

# S O L G M

NZ SOCIETY OF LOCAL GOVERNMENT MANAGERS



## **HANDBOOK FOR SCRUTINEERS AT LOCAL AUTHORITY ELECTIONS AND POLLS**

### **Appendix A Part 13**

**Code of Good Practice  
For the Management of Local Authority  
Elections and Polls**

Produced by the  
SOLGM Electoral Working Party

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# HANDBOOK FOR SCRUTINEERS

This handbook is issued for the guidance of scrutineers at local authority elections and polls. It has been prepared by the SOLGM Electoral Working Party.

The handbook aims to inform scrutineers of their rights and obligations under the Local Electoral Act 2001 and the Local Electoral Regulations 2001. It also informs candidates and electors, who appoint scrutineers for an election or poll, about the role of scrutineers.

Finally, the statutory provisions and practices applying to scrutineers in the handbook will also guide the relationship between them and the electoral officer, deputy electoral officer and electoral officials during the process of an election or poll involving scrutineers.

## **Disclaimer:**

This handbook has been compiled to help scrutineers and other interested parties understand the requirements of the Local Electoral Act 2001 and the Local Electoral Regulations 2001.

This handbook is not intended to be a substitute for the Act and Regulations. While every effort has been made to ensure the information in this guide is accurate, SOLGM, the SOLGM Electoral Working Party and any other individual or organisation involved in its preparation will not accept any liability for any loss or damage arising to any person or organisation from the use of the material contained in this handbook.

## 1 Introduction

- 1.1 The preparation of this handbook for scrutineers arose from a recommendation of the former Internal Affairs and Local Government Select Committee made in its 1999 Report on the Inquiry into Early Processing of Voting Papers at Local Authority Elections.
- 1.2 Because of some concerns identified with scrutineers during the 1998 local authority elections, the Select Committee agreed that it was important for candidates to be aware of what is expected of their scrutineers. The Select Committee noted that for Parliamentary elections the Chief Electoral Officer issues a handbook that outlines the rights and obligations of scrutineers and includes forms for both the candidate to appoint a scrutineer and the required secrecy declaration. Briefings by the Chief Electoral Officer for Parliamentary candidates and Parties also includes the role and functions of scrutineers.

## 2 Role of scrutineers

- 2.1 The general role of scrutineers is to oversee and observe that particular election or poll procedures are undertaken fairly and that votes are counted fairly and reasonably.
- 2.2 Section 68 of the Local Electoral Act 2001 (LEA) sets out the general rules applying to scrutineers including when they may be present for particular election or poll procedures. These times are:
  - scrutineering of roll (sections 81 and 83 LEA and Regulation 55 and 100 LER). This involves comparing the rolls used at the election or poll on which it is recorded that an

- elector has voted. The key is to establish any dual voting which is disallowed;
- counting of Votes (section 84 LEA, and Regulations 58, 60, 61A, 62, 103, 104A, 105A and 106 LER). The first count of votes occurs immediately following the close of voting. The outcome is the preliminary result announced on polling day. The second count follows the first count. It can commence on polling day and due to special voting issues is usually completed on the Monday or Tuesday following polling day;
  - recount (section 90, 91 LEA). A recount takes place on the order of a District Court judge following an application from a candidate. It involves a recount of the relevant voting documents.
- 2.3 In observing the processes in paragraph 2.2, a scrutineer (and a candidate) may request from the electoral officer before the close of voting the names of persons from whom voting documents have been received (section 68 LEA). There is nothing in the Act that prohibits the disclosure of this information but the passing on of any other information is not permitted – see section 6 of this handbook relating to offences.
- 2.4 Given that the practice has been for all local authority elections to be conducted by postal voting and not by booth voting as per Parliamentary elections, and with the early processing of voting documents, scrutineers become less involved in the local elections process than for Parliamentary elections.
- 2.5 Scrutineers are not entitled or empowered to interfere with the conduct of an election or poll or raise questions of procedure or law with electoral officials. If a scrutineer believes that electoral procedures are not being followed, he or she should draw the matter to the attention of the electoral officer.

