concerns were noted that the effectiveness of Māori representation and participation arrangements is inconsistent between local authorities. Many local authorities have also expressed interest in nationally consistent frameworks to support them in implementing Māori participation arrangements.
16. These issues also have connections with the current Local Government (Community Well-being) Amendment Bill, which seeks to restore references to social, economic, environmental and cultural well-being into the statutory purpose of local government. This Bill emphasises the value this Government places on supporting civic engagement and participation in local democracy.

I propose the Committee discuss mechanisms for Māori participation in local government

17. The attachments to this paper discuss barriers to implementing the existing Māori participation mechanisms in local government. This information is intended to support a discussion with the Committee on Māori participation in local government. These attachments include:
 - 17.1 *Potential future directions for Māori representation and participation in local government:* This outlines some key questions, guiding principles, barriers to Māori participation, and a range of approaches to addressing these barriers;
 - 17.2 *Supplementary background information:*
 - 17.2.1 *Current Models to provide for Māori participation in decision-making:* information on the current models that provide for Māori participation in local government;
 - 17.2.2 *Participating in the right issues:* information on common situations when Māori participation is sought in local government decision-making and some objectives and benefits;
 - 17.2.3 *Separate Māori representation and the poll requirement:* information on separate Māori representation in local government; and

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- 17.2.4 A set of maps showing the number of members that would be elected from Māori wards/constituencies in each council if they were established.

There are some key questions underpinning this discussion

18. The Committee may wish to consider the three broad themes of Māori participation in local government during discussion of the attachments. For example, some questions the Committee may wish to discuss include:
- 18.1 Māori (electoral) representation in local government;
- 18.1.1 Do the existing arrangements adequately reflect and uphold the core principles of the Treaty and local democracy?
- 18.1.2 Who should make decisions about Māori electoral representation in local government?
- 18.2 Māori participation in local government decision-making;
- 18.2.1 Are a range of participation options more effective than electoral representation arrangements?
- 18.2.2 What support do local authorities and/or Māori need to adequately provide for Māori participation in decision-making?
- 18.3 recognition of mana whenua in local governance;
- 18.3.1 Which Māori groups should be involved in which decisions?
- 18.3.2 What are the Crown's obligations to lead/direct Māori representation and participation in local government decisions?
19. As part of this discussion I seek an indication from the Committee of its level of interest in further investigating Māori participation mechanisms in local government, and, if required, an indication of areas for further advice or clarification. I will direct officials to investigate any identified areas of interest to enable me to report back to the Committee at its meeting in September 2018.

Consultation

20. The following agencies have been consulted on this paper: Te Puni Kōkiri, the Ministries of Business, Innovation and Employment, Primary Industries, Justice, the Environment, the Department of Conservation, and the Department of the Prime Minister and Cabinet (Policy Advisory Group). The Crown/Māori Relations officials group has also been consulted.
21. If further work proceeds as a result of this discussion, wider consultation is likely to be necessary, including with iwi, hapū, and Māori more broadly. The details of further consultation are likely to depend on any decisions arising from this discussion.

Financial implications

22. There are no Crown financial implications arising from this paper. Any financial implications resulting from further work will be addressed in future papers.

23. If further work proceeds it may have implications for the Department of Internal Affairs and the Department of Conservation. This is because the Minister of Local Government and the Minister of Conservation may fulfil the functions and responsibilities of local authorities in certain circumstances under the Local Government Act 2002 and the Resource Management Act 1991.

Human rights, gender implications and disability perspectives

24. The content of this paper is not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. There are no gender or disability implications arising from this paper.

Legislative implications

25. Any legislative implications depend on the nature of any work that follows.

Publicity

26. I do not intend to proactively release this paper or issue a media statement following the Committee's discussion.

Recommendations

27. The Minister of Local Government recommends that the Cabinet Crown/Māori Relations Committee (the Committee):
1. note and discuss this paper and the attachments;
 2. indicate direction and scope of any agreed further work to address Māori representation and improve iwi, Māori and mana whenua participation in local decision-making; and
 3. note that the Minister of Local Government will report back to the Committee in September 2018 on the proposed process and timing for any further work agreed by the Committee.

Authorised for lodgement

Nanaia Mahuta

Minister of Local Government

Appendix B: Supplementary background information

Current models to provide for Māori participation in decision-making

Legislative requirements

- The Local Government Act 2002 requires councils to “establish and maintain processes to provide opportunities for Māori to contribute to the decision-making of the local authority”, and to “consider ways in which it may foster the development of Māori capacity to contribute to” those processes. A range of other local government-related Acts, including Treaty settlement legislation and the Resource Management Act 1991 (RMA), include principles or process requirements to ensure councils involve Māori in decision-making.
- Councils implement these requirements in a variety of ways. These may include:
 - establishing relationship agreements to set out how councils and Māori will work together;
 - establishing joint committees and advisory boards;
 - providing for iwi to appoint iwi representatives on council committees with or without voting rights; and/or
 - employing cultural advisory staff and providing iwi and/or Māori organisations with financial assistance to be involved in planning by councils.

Treaty settlements

- Treaty settlements are agreements between the Crown and a Māori claimant group to settle all of that claimant group's historical claims against the Crown. As well as confirming historical fact and providing for a Crown apology, settlements usually also provide for cultural, financial and commercial redress.
- Treaty settlements have also established new mechanisms with a range of approaches for how councils engage with Māori on the management of natural resources, often focusing on a particular area. Common forms of redress include: co-governance entities and arrangements to contribute to planning requirements; statutory acknowledgements of links mana whenua groups have with specified natural resources; relationship redress, which can create memorandums of understanding and other agreements with settled groups; and Rights of First Refusal, which allow settled groups the right to purchase certain surplus Crown land at market value.
- Te Upoko Taiao, Greater Wellington Regional Council's natural resource management committee, is an example of an arrangement finalised by a Treaty settlement. Te Upoko Taiao is made up of six elected regional councillors and seven elected mana whenua members, and is co-chaired by one council representative and one mana whenua representative. It is responsible for overseeing the development of regional plans and overseeing the Council's resource management consenting and monitoring responsibilities. It was established in 2009 and made permanent by Treaty settlement in March 2018.

