

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 6 Polls

Produced by the
SOLGM Electoral Working Party

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Introduction

- 6.1 Poll is defined in the Act as meaning: “the submission to the vote of electors for decision of a proposal or the provision of opinion on a proposal or other matter, other than an election, that is required to be submitted under this Act or any other Act to which this Act, or any of its predecessors, is applied or has been made to apply”.
- 6.2 The Local Electoral Act has wide application to the conduct of polls undertaken by local authorities. A poll can arise as a requirement of law or by a decision of the local authority.
- 6.3 The statutory requirement to hold a poll may come from the Local Electoral Act or from some other Act. The statutory requirement is usually in the form of a right for a specified number of electors, often within a fixed time, to submit a petition or register a demand for a poll on some issue of public interest. Other Acts containing poll provisions can require that they be held under the Local Electoral Act.
- 6.4 A local authority that decides to hold a referendum on any matter relating to services, a policy or proposal, can instruct its electoral officer to conduct it under the Local Electoral Act. A referendum is a poll for the purposes of the Act.
- 6.5 Under section 9 of the Act a local authority may hold a poll on:
- (a) any matter relating to –
 - (i) the services that are provided or that may be provided by the local authority;
or
 - (ii) any policy or intended policy of the local authority;
 - (b) any proposal relating to –
 - (i) the current or future activities or objectives of the local authority; or
 - (ii) the current or future well-being of its local government area.
- 6.6 A poll may involve all of the electors of a local authority area or particular parts of the district depending upon the issue concerned. A poll can be held separately (like a by-election), or it can be held in conjunction with a triennial local authority election.
- 6.7 The Act provides that electoral officers of territorial authorities are responsible for the conduct of polls of electors of territorial authorities and their community boards (if any). Polls of electors of local authorities that are not territorial authorities may be conducted either in conjunction with another election or poll (e.g. triennial election) or separately. This will determine which electoral officer is responsible for the conduct of the poll.
- 6.8 The requirements for conducting polls are much the same as for an election and these are covered in detail in other Parts of this Code, specifically:
- Part 3: Duties and responsibilities of electoral officers
 - Part 7: Electoral rolls
 - Part 11: Elector information and education
 - Part 12: Voting
 - Part 13: Special voting
 - Part 14: Scrutineers
 - Part 15: Vote processing and counting
 - Part 16: Release of results
 - Part 17: Post election and poll tasks
 - Part 18: Disputed elections and polls.

6.9 Requirements relating to the conduct of polls on the electoral system and on establishment of Māori wards or constituencies are covered in detail in Parts 4 and 5 respectively.

Objective

6.10 To ensure that electoral officers and policy advisers are aware of the circumstances under which petitions or polls may arise and of the requirements relating to the conduct of polls, so as to assist the achievement of the Act's principles of all qualified persons having a reasonable and equal opportunity to cast an informed vote and of public confidence in and understanding of local electoral processes.

Legislation

6.11 The key legislative provisions relating to polls are:

Local Electoral Act 2001

Section 4	Principles
Section 5	Interpretation
Section 7	Application
Section 9	Holding of referendum
Section 14	Rules applying to electoral officers, deputy electoral officers and other electoral officials
Section 15	General duties of electoral officer
Section 16	Conduct of elections and polls for territorial authorities and community boards
Section 17	Conduct of elections and polls for local authorities that are not territorial authorities
Section 18	Conduct of election or poll in conjunction with other election or poll
Section 19	Conduct of separate election or poll
Section 20	Right to vote in election or poll
Section 21	Special voting
Section 35	Electoral systems for polls
Section 36	Voting method for elections and polls
Section 37	Consultation
Sections 38–51	Electoral rolls
Section 52	Notice of election or poll
Section 54	Additional material to be included in notice in respect of poll
Section 65	Further notice to electors of election or poll
Section 67	Scrutineers at poll
Section 68	General rules affecting scrutineers
Section 73	Adjournment of election or poll
Sections 74–86	Voting, processing and counting of votes
Section 89	Electoral records
Sections 93–103	Inquiry into poll
Sections 122–131	Offences
Section 138A	Special provision in relation to ... certain polls
Section 147	Cost of elections and polls

Local Electoral Regulations 2001

Regulation 30	Further notice to electors of election or poll
Regulation 46	Neutral information on polls
Regulation 140	Petition for inquiry

Local Government Act 2002

Section 131	Power to close down or transfer small water services
Section 132	Eligibility to vote in referendum
Section 133	Responsibility for conduct of referendum
<i>Schedule 3:</i>	
Clause 1	Who may make reorganisation proposal
Clause 2	Contents of proposal
Clause 34	Procedure for initiation of reorganisation proposal
Clause 49	Polls must be held
Clause 50	Timing of poll
Clause 51	Official result of poll
<i>Schedule 6:</i>	
Clause 3	Proposals to establish community
Clause 4	Requirements for proposal