### 3 Appointment of scrutineers

- 3.1 For a local authority election a candidate may, by notice in writing, appoint one or more scrutineers (section 66 LEA). However, only one scrutineer may be present at any one time.
- 3.2 In relation to a local authority poll, 10 or more electors, who are either in favour of or opposed to the proposal being polled, may appoint 1 or more scrutineers (section 67 LEA).
- 3.3 Every scrutineer appointed under sections 66 or 67 of the Act must be appointed in writing (a model letter of appointment is contained in Appendix A).
- 3.4 An appointment as scrutineer is not valid unless a copy of the notice of appointment is delivered by the candidate or the 10 electors to the electoral officer. The electoral officer must receive this notice not less than 24 hours before the close of voting at the election or poll. It is recommended that scrutineers always carry a copy of this notice when undertaking scrutineering duties.
- 3.5 Section 68(3) of the Act contains three restrictions on who may be appointed a scrutineer. No person can be a scrutineer if that person is:
- a candidate in the elections; or
  - a member or employee of any local authority or community board for whom the election or poll is being held; or
  - under 18 years of age

## 4 Declaration

- 4.1 No person appointed as a scrutineer can carry out scrutineering duties until he or she has completed a declaration (section 68(2) LEA and Regulation 137 LER)
- 4.2 A model declaration form for scrutineers is contained in Appendix B.
- 4.3 The key obligations for a scrutineer arising from the Declaration are that he or she:
- will properly exercise the powers conferred on a scrutineer;
  - is not a person to whom section 68(3) of the Act applies, i.e. is not a candidate or a member or employee or any local authority or community board for whom the election or poll is being conducted, or under the age of 18; and
  - will not directly or indirectly disclose any fact coming to his or her knowledge at the election or poll that he or she is required by the Act or Regulations not to disclose
- 4.4 A person appointed as a scrutineer should report to the electoral officer on the first day on which he or she is to undertake any scrutineering duty to complete the required declaration. Upon completing the declaration, the scrutineer will be given a “scrutineer” nametag. This nametag should be returned to the electoral officer when the scrutineer leaves the premises where he or she is acting as a scrutineer.

## 5 Information to be supplied by electoral officer

- 5.1 As soon as practicable following the appointment of a scrutineer, the electoral officer will advise that person of:
- arrangements for the election or poll process for which he or she has been appointed;
  - what restrictions apply to scrutineers; and
  - how that person is expected to conduct themselves.

## Arrangements for roll scrutiny, preliminary and official counts and any recount

- 5.2 The electoral officer will advise the scrutineer:
- where he or she should go, and at what time, to complete the required declaration before any scrutineering duties can be undertaken;
  - when and where any planned briefing of candidates and scrutineers about election processes is to be held;
  - when and where any planned briefing of electoral officials about the election or poll process is to be held;
  - in relation to the scrutiny of the roll
    - where it will be conducted (address and office), and
    - on what days and time the scrutiny of the roll will take place;
  - that the first count of voting documents will commence at 12 noon on what day and where. (In the case of the 2007 local authority elections, the day and time will be 12 noon on Saturday 13 October 2007);

- when and where the second count will commence and on what days it will extend over if there are special votes to clear with the Registrar of Electors;
- on how the first and second counts will be undertaken – manually or electronically;
- of any local authority transport arrangements (buses, car etc) if the first and second counts are being conducted at premises outside the district and how a scrutineer can book a seat if interested in attending the counts;
- if a recount has been ordered by a District Court Judge, where and when that recount will take place;
- that no remuneration will be paid to any scrutineer by the local authority for the undertaking of scrutineering duties.

## Restrictions on scrutineers during election and poll processes

- 5.3 A local authority can decide under section 79 of the Act to process voting documents during the voting period. Scrutineers are prohibited under section 81 of the Act from being present during the early processing of voting documents. Early processing of voting documents does not involve counting or totalling votes for any candidate for election or for or against any proposal in a poll. Counting of votes can only commence for the first count after the close of voting.
- 5.4 It is permissible for a candidate in the case of an election, and for 10 electors in the case of a poll, to appoint more than one scrutineer. However, only one scrutineer for any candidate can be present at the same place to undertake scrutineering duties. The same restriction applies in the case of scrutineers appointed for or against a proposal in a poll (sections 68(4) and 91(3) LEA).
- 5.5 It is permissible for scrutineers at any time to leave and return to the undertaking of the roll scrutiny, and after close of voting, the first and second counts. Upon returning to the process, a scrutineer has no power or right to demand the electoral officer to go back for his or her benefit and repeat the activities in relation to voting documents that were dealt with in his or her absence. The same practice will apply if a scrutineer is late for the commencement of any of these processes.

