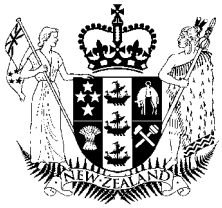

LOCAL GOVERNMENT COMMISSION

Initial Review of the Local Government Act 2002 and the Local Electoral Act 2001

1 July 2005

CONTENTS

INTRODUCTION

1 This report has been completed in accordance with section 32(4) of the Local Government Act 2002 ("the LGA"), which requires the Local Government Commission ("the Commission") to report to the Minister of Local Government ("the Minister") if it considers that any amendments should be made to the LGA or the Local Electoral Act 2001 ("the LEA") before the 2007 triennial local elections. This report is produced within the wider context of section 32 of the LGA, which requires the Commission to review the operation of the LGA and the LEA, and to present a report on this review to the Minister as soon as practicable after the 2007 triennial local elections.

Summary of recommendations

2 The Local Government Commission recommends the following amendments to the Local Electoral Act 2001:

(a) all consecutive statutory deadlines under Part 1A of the Local Electoral Act 2001 should be moved forward by three months, and the final date for forwarding appeals and objections on representation reviews to the Commission under section 19Q should be changed to 15 October in the year preceding the triennial election of members, with the Commission continuing to have until 10 April in election year to issue its determinations;

(b) the Commission, in its determinations on representation arrangements under Part 1A of the Local Electoral Act 2001, should be able to prescribe community board delegations to apply for the next triennium;

(c) the statutory timeframe between the close of nominations and the dispatch of voting documents should be extended by one week, starting the whole election process one week earlier and calling for nominations on the 57th day before polling day. This will require amendments to:

- section 5 of the Local Electoral Act 2001, changing the definition of nomination day to the 57th day before polling day; and
- regulation 10 of the Local Electoral Regulations 2001, as follows:
  - (a) in clause (1), changing the date from 7 July to 30 June
  - (b) in clause (2), changing the date from 6 July to 29 June
  - (c) in clause (3), changing the reference from "50th day" to "57th day"
  - (d) in clause (4), changing the reference from "50th day" to "57th day"

(d) the word “trust” should be included in section B of the ratepayer enrolment application form, contained in schedule 1 of the Local Electoral Regulations 2001;

(e) section 25 of the Local Electoral Act 2001 should state that an electoral officer has the ability to refuse a nomination if proof of citizenship is not provided;

(f) section 55(5) of the Local Electoral Act 2001 should be amended so that nominations can only be inspected by a member of the public after nominations have been accepted, being after the close of nominations;

(g) section 61 of the Local Electoral Act 2001 should be amended to require candidates to submit their candidate profile statement at the same time as their nomination form;

(h) clause 29(2) of the Local Electoral Regulations 2001 should be amended to clarify that local authorities may publish or display candidate profile statements following the close of nominations rather than during the voting period;

(i) sections 18 and 79 of the Local Electoral Act 2001 should be amended to provide that progressive processing of voting documents applies by default to all elections where postal voting is used, unless resolved otherwise by the territorial authority responsible for elections in that local government electoral area; and

(j) section 115(2) of the Local Electoral Act 2001 should be amended to make it clear that an elected candidate comes into office on the day after the day on which the candidate is declared elected by public notice under section 86 of the Local Electoral Act 2001.

3 The Commission recommends the following amendments to the Local Government Act 2002:

(a) section 156(2) of the Local Government Act 2002 should be amended as follows:

(2) A local authority may, by resolution publicly notified, amend a bylaw—

(a) by making editorial changes to clarify meaning, or to make amendments of a temporary nature, provided that amendments of a temporary nature shall only be made after notification of those who in the opinion of the local authority are likely to be affected by the amendment and

after public notification of the amendment and its duration; and

(b) the Local Government Act 2002 should be amended to make it clear that local authorities are able to make donations for purposes outside their city, district, or region.

