

S O L G M

NZ SOCIETY OF LOCAL GOVERNMENT MANAGERS



CODE OF GOOD PRACTICE

For the Management of Local Authority
Elections and Polls

Part 18 Disputed Elections and Polls

Produced by the
SOLGM Electoral Working Party

Contents

Introduction	3
Objective	3
Legislative requirements	3
Recommended practices	4

Introduction

- 18.1 In any election, there is always a possibility that a candidate or candidates will seek an application for a recount. In respect of either an election or a poll, any candidate or 10 electors may submit a petition for an inquiry into the conduct of the election or poll. In each case the final decision rests with the presiding District Court Judge and is not open to challenge.
- 18.2 The purpose of this Part of the Code is to draw attention to the procedures for dealing with disputed elections and polls and to suggest practices to enable any challenge to the validity of an election or poll to be handled in an efficient and professional manner.
- 18.3 In all cases, electoral officers should take out insurance to cover them against the risks/ costs associated with any possible recounts or inquiries.

Objective

To ensure that electoral officers are aware of the procedures for disputed elections and polls and to help them be prepared to deal with the additional requirements associated with recounts and inquiries.

Legislative requirements

- 18.4 The legislative provisions relating to disputed elections are:

Local Electoral Act 2001

Section 90	Application for recount
Section 91	Scrutineers at recount
Section 92	Conduct of recount
Section 93	Petition for inquiry
Section 94	Specified grounds only to be investigated
Section 95	Who may be respondent
Section 96	Time for holding inquiry
Section 97	Powers of District Court Judge
Section 98	Result of inquiry
Section 99	Election or poll not void by reason of certain irregularities
Section 100	Costs of inquiry
Section 101	Return of deposit
Section 102	New election or poll if election or poll declared void
Section 103	Order to be final

Local Electoral Regulations 2001

Regulation 139	Application for recount
Regulation 140	Petition for inquiry

Recommended practices

Recounts

- 18.5 An application for a recount can only be made by an unsuccessful candidate in an election. The application must be made to a District Court Judge within 3 days of the official declaration. To succeed the application must:
- satisfy the District Court Judge that reasonable grounds exist to believe that the declaration is incorrect and that upon a recount the applicant might be elected; and
 - be accompanied by a deposit of \$750 (GST inclusive).
- 18.6 The recount of all of the voting documents used at the election will be carried out by the electoral officer in the presence of the District Court Judge or his/her appointee and also any scrutineer appointed by any candidate. If the official declaration is found to be incorrect, the District Court Judge must order publication of an amended declaration and may also make an order for costs. The deposit or the balance of the deposit after payment of any costs ordered by the District Court Judge must be returned to the person who made it.

- 1 Recommended good practice is that electoral officers ensure that:**
- (i) all election officials involved in counting votes are properly trained and fully aware of the importance of accuracy in recording voters' preferences; and**
 - (ii) processes are transparent with clear audit trails and easily accessed documents.**

Inquiries

- 18.7 An inquiry covers a much broader field than a recount. It can relate to the conduct of an election or poll or the conduct of any candidate or other person at an election or poll. An inquiry can be initiated by any candidate or any 10 electors by filing a petition in the District Court.
- 18.8 To be valid, a petition for inquiry must:
- be filed in the District Court within 21 days of the public notice declaring the result of the election or poll;
 - be filed in the same District Court to which the voting documents for the election or poll were deposited;
 - be accompanied by a deposit of \$750 (GST incl);
 - specify the grounds for complaint.
- 18.9 A petition will be heard and determined by a District Court Judge.
- 18.10 The key steps in the process of dealing with a petition are:
- the inquiry may only deal with the subject of the petition unless the District Court Judge agrees otherwise;

- certain people may oppose the petition including a candidate or 10 electors in the case of an election, and the electoral officer or other electoral official, if the petition complains of the conduct of the electoral officer or other electoral official. People who oppose the petition are respondents;
- the inquiry must commence within 14 days after filing of the petition;
- not less than seven days public notice must be given of the inquiry;
- the decision of the District Court Judge is final and cannot be appealed.

18.11 The Act sets out the process to be followed after a petition has been filed. The implications for electoral officers are:

- being sent a copy of the petition by the District Court;
- the right to be a respondent to the petition if the petition complains of the conduct of the electoral officer;
- being required by the District Court Judge to recount or conduct a scrutiny of the votes;
- being required to pay costs if so ordered by the District Court Judge;
- conducting a new election or poll if the election or poll that is the subject of the petition is declared void by the District Court Judge.

18.12 It is important for electoral officers to understand the seriousness of an inquiry. If, as a result of an inquiry, the election or poll is declared void on the grounds of negligence or intentional or reckless misconduct by the electoral officer or any electoral official, the District Court Judge may make an order of costs against the person concerned. In addition, actions against an electoral officer or an electoral official could also follow under the various offence provisions of the Act. The seriousness of such action is reflected in the fact that some offences, upon conviction, carry heavy fines and terms of imprisonment.

2 Recommended good practice is that electoral officers ensure that:

- (i) **they and all other electoral officials fully understand their responsibilities under the Local Electoral Act and the Local Electoral Regulations and the nature and consequences of errors and omissions;**
- (ii) **processes are lawful, transparent with clear audit trails and easily accessed documents.**