## Conduct of scrutineer

- 5.6 As stated in section 2 of this handbook, the general role of scrutineers is to oversee and observe that particular procedures at an election or poll are undertaken fairly and that votes are counted fairly and reasonably. As the emphasis in relation to the role of scrutineers is on overseeing and observing, scrutineers must not talk to electoral officials involved in the roll scrutiny, the first or second counts or in any recount. As already stated under paragraph 2.5, if a scrutineer believes that electoral procedures are not being followed he or she should draw the matter to the attention of the electoral officer. It should not be raised with other electoral officials.
- 5.7 A scrutineer must not seek from the electoral officer or other electoral officials, any progressive voting trends during the first count.
- 5.8 The scrutiny and the first and second counts are critical processes to the outcome of an election or poll and demand a high level of concentration from electoral officials. Accordingly, it is incumbent upon scrutineers not to distract, annoy, linger close by or talk loudly to one another so as to disrupt or upset any electoral officials.

- 5.9 In keeping with the needs of electoral staff as explained under paragraph 5.8, scrutineers are not allowed to use nor have mobile phones switched on within the area where scrutiny of the roll, the first or second count or a recount is being conducted.
- 5.10 The LEA and LER are silent on the display of any group or organisation affiliation by scrutineers. This handbook therefore adopts the policy which applies to scrutineers at Parliamentary elections. This means that the following items, in group or organisation colours but without its name, emblem, slogan or logo, may be worn on the person or displayed in a vehicle:
- (a) streamers;
  - (b) ribbons;
  - (c) rosettes (but see also the special rule about group or organisation lapel badges below);
  - (d) items of a similar nature.

Group or organisation lapel badges may be worn anywhere on the person. A group or organisation lapel badge is any badge or rosette designed to be worn on the lapel and bearing the group or organisation's name, emblem, slogan or logo. None of the above items may be displayed on bags or briefcases. A group or organisation will be asked to supply the electoral officer with a sample of its rosette prior to the commencement of the polling period.

- 5.11 Scrutineers should also bring their own refreshments. The electoral officer will not provide meals and refreshments for scrutineers.

## 6 Offences

- 6.1 Scrutineers can be present at election and poll processes, which will expose them to returned voting documents and information about voting. While scrutineers are permitted to tell any person the names of persons who have voted, as mentioned in section 4 of this handbook, under the declaration a scrutineer must not directly or indirectly disclose any fact coming to his or her knowledge at the election or poll that he or she is required by the Act or Regulations not to disclose.
- 6.2 Should a scrutineer break their declaration and disclose information which is prohibited then they are likely to have committed an offence under one or more of the following provisions of the LEA:
- (a) Section 123, Offences in respect of official documents;
  - (b) Section 129, Infringement of secrecy;
  - (c) Section 130, Disclosing voting or state of election or poll.

These three sections are reprinted in full in Appendix C. Scrutineers are advised to become familiar with them before they complete their declaration and undertake any scrutineering duties.

## Model letter of appointment of scrutineer

To the Electoral Officer  
(Name of Local Authority)  
Address 1  
Address 2

I [*name*] a candidate for the [*name of election*] appoint [*name*] to act as scrutineer at the following election processes.

or

We [*list the names of the 10 electors*] being electors of [*name of local authority*] appoint [*name*] to act as scrutineer at the following poll processes, at the Poll on [*name issue*]

Delete those election or poll processes below that the scrutineer is not appointed for

- 1 Scrutiny of the roll
- 2 Preliminary count
- 3 Official count
- 4 Recount

Signed \_\_\_\_\_  
Candidate Name (or as the case may be), one of the ten electors

Notes for candidates, nominating electors and scrutineers

- 1 A copy of this letter of appointment must be given to the electoral officer no later than 24 hours before the close of voting (i.e. by 12 noon Friday 12 October 2007)
- 2 Scrutineers should carry this letter at all times when undertaking their scrutineering duties
- 3 At any of the election processes only one scrutineer for each candidate may be present at any one time. The same limitation also applies in the case of scrutineers for a poll.