Resource Management Act 1991

- Part 2 of the RMA requires anyone exercising functions and powers under the RMA to recognise Māori values and take into account the principles of Te Tiriti o Waitangi - the Treaty of Waitangi (the Treaty).
- The RMA provides for Joint Management Agreements between iwi and hapū and local authorities to jointly manage natural resources. Decisions under these agreements have the effect of being decisions made by the local authority.
- Changes to the RMA in 2017 strengthened iwi participation requirements in local authority plan-making processes. Mana Whakahono ā Rohe: Iwi Participation Arrangements provide a mechanism for iwi, hapū and local authorities to set out the ways in which Māori participate in resource management and decision-making

Local Electoral Act 2001

- The Local Electoral Act 2001 provides a process (discussed in further detail below) for creating separate Māori wards and constituencies.
- The report of the Royal Commission on the Electoral System in 1986 noted the purpose of separate Māori representation is to prevent the exclusion of Māori from decision-making processes by guaranteeing representation in the legislature. It also determined that having separate Māori representation does not violate or deny any fundamental rights of the non-Māori population.
- The Bay of Plenty Regional Council is an example of separate Māori representation. The Council has three Māori constituencies, calculated using a formula and elected by voters on the Māori electoral roll. It was established by the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001, prior to the 2002 amendments to the Local Electoral Act 2001. The seats cannot be specifically reserved for mana whenua or non-mana whenua representatives. The Bay of Plenty Regional Council also has the Komiti Māori, made up of three Māori elected members, three general elected members, and the Council chair. Its role is to set the Bay of Plenty Regional Council's operational direction for legislative obligations to Māori.

Other models have been provided for in legislation

- In 2010, Environment Canterbury's councillors were replaced by seven commissioners. The relevant legislation provided that the commissioners must have collective knowledge and expertise in certain matters, including tikanga Māori, as it applies in the Canterbury region.
- In 2010, the Government established the Independent Māori Statutory Board (the Board) for the new Auckland Council. The Board's purpose is to promote issues of significance for the mana whenua and Māori of Auckland to assist Auckland Council in its decision-making, and in carrying out existing legislative requirements. Two Board members sit on each of Auckland Council's committees that deal with the management and stewardship of natural and physical resources. The Board has seven mana whenua representatives and two mataawaka representatives
- Auckland Council must consult with the Board on matters affecting mana whenua and Māori. It must also take into account the advice of the Board in relation to ensuring that the input of mana whenua and Māori are reflected in strategy, policies or plans.

Potential barriers to Māori participation in local government

- The effectiveness of these models and how councils implement them varies across the country. Feedback from the Crown/Māori Relations hui indicates there may be a number of potential barriers to effective Māori participation. These include:
 - Limited resources for both councils and Māori can restrict the level of engagement and involvement in consultation. Smaller councils with limited resources may struggle to engage constructively, while iwi leaders can have difficulties providing input on multiple matters for consultation over more than one council.
 - Council's understanding of, and commitment to, their obligations to provide opportunities for Māori participation is inconsistent across New Zealand.
 - Māori may be unfamiliar with local government processes and the local government framework, leading to unwillingness to take part. Similarly, councils may be unfamiliar with the appropriate ways to consult with Māori and who to consult with, leading to unwillingness to engage with Māori communities.
 - Misalignment of council decision-making timeframes or misunderstanding of Māori tikanga and process can result in Māori not being given enough time to engage fully in consultation processes.
- Councils' attitudes to adopting the currently available models may also vary. Prior to the New Plymouth District Council's attempt to establish a Māori ward in 2015, New Plymouth councillors considered the option of Māori representation on council standing committees. Councillors rejected this option on the basis that the representatives would not be democratically elected.

Participation in the right issues

- Requirements under different Acts provide for involvement of Māori groups in different ways. The rights of mana whenua under the RMA are grounded in the relationship of Māori and their culture and traditions with their ancestral land, water and other tāonga, and through the Treaty.
- The focus on mana whenua responsibility for natural resources may mean both that non-mana whenua are overlooked for consultation, and that all Māori may not be consulted on local government matters that do not relate to natural resources but still affect them. These matters can include those relating to infrastructure, public transport, housing, the management of large council-owned assets such as ports and parks, and regional economic development. As mentioned above, the issue of resourcing is likely to have an impact on the capacity for Māori to be able to respond to any increase in consultation.
- The Local Government Act 2002 and Local Electoral Act 2001 do not differentiate between groups.

The Treaty relationship between the Crown and Māori

- The Crown is a partner to the Treaty, and therefore has direct obligations to Māori. The Crown has devolved a number of responsibilities to local government but is responsible, as the Treaty partner, to ensure that councils are acting in ways that recognise and respect the Crown's obligations under the Treaty.
- Feedback from the Crown/Māori Relations hui has suggested that in practice the line between central and local government is more blurred, with iwi seeing local government as an extension of the Crown's Treaty partnership.
- The Crown has ultimate responsibility for ensuring that Māori participation in individual councils' processes is adequate and at least meets existing legislative requirements. The effectiveness of current Māori participation and representation arrangements is not comprehensively monitored by central government.