Areas identified for future monitoring

4 In addition to those recommendations above, the Commission has, through this initial review, identified the following areas of the LEA and the LGA as requiring specific monitoring, leading toward its wider review under section 32 of the LGA:

- the representation review provisions, under Part 1A of the LEA;
- the order of candidates names on voting documents;
- electoral expenditure limits, and electoral advertising requirements, under Parts 5 and 7 of the LEA;
- elector participation in the electoral process;
- administration of local elections, including contracting out of electoral functions; and
- decision-making, consultation, and accountability requirements, under Part 6 of the LGA.

BACKGROUND

Statutory requirements under section 32 of the LGA

5 Section 32 of the Local Government Act 2002 ("the LGA") requires the Local Government Commission ("the Commission") to review the operation of the LGA and the Local Electoral Act 2001 ("the LEA"). The Commission must present a report on this review to the Minister of Local Government ("the Minister") as soon as practicable after the 2007 triennial local elections.

6 Without limiting the scope of this post-2007 review, section 32(3) sets out three specific areas for focus, these being:

(a) the impact of conferring on local authorities full capacity, rights, powers, and privileges;
(b) the cost-effectiveness of consultation and planning procedures; and
(c) the impact of increasing participation in local government and improving representation on local authorities.

7 As part of the overall review, the Commission is also required, under section 32(4) of the LGA, to report to the Minister by 1 July 2005, if it considers that any amendments should be made to the LGA or the LEA before the 2007 triennial local elections.

Commission's approach under section 32(4)

8 The Commission notes that two years have passed since the LGA came into force, and that a number of provisions contained in the LEA have only been in effect for either one or two local elections. It will be some time before the effects of many of the fundamental changes become evident. These factors place substantial restrictions on the Commission's ability to properly evaluate the impact of both Acts in a meaningful way at this time.

9 In the Commission's view, the wording of section 32(4) of the LGA indicates that it should only report to the Minister by 1 July 2005 if it considers that **urgent** amendments to certain provisions of the LEA and the LGA are required.

10 In initiating this review, the Commission considered it most likely that any recommendations for amendment would be focused on the areas of:

- matters relating to local elections, including electoral processes and representation reviews; and
- matters relating to the term of a council, or the coming into office of the council after the triennial elections.

11 Notwithstanding these limitations, the Commission has sought the views of local authorities and sector organisations, requesting them to identify any

matters of concern with the operation of the LEA and the LGA they considered appropriate for consideration by the Commission under section 32(4). Local authorities and sector groups responded with both broadly themed concerns and specific requests for legislative amendment or clarification. In preparing this report, the Commission sought to address the majority of issues presented to it from the sector.

12 In many instances, the Commission has not been able to satisfy itself that amendments, as suggested through the submission process, are warranted at this stage. In a number of cases, the Commission considered that it would be more appropriate to subject broadly themed concerns to longer-term monitoring, within the wider context of the main review to be conducted under section 32. It could therefore report to the Minister on a more substantive basis about these concerns following the 2007 local elections.

13 Without seeking to diminish the significance of issues raised through the submission process, the Commission observes that some submissions reflect a learning process within the sector that might be expected following the enactment of any fundamentally new legislation.

14 The Commission notes that in addition to the requirement to report under section 32, it is able to report to the Minister on matters relating to local government at any time, in accordance with section 31 of the LGA. It could do so in some cases as an alternative to leaving them till the report to submitted in 2008.

Methodology of review

15 On 30 September 2004 the Commission wrote to local authorities, and relevant state sector and local government organisations, inviting them to bring forward any matters of concern relating to the operation of the LEA and the LGA that they considered should be dealt with in time for the 2007 local elections, or for the term of the council elected at the 2007 local elections. These organisations were:

- local authorities;
- local authority electoral officers;
- Department of Internal Affairs ("DIA");
- Statistics New Zealand;
- Land Information New Zealand;
- Ministry of Health;
- Electoral Enrolment Centre;
- Local Government New Zealand ("LGNZ");
- Society of Local Government Managers ("SOLGM");
- Office of the Controller and Auditor-General ("OAG").