Requirements and recommended practices

Petitions, demands and requirements to conduct a poll

- 6.12 Elector petitions are provided for in the Local Electoral Act and in other legislation. Petitions may be in the form of elector demands for a poll or for consideration of a particular proposal. Generally these require the electoral officer to confirm the validity of the petition or demand against statutory requirements.
- 6.13 Demands by electors for a poll on the choice of electoral system and on Māori wards or constituencies are addressed in Parts 4 and 5 of the Code. Other provisions for elector petitions and demands or requirements to conduct a poll include the following under the Local Government Act 2002:
- a prescribed number of electors may propose that a particular area be constituted as a community and that a community board be established;
 - a local authority may not close down or transfer small water services unless, among other things, the proposal is supported in a binding referendum of electors held under section 9 of the Local Electoral Act;
 - a prescribed number of electors may submit a local government reorganisation proposal;

- if a draft reorganisation scheme has been approved, a poll of electors in the affected area must be held under the Local Electoral Act.
- 6.14 Electoral officers should be aware of these provisions relating to elector petitions and demands or requirements for polls, including requirements to check the number of signatories that are qualified electors, and to conduct polls in certain cases under the Local Electoral Act.
- 6.15 To be valid, a petition, demand or proposal must generally satisfy the following criteria:
- it must be made by notice in writing;
 - it must be made by people qualified as electors of the local authority or area concerned and who are enrolled either on the local authority roll (residential or ratepayer) or the most recently published parliamentary roll, at an address within the district or area of the local authority concerned;
 - it must be signed by the prescribed number of electors;
 - it must be delivered to the principal office of the local authority;
 - in addition to each elector's signature it must state the elector's name and the address for which the person is qualified as an elector of the local authority.

- 1 Recommended good practice** for checking petitions and poll demands is that electoral officers:
- (i) obtain a fresh listing of electors from the Electoral Enrolment Centre for their local authority at a time as close to the actual date as possible of the lodging of the demand;
 - (ii) carefully check the petition or demand for a poll to verify that each person signing is eligible to sign the demand;
 - (iii) commence the checking and verification of elector details as soon as possible. In addition to valid signatures, electoral officers will also encounter numerous instances where invalid signatures have been included from people:
 - who are resident outside the district or area concerned
 - who are resident within the district or area, but are not on the current electoral roll
 - who have given fictitious names and/or addresses
 - who have not included all the relevant details for checking (e.g. no address given)
 - who have signed the demand more than once
 - whose signature and other details are illegible (if electoral officer is unable to decipher the details, have someone else review them – a different pair of eyes often bears results);
 - (iv) note that some of the signatories may be eligible ratepayer electors, or eligible residential electors whose names are held on the unpublished roll. Electoral officers will be able to check for eligible ratepayer electors (from local authority records) but will need to liaise with the appropriate Registrar/s of Electors and ask them to check for any names that may be on the unpublished roll;
 - (v) note that the percentage of valid signatures on petitions and poll demands will vary. Where possible, persons organising the petition or poll demand should be alerted to the fact that they will need to obtain substantially more signatures than the bare prescribed minimum, to allow for the fact that many signatures may be invalid;
 - (vi) allow adequate time to check the petition or poll demand when received. Experience has shown that this is a slow process, which needs to be undertaken methodically. Should the outcome of the petition or poll demand scrutiny process be challenged, the electoral officer will need to demonstrate that the checking process was undertaken carefully and systematically;
 - (vii) include the papers associated with a petition or demand for a poll with the voting material lodged with the District Court immediately following the poll if appropriate.

Conduct of polls

- 6.16 If there are no prescribed statutory timeframes, local authorities need to consider the timing for polls. There may be significant cost savings if a poll is held at the same time as the triennial elections, for example, or for more than one poll to be conducted together.
- 6.17 Holding more than one poll together or in conjunction with triennial elections may also have a positive effect on voter turnout at the poll. However consideration will also need to be given to any impact of holding the poll in conjunction with triennial elections on matters such as the number of issues for voters to address and practical matters like the size of the outgoing envelope. The option to include additional neutral information about the poll may result in the envelope for the triennial election exceeding New Zealand Post's 6mm thickness threshold. This will have cost implications.
- 6.18 If a poll is to be conducted at some time other than in conjunction with triennial elections, section 138A of the Act may need to be taken into account. This section places timetable constraints on local authorities conducting polls under the Act over the Christmas/New Year period. This is to ensure that the public is not disadvantaged by the timing of the period for important public processes such as inspection of rolls.
- 6.19 Notice to the electoral officer of the requirement to hold a poll is important because it is the trigger point for compliance with the timetable requirements of the Act including the statutory 82 day period for conducting a poll. Electoral officers should ensure that the 82 day period does not result in an inappropriate day for polling day such as during a holiday weekend.
- 6.20 Polls must be conducted using an electoral system and voting method adopted by resolution of the local authority either for the purpose of the particular poll or for two or more polls conducted at the same time. In the absence of a resolution, the FPP electoral system and postal voting must be used.
- 6.21 Where a poll is to be held in conjunction with the election of one or more territorial authorities, the voting method to be used is the one to be used for the territorial authority election. There are also particular consultation requirements on local authorities, set out in section 37 of the Act, in relation to the voting method for polls in certain circumstances.
- 6.22 Sections 20 and 21 set out entitlements to vote in polls under the Act. Generally every (residential or ratepayer) elector is entitled to vote in a poll if their name appears on the electoral roll in force for the poll. A person is also entitled to vote in a poll if that person has:
- (a) qualified as an elector before the close of voting;
 - (b) applied to enrol as an elector not later than the day before the close of voting, but whose:
 - (i) name does not appear on the electoral roll, or
 - (ii) voting entitlements are incorrectly recorded on the roll.
- 6.23 Other special voting entitlements applying to elections also apply in respect of polls under the Act.