There may be wider economic and social benefits to increasing Māori participation at the local government level

- The potential benefits of higher levels of Māori engagement in local government are likely to include: a stronger focus on achieving better local results for Māori; ensuring that a Māori perspective is represented when developing policies and designing services; and tailored consultation and participation mechanisms on council decisions that affect Māori interests.
- Feedback from the Crown/Māori Relations hui indicates that local government and iwi are having difficulties working together to meet deadlines on Provincial Growth Fund proposals due to resourcing and capacity issues. Improving Māori engagement at the local level may increase opportunities for developing regional economies.
- The Māori economy was estimated in 2017 as being worth \$50 billion, with assets largely concentrated in the primary industries sector. Participation in export markets is increasing in finance and business sectors, and in the dairy, forestry, seafood and red meat markets.
- Post Settlement Governance Entities (PSGEs), organisations that receive and manage Treaty settlements on behalf of a Māori claimant group following settlement, are

increasingly focused on social issues. These include providing social and affordable housing and investigating the use of underutilised Māori land. A thriving Māori economy is likely to result in benefits not only for Māori communities, but for the wider regional economies and the national economy.

- Further benefits to wider communities from greater levels of Māori engagement may include provision of holistic services that could benefit the entire community; improved infrastructure in rural and remote areas; and a greater focus on protecting natural resources and improving environmental outcomes.

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Separate Māori representation and the Local Electoral Act 2001 poll requirement

Local Electoral Act 2001 provisions

- There are two different legislative processes for creating Māori wards/constituencies and general wards/constituencies:

Separate Māori wards and constituencies (sections 19Z – 19ZH of the Local Electoral Act 2001)

- A proposal for separate Māori elected representation on a local authority may be initiated at any time by:
 - a resolution of the local authority to establish such representation; or
 - a poll of all electors of the local authority, that may be initiated by:
 - a petition signed by 5 per cent of electors in response to the resolution to establish such representation; or
 - a petition of 5 per cent of electors, at any other time; or
 - a resolution of the local authority to hold the poll.
- The result of the poll is binding for two elections. If the proposal is defeated, Māori wards or constituencies cannot be established for the next two elections. If Māori wards or constituencies are established, the same processes can be used to propose they be discontinued, but only after two elections.
- If Māori wards or constituencies are required to be established or disestablished as a result of these processes, the local authority must undertake a representation review that reflects the changed context before the relevant triennial election.
- The electors of a Māori ward or constituency are those on the Māori roll for Parliamentary elections, who cannot vote for any other ward representatives. Once elected, a member elected by a Māori ward or constituency is under the same obligation to act in the best interests of the region as all governing body members.
- Under the Local Electoral Act 2001 the decision to have a Māori ward is treated as a policy decision, made prior to a representation review. This process is treated in the same way, and with the same thresholds, as a decision on the system of voting. The opportunity for electors to demand a poll on Māori wards or constituencies is based on the principles that elected officials should not make final decisions about electoral arrangements, and that communities are entitled to choose their representation arrangements.

Representation reviews (sections 19H-19Y of the Local Electoral Act 2001)

- Local authorities are required to undertake a representation review at least every six years. The review determines:
 - the total number of members to be elected at the next triennial election;
 - whether they will be elected:
 - wholly at large (i.e. across the whole district or region); or
 - partly at large and partly from wards/constituencies; or
 - solely from wards/constituencies; and

- the names, boundaries and elected membership of any wards/constituencies.
- The predominant criteria for determining ward/constituency boundaries and representation are:
 - *fair representation* – the population served by each elected ward/constituency member must generally be within 10 per cent of the average over the whole district/region; and
 - *effective representation of communities of interest* – ensures that distinct communities of interest are not split between several wards or constituencies.
- Local authorities are required to initiate a formal consultation process (with public submissions) by 8 September in the year before the triennial election. After the local authority has considered submissions and notified its finalised proposals, there are further rights of appeal or objection that must be determined by the Local Government Commission.
- A representation review is treated as an administrative decision on issues including boundaries, the number of councillors, communities of interest, and implementing any previous decisions about Māori wards. Appeals and objections on these administrative issues can be made to the Local Government Commission. The Local Government Commission's decision may also be appealed to the High Court on points of law.

The poll requirement has led to a number of unsuccessful attempts to create Māori representation

- To date, few attempts to establish separate Māori representation have been successful. The following table shows poll results by councils attempting to create Māori wards or constituencies.

Date	Council	For	Against	% For	% Against	Outcome
May 2003	Opotiki District	678	1294	34%	66%	Lost
October 2004	Papakura District	1772	8870	17%	83%	Lost
October 2004	Taranaki Regional	4456	33154	12%	88%	Lost
October 2007	Whakatāne District	2894	6727	30%	70%	Lost
April 2012	Waikato District	2520	10113	20%	80%	Lost
May 2012	Wairoa District	1210	1306	48%	52%	Lost
May 2013	Hauraki District	1015	4249	19%	81%	Lost
May 2015	New Plymouth District	4285	21053	17%	83%	Lost
October 2016	Wairoa District	1727	1468	54%	46%	Won

- In May 2018, five councils held polls on creating Māori wards, following petitions from voters. Each of the polls resulted in a defeat of the proposal. The results of the polls, including voter turnout, are outlined in the table below.