16 In preparing this report, the Commission also drew on the following sources of data:

- statistics relating to the 2004 local elections, compiled by DIA;
- a survey of candidates standing for the 2004 local elections, prepared by DIA; and
- an assessment of voting documents, prepared by DIA.

17 The Commission's approach to considering submissions has been based on:

- consideration of suggestions against the purposes and principles contained in the LGA and the LEA;
- identification of additional risks, administrative complications, costs, and assessment of these factors against suggested benefits;
- identification of alternative strategies to resolve submitted concerns, that are not dependent on legislative amendment; and
- consideration as to whether suggestions are better dealt with in this report, under section 32(4) of the LGA, or whether the issues raised should be subject to longer-term monitoring, with a view to reporting to the Minister, in accordance with the wider review requirements of section 32 of the LGA.

THE LOCAL ELECTORAL ACT 2001

Key changes in the framework for local elections

18 The LEA established a principle-based and less prescriptive approach to the law governing local government elections and polls. It was designed to implement three key electoral outcomes:

- fair and effective representation for individuals and communities;
- equal opportunities to participate in local elections and polls; and
- public understanding of, and confidence in, local electoral processes.

19 A key purpose of the LEA is to provide flexibility to accommodate changing electoral systems, voting methods and new technologies.

20 The LEA also:

- enables the use of the STV electoral system;
- enables Māori wards or constituencies to be established;
- places limits on election expenditure by candidates;
- requires candidates' profiles to be produced; and
- enacted a number of technical and procedural changes.

21 The Local Electoral Amendment Act 2002 introduced a fundamentally new representation review process to the LEA. Key changes included:

- replacement of the triennial review with a representation review that must be undertaken at least once every six years and, in the first instance, prior to the 2007 local government elections;
- members of a territorial authority being able to be elected partly by the district as a whole and partly by the electors of wards;
- as part of every representation review, all territorial authorities having to consider whether or not the district or city should have communities and community boards, and if so the nature and structure of those boards; and
- specific population formulae being introduced to determine fair representation for electors.

Overview of Commission's consideration of submissions on the LEA

22 The Commission's assessment of the operation of the LEA during the 2004 local elections is generally positive. To date, much of the Commission's engagement with the sector reflects a reasonable level of satisfaction with the provisions of the LEA. In particular the Commission notes that a survey of electoral officers conducted by SOLGM indicates that:

(a) *"there is a high (and in some cases increasing) level of satisfaction with the operation of key provisions of the LEA and the Local Electoral Regulations 2001; and*

(b) the level of significant problems arising from the legislative framework was relatively low."

23 While a delay in the announcement of some election results received considerable attention in the period immediately following the election, it is, from the Commission's observation, now widely understood within the local government sector that this issue arose because of a very specific technical issue. The contracted vote processor's (Electionz.com) sub-contractor, Datamail, encountered problems in 'transforming' scanned voting documents into the XML file used to upload the STV calculator. While this failure no doubt contributed to broad concerns surrounding the issue of the contracting of electoral functions, and highlighted issues surrounding transitional provisions following the election of a new council, it does not, in the Commission's view, signify a failure with the operation of the LEA.

24 It can be seen in hindsight that the prominence of this issue served to cloud meaningful and fact-based assessment of the operation of the LEA immediately following the 2004 local elections. While by no means conclusive, statistics provided by the DIA cast uncertainty over the assertions made during this period, particularly in regard to the impact of the STV voting system on voter turnout, and in contributing toward voter confusion.

25 Submissions made to the Commission reveal a high degree of support within the sector on some issues, these being:

- amending the criteria and process for determining representation arrangements;
- mitigating voter confusion in respect to voting document formats, in respect to:
  - (a) the impact of STV, and separation of voting documents by voting system;
  - (b) the quality of voting documents in some areas;
  - (c) extending statutory timeframes for the production of voting documents; and
- amending provisions for the early processing of votes.