6.24 Electors who were on the ratepayers roll for the previous triennial election must be checked to ensure they still own the property in respect of which they were qualified for enrolment and that their name still appears on the district valuation roll as the ratepayer of the rating unit. If not, their name must be removed from the roll and they must be advised in writing that this action has been taken in accordance with section 46(2) of the Act.

6.25 A generic timetable for a poll follows as Table 1.

TABLE 1: GENERIC TIMETABLE FOR A POLL			
1	Local authority decision or requirement to hold a poll, or a valid demand for a poll received	Any time	
2	Local authority notifies/directs electoral officer	Immediately after local authority decision or demand received	s7, s9
3	Declaration by electoral officer and deputy	Immediately if no current declaration	s14
4	Compile preliminary roll	Prior to roll being open for inspection	s38(2)
5	Public notice of poll Roll open for inspection	Not less than 28 days before roll closes	s42, s52
6	Optional early processing resolution	Before further public notice is given under section 65	s79
7	Appointment of JP	Before any voting documents are processed (if local authority has passed resolution to allow early processing)	s82
8	Roll closes	Close of business 50 th day before polling day	s50, r21
9	Further public notice	As soon as practicable after roll closes	s65
10	Electoral officer certifies electoral roll/comes into force	Certify before the 25 th day before polling day/in force on 25 th day before polling day	s51, r22, r23
11	Delivery of voting documents	After the 23 rd day and not later than the 17 th day before polling day	r51, r96
12	Progressive roll scrutiny Special voting period Early processing (if resolution passed by local authority)	Up to close of poll	s83, r35, s79, s80

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13	Appointment of scrutineers	Not less than 24 hours before the close of voting	s68
14	Polling day	Not less than 78 days after the public notice of poll under section 52	s52, r21
15	Counting of votes/preliminary results	As soon as practicable after the close of voting	s84, s85
16	Declaration of result/public notice	As soon as practicable after completion of the roll scrutiny and validation of special votes	s86
17	Securing of voting documents and deposit with Registrar of District Court	As soon as practicable after the completion of the count	s89

6.26 In line with the principle of the Act for all qualified persons to have a reasonable and equal opportunity to cast an informed vote, appropriate information must be provided to electors at polls conducted under the Act. This includes information as to whether the outcome of the poll is binding on the local authority. In most cases the legislation requiring polls to be held will prescribe whether the outcome is binding. Under section 9, a referendum held as a consequence of a direction under the Act is not binding on the local authority unless the local authority resolves otherwise.

6.27 Under section 76, voting documents for polls must include a full statement of the proposal of the poll and whether or not the poll is binding on the local authority. Section 54 of the Act also requires the public notice relating to a poll under section 52, to state:

- (a) the proposal or subject matter of the poll;
- (b) if the poll is binding, the consequences of each result of a poll;
- (c) if the poll is non-binding, the intentions of the local authority (if any) in respect of each possible result of the poll.

6.28 It is important that the electoral officer, when notified of a decision or requirement for a local authority to conduct a poll, is advised of the necessary information to comply with these requirements including the statutory reference under which the poll has arisen (if any).

6.29 Section 65 and regulation 30 set out further requirements relating to public notices on polls.

6.30 Other differences between the conduct of elections and polls which should be noted by electoral officers include:

- discretion for the electoral officer, under regulation 46, to include neutral information on the matter or matters that are the subject of the poll with the voting documents;
- provision for 10 or more electors either in favour or opposed to a poll proposal, by notice in writing, to appoint one or more scrutineers for the conduct of that poll (who may be present for the scrutiny of the roll and for any processing of votes after the close of the poll).

2 Recommended good practice for the conduct of polls is that electoral officers:

- (i) be aware of how polls may arise under the Local Electoral Act and other legislation;
- (ii) be aware that multiple polls can be held at the same time;
- (iii) understand how conducting a poll differs from conducting an election;
- (iv) be familiar with practical considerations relating to the timing of polls including the timing of polling day;
- (v) be familiar with requirements relating to the electoral system and voting method to be used for polls and information requirements;
- (vi) ensure that the local authority, where necessary, resolves whether the poll is binding or not, and the consequences or intentions in respect of each option in the poll;
- (vii) ensure that all of the information requirements from the local authority promoting the poll are obtained in advance;
- (viii) ensure that any information that is sent out to electors with the voting document(s) is completely neutral in content;
- (ix) maintain liaison with the promoting local authority throughout the poll process.