Council	For	Against	% For	% Against	% Turnout
Western Bay of Plenty District	3212	11594	22%	78%	40%
Palmerston North City	6589	14621	31%	68%	37%
Manawatū District	2147	7268	23%	77%	44%
Kaikōura District	246	1002	20%	80%	45%
Whakatāne District	4801	6004	44%	55%	44%

A number of attempts have been made to challenge the poll requirement

- Following an unsuccessful attempt to create a Māori ward at the New Plymouth District Council, then-Mayor Andrew Judd started a petition seeking to align the process of establishing Māori wards for district councils with the process for creating general wards. The petition was presented by the former Minister for Māori Development, Hon Te Ururoa Flavell, in May 2016. It currently sits with the Governance and Administration Committee, which has yet to report on the petition.
- A Member's Bill introduced by Marama Davidson, MP, the Local Electoral (Equitable Process for Establishing Māori Wards and Māori Constituencies) Amendment Bill, also proposed to remove the separate process for dealing with Māori ward and constituency proposals. It was defeated at its first reading on 28 June 2017.
- Local Government New Zealand wrote to Government party leaders on 22 March 2018 expressing support for the removal of the poll requirement when establishing Māori wards and constituencies.
- All of these proposals seek the process for separate Māori representation to be the same as, and integrated with, the representation review process. This process does not require a poll, but may be referred to the Local Government Commission for final decision if objections are received.

The Local Electoral Act 2001 bases the number of potential Māori seats on the local authority's Māori population

- The Local Electoral Act 2001 calculates the number of potential Māori seats available to a council using the following formula:

$$nmm = mepd \div (mepd + gepd) \times nm$$

where—

nmm is the number of Māori ward members

mepd is the Māori electoral population of the district

gepd is the general electoral population of the district

nm is the proposed number of members of the territorial authority (other than the mayor).

The result is rounded to the nearest whole number, and will be rounded to zero if the result is below 0.5.

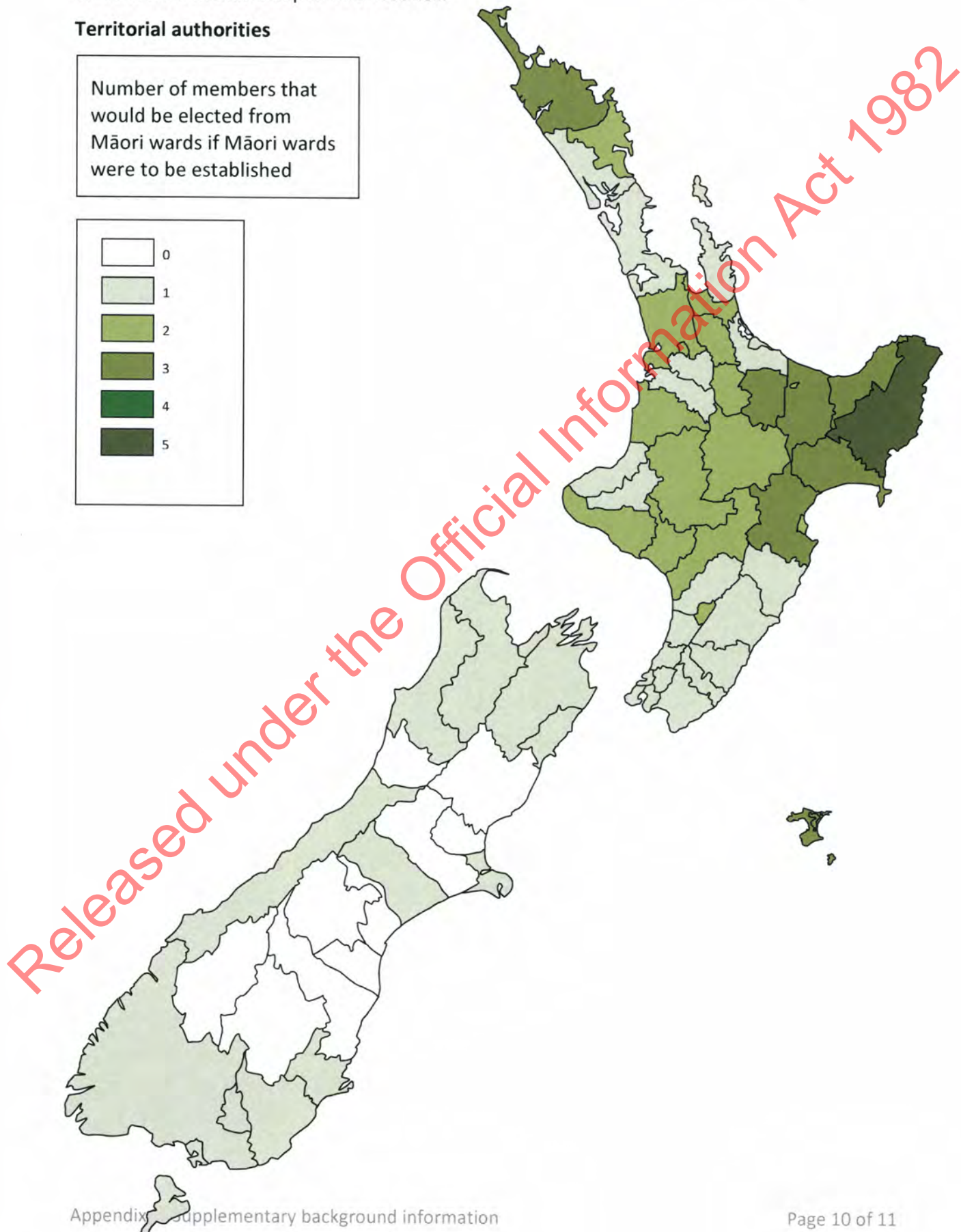
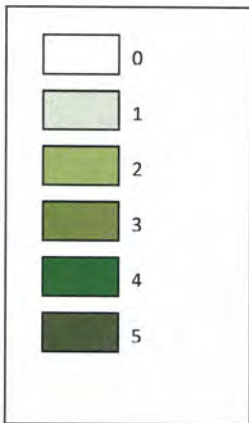
- This restricts the number of available council seats based on the Māori population of the council area. If the Māori population is too low, no separate Māori representation will be possible. This is currently the case for a number of South Island councils.
- This may not provide for representation for all Māori groups within a region. For example, the Whakatāne District Council is allocated three Māori wards based on this formula, but there are seven iwi in the Whakatāne district.