26 The Commission also considered suggestions for:

- clarifying transitional provisions applying after the election of a new council;
- reviewing requirements for candidate profile statements ("CPSs") and nomination forms;
- internet voting;
- civic participation in, and awareness of, local government;
- ratepayer elector enrolment; and
- district health board ("DHB") elections.

27 The submission process also highlights a number of debates within the sector, relating to:

- prohibitions on candidacy;
- shortening the voting period;
- the purpose and effects of electoral advertising provisions and the level of campaign spending limits; and
- the choice of electoral system.

28 As far as possible, the Commission has sought to align its discussion of these issues with the order of relevant provisions contained in the LEA.

Comparative summary of 2004 local election statistics

29 The DIA collates election statistics following each local election. The following tables present a brief summary of available statistical information. A comprehensive range of statistics for the 2004 local elections is expected to be available from August 2005 at http://www.dia.govt.nz.

Voter Turnout

30 Table 1 illustrates overall voter turnout in all local authority elections since local government reorganisation in 1989. Voter turnout is the number of valid, blank and informal votes returned for a particular issue. While the turnout for 2004 continued the pattern of generally declining voter turnout, closer examination of individual local authority elections reveal a greater degree of fluctuation. Further analysis of these fluctuations may provide the most effective analysis of the factors contributing to voter turnout. For example, the Christchurch City Council election recorded a 10% decline in turnout between 2001 and 2004 (from 49% to 39%), while the Auckland City Council recorded a 6% increase in turnout between 2001 and 2004 (from 43% to 49%).

Table 1: Total voter turnout

	1989	1992	1995	1998	2001	2004
Regional councils	56%	52%	48%	53%	49%	45%
City councils	52%	48%	49%	51%	45%	43%
(City mayors)	(50%)	(48%)	(49%)	(51%)	(45%)	(43%)
District councils	52%	61%	59%	61%	57%	51%
(District mayors)	(50%)	(61%)	(59%)	(59%)	(56%)	(52%)
Community boards	54%	49%	50%	50%	46%	42%
District health boards	-	-	-	-	50%	46%
Licensing and lands trusts	NA	NA	NA	NA	NA	48%

NA – Not available

31 Table 2 illustrates turnout in each election for areas using "fully STV", "mostly STV" and "mostly FPP" elections, these being:

- Fully STV (n=4): those areas where all elections were STV (Chatham Islands, Marlborough, Kaipara and Kapiti);
- Mostly STV (n=6): those areas where the elections for mayor and for the council were STV but the regional council elections were FPP (Dunedin, Matamata-Piako, Papakura, Porirua, Thames-Coromandel and Wellington);
- Mostly FPP (n=64): those areas where FPP was used for all but DHB elections.

32 These figures demonstrate that while elections using STV show the highest reduction in turnout between 2001 and 2004, STV elections continue to show higher turnout than FPP elections.

Table 2: Turnout by electoral system

	2001 turnout	2004 turnout
Mayoral elections		
Fully STV councils	64%	56%
Mostly STV councils	51%	46%
Mostly FPP councils	49%	46%
Council elections		
Fully STV councils	64%	56%
Mostly STV councils	49%	45%
Mostly FPP councils	50%	46%
Community board elections		
Fully STV councils	64%	51%
Mostly STV councils	58%	55%
Mostly FPP councils	45%	42%

33 Table 3 illustrates overall turnout for territorial authorities using STV compared with those using FPP.

Table 3: Turnout for STV and FPP territorial authorities

	Turnout
STV district council elections (n7)	51%
FPP district council elections (n50)	51%
STV city council elections (n3)	46%
FPP city council elections (n13)	42%

Blank and Informal Voting

34 Table 4 shows the number of blank and informal voting documents as a percentage of total voting documents returned between 1989 and 2004. However, it should be noted that prior to 2004 there was no requirement to separately record 'blank' and 'informal' voting documents and that some electoral officers may have separately identified or not recorded the number of blank voting documents.