## Declaration by scrutineers

I, \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Occupation)

solemnly and sincerely declare that

- (i) I will well and truly serve in the office of scrutineer:
  - (a) at any election or poll held by the *(name of local government area)*
  - (b) at any election or poll held in the *(name of local government area)* on *(date)*
  - (c) at the *(name of election or poll)* on *(date)*
- (ii) I am not a person to whom section 68(3) of the Act applies; and
- (iii) I will not, directly or indirectly, disclose any fact coming to my knowledge at any election or poll which I am required by the Local Electoral Act 2001 and the Local Electoral Regulations 2001, not to disclose.

Signature: \_\_\_\_\_

Declared at: \_\_\_\_\_ this \_\_\_\_\_ day of *(year)*

Before Me: \_\_\_\_\_

- \* Justice of the Peace
- \* Mayor or Chairperson of *(Council)*
- \* Electoral Officer
- \* Deputy Electoral Officer

\* Delete which ever do not apply

# Main offence provisions in the Local Electoral Act relating to scrutineers

## Section 123, Offences in respect of official documents

- (1) Every person commits an offence who:
  - (a) intentionally removes, obliterates, or alters any official mark or official writing on any voting document, or other official document used at an election or poll;
  - (b) intentionally places any mark or writing that might be mistaken for an official mark or official writing on any voting document, or other official document used at an election or poll;
  - (c) forges, counterfeits, fraudulently marks, defaces, or fraudulently destroys any voting document, or other official document used at an election or poll, or the official mark on that document;
  - (d) supplies, without authority, a voting document to any person;
  - (e) obtains or has possession of any voting document, other than one issued to that person under this Act or any Regulations made under this Act for the purpose of recording his or her vote, without authority;
  - (f) intentionally destroys, opens, or otherwise interferes with any ballot box or box or parcel of voting documents without authority.
- (2) Every person who commits an offence against subsection (1) is liable on conviction on indictment:
  - (a) in the case of an electoral officer or other electoral official, to imprisonment for a term not exceeding 2 years;
  - (b) in the case of any other person, to imprisonment for a term not exceeding 6 months.

## Section 129, Infringement of secrecy

- (1) Every electoral officer, deputy electoral officer, and other electoral official:
  - (a) must maintain and assist in maintaining the secrecy of the voting; and
  - (b) must not communicate to any person, except for a purpose authorised by law, any information likely to compromise the secrecy of the voting.
- (2) No person, except as provided by this Act or Regulations made under this Act, may:
  - (a) interfere with or attempt to interfere with a voter when marking or recording his or her vote; or
  - (b) attempt to obtain, in the building or other place where the voter has marked or recorded his or her vote and immediately before or after that vote has been marked or recorded, any information as to any candidate for whom, or the proposal for or against which, the voter is about to vote or has voted; or
  - (c) communicate at any time to any person any information obtained in the building or other place where the voter has marked or recorded his or her vote and immediately before or after that vote has been marked or recorded, as to
    - (i) any candidate for whom, or the proposal for or against which, the voter is about to vote or has voted, or

- (ii) any number on a voting document marked or transmitted by the voter.
- (3) Every person present at the counting of votes must:
  - (a) maintain and assist in maintaining the secrecy of the voting; and
  - (b) must not, except as is provided by this Act or Regulations made under this Act, communicate any information obtained at that counting as to any candidate for whom, or proposal for or against which, any vote is cast by a particular voter.
- (4) No person may, directly or indirectly, induce any voter to display or provide access to his or her voting document or any copy of that document after it has been marked or transmitted, so as to make known to any person the name of any candidate for or against whom, or proposal for or against which, the voter has voted.
- (5) Every person commits an offence who contravenes or fails to comply with this section.
- (6) Every person who commits an offence against subsection (5) is liable on summary conviction to imprisonment for a term not exceeding 6 months.

### **Section 130, Disclosing voting or state of election or poll**

- (1) Every electoral officer, deputy electoral officer, other electoral official, Justice of the Peace, or scrutineer commits an offence who:
  - (a) makes known for what candidate or candidates or for which proposal any particular voter has voted for or against, except as provided by this Act or Regulations made under this Act; or
  - (b) before the close of voting, makes known the state of the election or poll or gives or pretends to give any information by which the state of the election or poll may be known.
- (2) Subsection (1)(b) does not prevent an electoral officer from disclosing the total number of voting documents so far returned at an election or poll at any time during the voting period.
- (3) A person who commits an offence against subsection (1) is liable on summary conviction to a fine:
  - (a) not exceeding \$5,000 for an electoral officer or deputy electoral officer;
  - (b) not exceeding \$2,000 for any other person.