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The following maps illustrate the potential number of Māori wards and constituencies for territorial authorities and regional councils under the formula. The population data is derived from the Estimated Resident Population as at 30 June 2016 (based on the 2013 census). Council boundaries are current as at 1 January 2017 and assumes no change to the current total membership of each council.

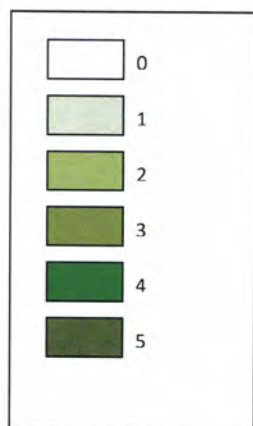
Territorial authorities

Number of members that would be elected from Māori wards if Māori wards were to be established



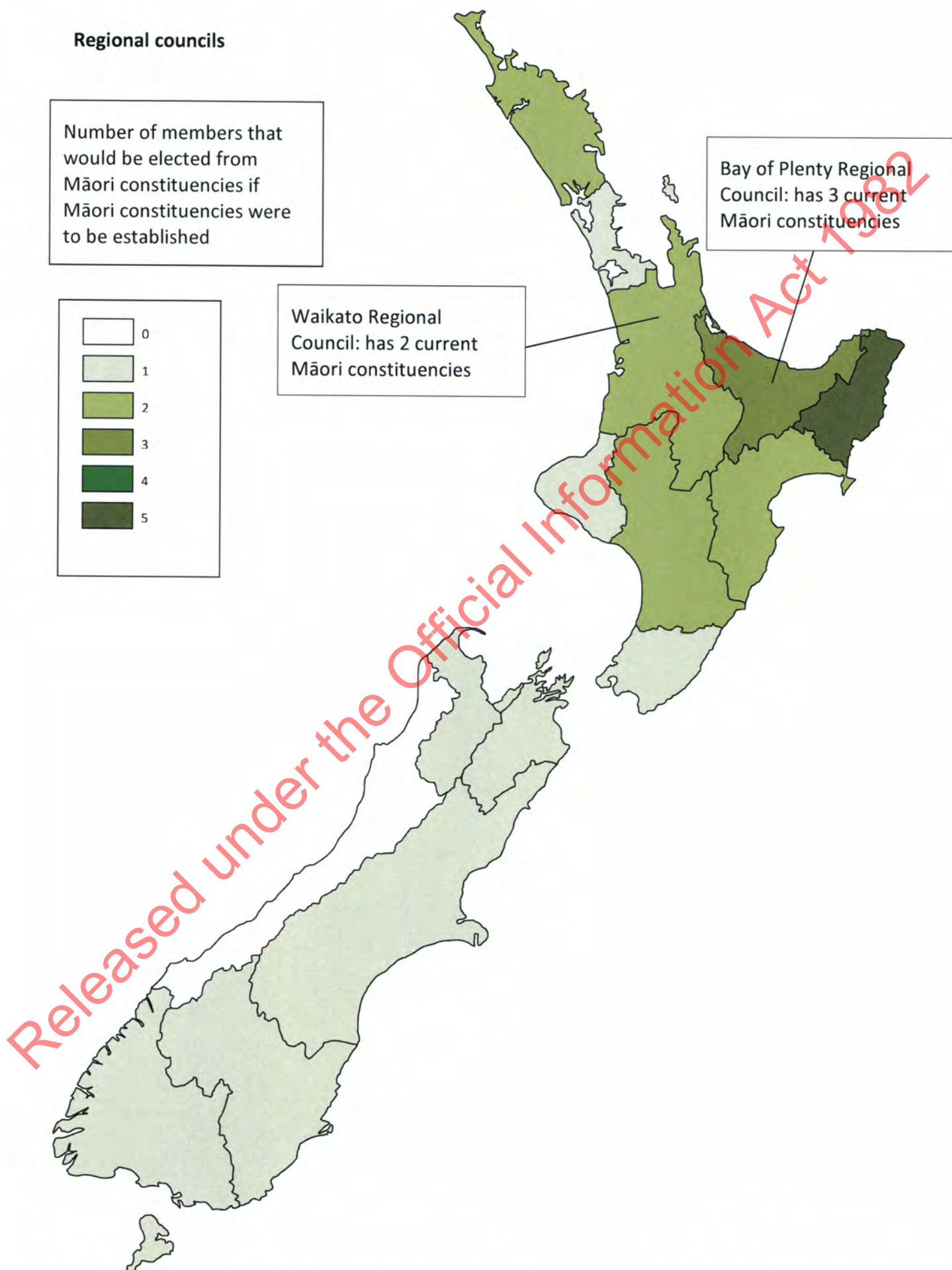
Regional councils

Number of members that would be elected from Māori constituencies if Māori constituencies were to be established



Waikato Regional Council: has 2 current Māori constituencies

Bay of Plenty Regional Council: has 3 current Māori constituencies



Appendix B: Talking points to support discussion at CMR

Framing the discussion

- As a Treaty partner, the Crown has responsibilities to ensure the mechanisms in place for Māori participation, including Treaty settlements, are being implemented appropriately.
- My stewardship responsibilities for the local government system also involve an obligation to ensure the frameworks that are in place are robust and effective.
- I am seeking the Committee's consideration of:
 - Māori participation issues in local government;
 - an indication of the Committee's interest in commissioning further work; and
 - the Committee's views on the scope and direction of any further work.