35 Informal voting documents are those not issued by an electoral officer, or (for FPP) where the number of votes exceeds the number of vacancies or (for STV) where there is no unique first preference. Blank voting documents are those on which there is no evidence the voter has attempted to vote for one or more candidates.

Table 4: Informal and blank voting documents

	1989	1992	1995	1998	2001	2004
Informal & blank voting documents as proportion of total documents	4.6%	5.4%	5.8%	5.9%	4.1%	7.2%

36 Table 5 shows the rates of informal and blank voting documents for territorial authority and DHB elections held under FPP and STV in 2004. The 2004 results show that the majority of 'invalid' documents were blank and not informal (i.e. for whatever reason, voters chose not to complete all the voting documents sent to them).

Table 5: Proportion of blank and informal voting documents for FPP and STV elections

	TAs using FPP	TAs using STV	DHBs
% of blank voting documents	3.1%	3.0%	8.0%
% of informal voting documents	0.3%	1.6%	6.6%

37 Table 6 shows blank and informal voting documents as a proportion of total voting documents in 2004. These figures support the idea that there is a hierarchy of interest in local elections, with greatest interest in mayoral elections.

Table 6: Blank and informal voting documents

	Total Voters (N)	Informals (N)	Informals (%)	Blanks (N)	Blanks (%)	Total Blank and Informal Votes	% Total Votes
New Zealand Mayors	1,164,268	3,725	0.32%	24,846	2.13%	28,571	2.45%
Mayoral City Councils	659,227	2,390	0.36%	13,971	2.12%	16,361	2.48%
Mayoral District Councils	505,041	1,335	0.26%	10,875	2.15%	12,210	2.42%
New Zealand Councils	1,182,239	6,692	0.57%	37,894	3.21%	44,586	3.77%
City Councils	652,350	2,952	0.45%	23,753	3.64%	26,705	4.09%
District Councils	529,889	3,740	0.71%	14,141	2.67%	17,881	3.37%
New Zealand Community Boards	504,557	1,820	0.36%	28,914	5.73%	30,734	6.09%
City Community Boards	398,122	1,372	0.34%	24,956	6.27%	26,328	6.61%
District Community Boards	106,435	448	0.42%	3,958	3.72%	4,406	4.14%

Representation reviews

38 The Commission is aware of concern within the local government sector about Part 1A of the LEA, which sets out the requirements for councils to undertake representation reviews. The vast majority of submissions made to the Commission focus on the criteria for determining representation arrangements, particularly as contained in subsections 19(V)(2) and section 19(V)(3). The Commission also received a small number of submissions concerning the process for determining representation arrangements.

Summary of submissions on the criteria for determining representation arrangements

39 The overriding theme of submissions concerned with the *criteria* for determining representation arrangements was that the impact of the new legislation shifted the balance of the criteria toward determining *fair representation for electors,* at the cost of *effective representation*, and therefore recognition of *communities of interest*. A number of submitters considered that the legislation should enable more effective recognition of "communities of interest" than currently exists or that the criteria for determining fair representation for electors should be made more flexible to accommodate this.

40 Many submitters also expressed dissatisfaction with the outcome of the Commission's determinations on appeals issued in 2004. Submitters were critical of what they perceived as too strict an interpretation of section 19V(2), and too limited an interpretation of section 19V(3).

41 The primary focus for criticism of the legislation was section 19V(2), which states:

> *"For the purposes of giving effect to [fair representation], the territorial authority or regional council and, where appropriate, the Commission must ensure that the population of each ward or constituency or subdivision, divided by the number of members to be elected by that ward or constituency or subdivision, produces a figure no more than 10% greater or smaller than the population of the district or region or community divided by the total number of elected members (other than [[members elected by the electors of a territorial authority as a whole, if any, and]] the mayor, if any)."*

42 Exceptions to the +/-10% requirement are limited. In the case of territorial authorities, section 19V(3)(a) states that, despite subsection (2), *"if the territorial authority or the Commission considers that the effective representation of communities of interest within island communities or isolated communities situated within the district of the territorial authority so*

requires, wards and subdivisions of a community may be defined and membership distributed between them in a way that does not comply with subsection (2)".