Representation and participation

- Māori and mana whenua participation in local government is an important element of a representative local government system.
- Māori groups and iwi may participate in local government in a broad range of ways. The electoral representation arrangements, however, are set out in the Local Electoral Act 2001.
- Māori and local authorities alike have expressed a strong interest in addressing common barriers to participation and setting in place a framework for Māori representation that can be implemented consistently across New Zealand.
- As a principle, where a mechanism is provided for in legislation, it should be achievable and workable.
- As is the case for both local government and Māori issues, a 'one size fits all' approach is unlikely to reflect local intricacies and needs, but a solid foundation from which to develop local solutions is important.

Barriers to adequate Māori participation

- The appendix diagram shows a number of problems with the current mechanisms for Māori representation and participation that could be addressed through a spectrum of solutions.
- If the Committee has an interest in addressing any of these issues, I am keen to discuss the direction our response might take.
- A key example of the system failing to reflect Māori and councils' ambitions is the process to create Māori wards and constituencies. The current process continues to see council resolutions overturned by a poll process that does not apply to the creation of general wards and constituencies.

The Treaty and the process for creating Māori wards/constituencies

- Do the poll provisions for establishing separate Māori representation uphold the Treaty partnership?
 - These provisions differ to, and are arguably more difficult to achieve, than other representation arrangements.
 - The threshold to initiate a poll regarding Māori wards and constituencies is lower (5% of electors) than for reorganisation proposals (10% of electors).
 - Fourteen out of fifteen polls for Māori wards/constituencies have been unsuccessful.
- Should the Treaty partnership be extended to local government?

Appendix C: Further information on petition thresholds

- The opportunity for electors to demand a poll on separate Māori representation is based on the principles that elected officials should not make final decisions about electoral arrangements, and that communities are entitled to choose their representation arrangements.
- The legislative framework for local choices about the creation of Māori wards or constituencies is based on the process for selecting an electoral system. In both cases, a petition of five per cent of electors can demand a poll, the results of which are then binding for the next two terms.
- The thresholds for petitions on other local government decisions vary. Under the Sale and Supply of Alcohol Act 2012, polls on competition proposals can be demanded by a petition of 15 per cent of residential electors in the trust district.
- Prior to the Local Electoral Act 2001, a petition of five per cent of electors could force a council to hold a by-election if it decided not to fill a vacancy on its council or to fill it by appointment. Prior to 1996, local authority proposals to borrow money from the Local Authorities Loans Board could be subject to a poll if 15 per cent of electors demanded one. This provision was abolished by the Local Government Amendment (No.3) Act 1996.

Reorganisation petition and poll thresholds have fluctuated over time

- In a local government reorganisation process, a petition of 10 per cent of electors is required to demand a poll on the Local Government Commission's final proposal.
- While the threshold for a petition to demand a poll is at 10 per cent of valid electors, it hasn't always been set at this level. The Local Government Commission 1946 Act set the threshold for a petition to trigger a poll at 20 per cent of the electors of any affected district.
- The Local Government Commission Act 1953 lowered the petition threshold to 5 per cent, but the poll required a majority of 60 per cent in any affected district to reject a reorganisation proposal.
- The Local Government Commission Act 1961 increased the petition threshold to 15 per cent, but also imposed the following conditions in relation to the poll:
 - If **more than** two thirds of voters on the electoral roll participated in the poll, a majority of 50 per cent of votes could defeat a proposal.
 - If **less than** two thirds of voters on the electoral roll participated in the poll, a majority of 60 per cent was required to defeat a proposal.
- When the Local Government Act 1974 was enacted, the threshold for a petition on a reorganisation proposal remained at 15 per cent, but the poll required 50 per cent of voters on the electoral roll in all affected districts to vote against it in order for the proposal to be defeated. The 15 per cent threshold was reduced to 10 per cent in 1992.
- The thresholds for both petitions and polls have shifted based on the government at the time and their goals for the local government sector.

Impact of changes to the threshold

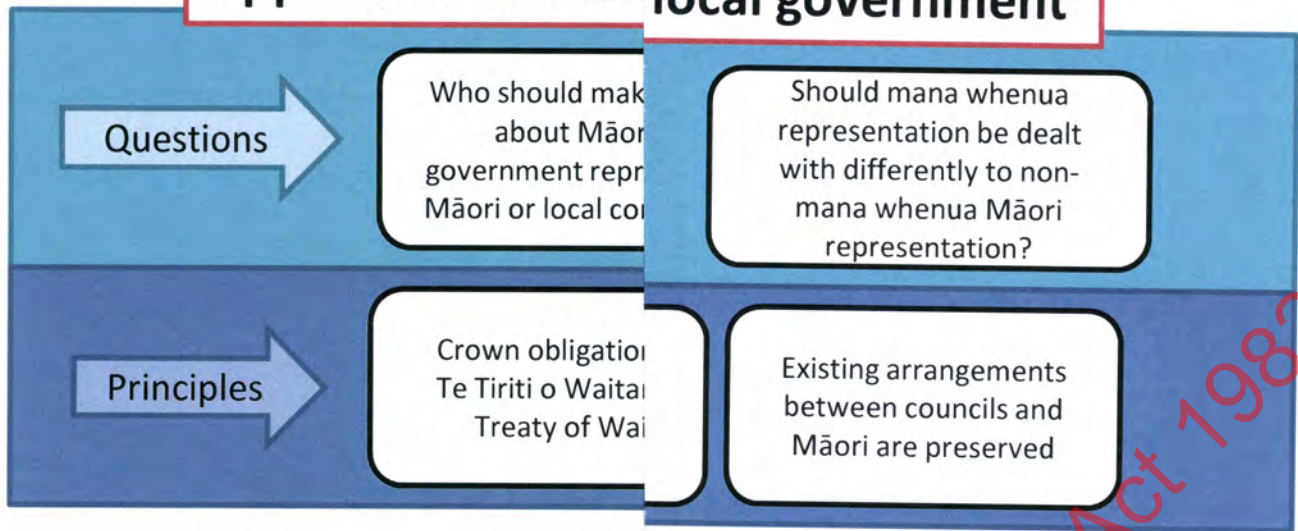
- Increasing the threshold for demanding a petition is likely to make it more difficult to gather the required number of signatures, but we do not have sufficient information to confirm that increasing the threshold would have prevented a poll from being triggered.

We are not aware of any situations where a petition to demand a poll was created but did not gain enough signatures.

- The size of councils has an impact on the number of voters required to reach the threshold. Increasing the petition threshold to 10 per cent in Kaikōura would mean less than 300 signatures were required to trigger a poll, while 10 per cent of Auckland voters would mean around 100,000 signatures were required.

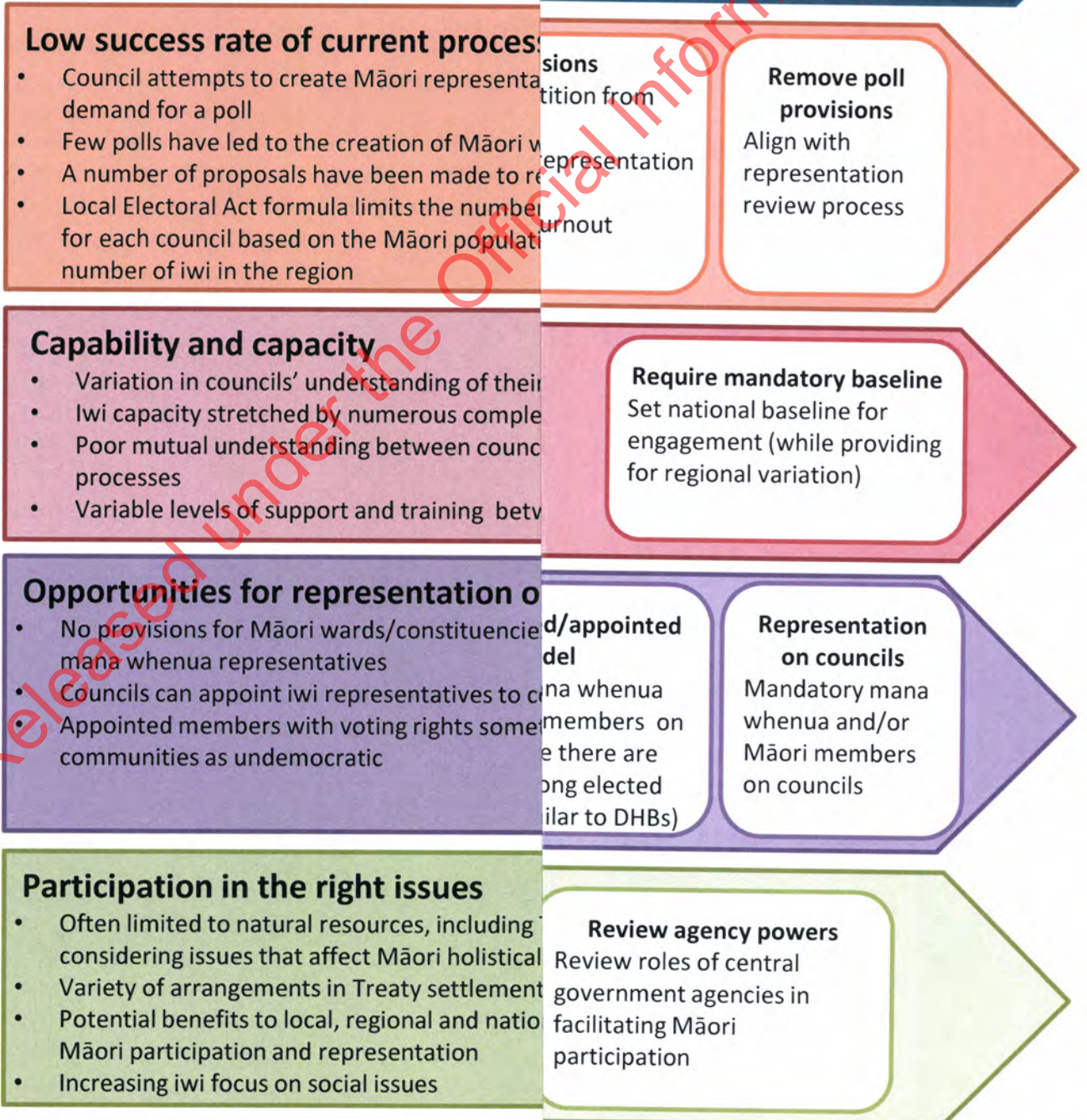
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Appendix A: Potential local government



Challenges to Māori representation in local government

Legislative change



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29 May 2018

PORTFOLIO: Local Government Cover Note

Priority Routine
Timeframe Your approval is sought to lodge the Cabinet paper by 10am 21 June 2018

Final Cabinet paper: Mechanisms for Māori participation in local government

Following feedback from Ministerial and Party consultation, the Department has produced the attached updated draft Cabinet paper for the Crown/Māori Relations Committee (CMR). The next meeting of CMR is 26 June 2018. In order to be considered at that meeting the paper will need to be lodged with Cabinet office by 10am on Thursday 21 June.

Changes that have been made to the paper as a result of feedback include:

- High-level information about barriers to Māori participation and the benefits of increased Māori engagement in local government has been added to the supplementary information.
- Additional information about the impact of resourcing on the effectiveness of models of Māori participation arrangements.
- Clarification of the legislative framework to provide for Māori participation in local government.
- Inclusion of a section noting potential future financial implications for agencies, should subsequent work go ahead.
- Minor clarifications to information on mana whenua and non-mana whenua group participation.
- An additional option requiring a mandatory baseline for council engagement with Māori, while providing for regional variation, has been added to the Capability and capacity section of the A3.

Issues raised during consultation that have not been incorporated include:

- Suggestions that barriers to participation and benefits of increased engagement should be discussed in the body of the Cabinet paper, to keep the primary basis of the discussion focused on the A3. These suggestions have instead been incorporated into the appendices.
- Additional detailed suggestions that would be relevant to a future work programme but not to initial discussions. Examples include changes outside the Local Government portfolio, linkages to the work of other agencies that is currently underway, and future consultation requirements.
- The proportionality of Māori elected members in comparison to the Māori population. This has not been included as the use of this measure may not sufficiently portray how well Māori communities are represented.

A table outlining poll results and voter turnout for the five councils that have recently held polls on Māori representation has been included in the supporting information to the Cabinet paper.

Appendix A: Potential future directions for Māori representation and participation in local government

Questions

Who should make decisions about Māori local government representation, Māori or local communities?

What support do councils need to meet statutory requirements?

Is the number of potential Māori seats under the Local Electoral Act formula sufficient?

What support do iwi and Māori groups need to participate fully in local government?

Should mana whenua representation be dealt with differently to non-mana whenua Māori representation?

Principles

Crown obligations under Te Tiriti o Waitangi – the Treaty of Waitangi

Community choice of representation arrangements

Local and regional diversity in communities, issues, mana whenua groupings and other Māori interests

No 'one size fits all' model – should be based on local circumstances

Existing arrangements between councils and Māori are preserved

Challenges to Māori representation and participation in local government

Low success rate of current process

- Council attempts to create Māori representation frequently lead to public demand for a poll
- Few polls have led to the creation of Māori wards/constituencies
- A number of proposals have been made to remove the poll requirement
- Local Electoral Act formula limits the number of potential Māori members for each council based on the Māori population - often fewer than the number of iwi in the region

Capability and capacity

- Variation in councils' understanding of their statutory obligations
- Iwi capacity stretched by numerous complex requests
- Poor mutual understanding between councils and iwi of each others' processes
- Variable levels of support and training between councils

Opportunities for representation on councils

- No provisions for Māori wards/constituencies on councils to be exclusive to mana whenua representatives
- Councils can appoint iwi representatives to committees but not councils
- Appointed members with voting rights sometimes seen by councils and communities as undemocratic

Participation in the right issues

- Often limited to natural resources, including Treaty settlements, rather than considering issues that affect Māori holistically
- Variety of arrangements in Treaty settlement legislation
- Potential benefits to local, regional and national economies to increased Māori participation and representation
- Increasing iwi focus on social issues

Options could include...

Guidance and education Support Legislative change

Support for local proposals

- Encourage Māori to stand for election
- Promote Māori voter turnout
- Public education campaigns

Amend poll provisions

- Increase threshold for petition from 5 to 10%
- Restrict voting on Māori representation to Māori electoral roll
- Require minimum voter turnout

Remove poll provisions

Align with representation review process

National guidance

- Develop models
- Publicise good practice
- Broker relationships

Financial support

- Fund improvements to council capability
- Fund improvements to Māori/iwi capacity

Require mandatory baseline

Set national baseline for engagement (while providing for regional variation)

Advisory boards

Mandatory mana whenua and/or Māori advisory committees (similar to IMSB)

Representation on committees

Mandatory mana whenua and/or Māori members on council committees

Mixed elected/appointed model

Appointed mana whenua and/or Māori members on councils where there are skills gaps among elected members (similar to DHBs)

Representation on councils

Mandatory mana whenua and/or Māori members on councils

National guidance

- Publicise good practice
- Develop models that could complement existing arrangements
- Develop guidance for councils to meet obligations

Improve monitoring

More holistic monitoring of Māori participation in local government (wider than Treaty settlements)

Review agency powers

Review roles of central government agencies in facilitating Māori participation

- To date, few attempts to establish Māori electoral representation have been successful. The following table shows poll results by councils attempting to create Māori wards or constituencies.
- Waikato Regional Council did not go to a poll in 2011

Date	Council	For	Against	% For	% Against	Outcome
May 2003	Opotiki District	678	1294	34%	66%	Lost
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April 2012	Waikato District	2520	10113	20%	80%	Lost
May 2012	Nelson City	3137	12298	20%	80%	Lost
May 2012	Wairoa District	1210	1306	48%	52%	Lost
May 2013	Hauraki District	1015	4249	19%	81%	Lost
March 2015	Far North District	4309	9315	32%	68%	Lost
May 2015	New Plymouth District	4285	21053	17%	83%	Lost
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- In May 2018, five councils held polls on creating Māori wards, following petitions from voters. Each of the polls resulted in a defeat of the proposal. The results of the polls, including voter turnout, are outlined in the table below.

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