43 Sections 19V(3)(b), 19V(4) and 19V(5) provide regional councils with different grounds for exception to the population-to-member ratio criteria contained in subsection 19V(2). Section 19V(3)(b) states that *"if the regional council or the Commission considers that effective representation of communities of interest so requires, constituencies may be defined and membership distributed between them in a way that does not comply with subsection (2)".* However, when a regional council decides under subsection (3)(b) not to comply with subsection (2), it must refer that decision to the Commission. The Commission must then determine representation arrangements for the region through the same process as if it had received appeals or objections against the decision of the regional council.

44 A recurring theme in submissions was the perception that the population criteria in section 19V(2) is easier to apply to urban-based districts with less easily defined communities of interest than territorial authorities with large, often sparsely populated, rural areas.

45 Submitters made a number of specific recommendations or suggestions. These may be organised in two ways:

1. That greater flexibility be afforded to section 19V(2), or that additional or alternative considerations be included in the criteria for determining fair representation by taking into account:
   (a) the number of rateable properties;
   (b) the rateable value;
   (c) the area;
   (d) the number of absentee ratepayers;
   (e) the addition of holiday-makers to the population of a ward;
   (f) any other relevant characteristics;
   (g) requiring a +/-20% ratio in the case of regional councils only;
   (h) the same criteria as provided in clause 101L of the Local Government Act 1974 ("the LGA 1974"); and/or
   (i) the same criteria contained in the Local Government Bill 2002 as introduced to Parliament.

2. That section 19V(3) be amended to allow councils, and the Commission, clearer or wider grounds for exception to the population-to-member ratio criteria, beyond that of "island communities or isolated communities". This may include consideration of communities of interest in light of:
   (a) the geography of a district or region;
   (b) the population;
   (c) the topography;

(d) the demographic make-up; or
(e) including a statutory definition of the term "community of interest" within the LGA and the LEA.

Commission's consideration of criteria for determination of representation arrangements

46 While arguments were put forward by submitters for a change to the representation review provisions, particularly with respect to the application of the +/-10% rule, and recognition of "isolated communities", the Commission considers that the existing provisions should be retained at this time. This is because, to date, only a minority of local authorities have undertaken their representation reviews under the existing LEA requirements, and the Commission considers that all local authorities should work through the existing process to enable a more robust assessment of the statutory criteria to be made. It intends to actively monitor the application of the existing provisions, with the view to making any recommendations it considers necessary as a result of this monitoring in its full report following the 2007 local elections.

47 The Commission received a number of submissions that contended that its application of the "isolation" criteria in section 19V(3)(a) in its 2004 determinations was too rigid. While not satisfied of the need for legislative change at present, the Commission decided to revise its guidance for the application of the "isolated communities" concept. These are contained in the second edition of the Commission's Representation Review Guidelines, issued on 29 June 2005. The Commission has done this to provide better guidance for local authorities and itself in dealing with "isolation". As previously noted however, section 19V(2) provides that local authorities must ensure adherence to the +/-10% requirement. In the case of territorial authorities, exception from this requirement may only be considered if required for the effective representation of communities of interest within island communities or isolated communities. Where local authorities do propose to apply the concept of isolation it remains important that they put forward well reasoned arguments for doing so. In such cases it would be helpful for councils to take the Commission's Guidelines into account as part of their analysis and argument.

48 The Commission is also aware that the Justice and Electoral Committee is considering the LEA representation review provisions in detail as part of its review of the 2004 local elections, and that recommendations for changes to the statutory provisions may result from that process.

Commission's consideration of submissions related to the process for determining representation arrangements

49 The Commission received a small number of submissions related to the process for determining representation arrangements under Part 1A of the LEA, related to:

- statutory timeframe for determination of appeals;
- community board functions;
- Commission consultation under section 19R(2);
- timing of decisions on electoral system and representation arrangements;
- a ward system as a default option for local authorities with larger populations; and
- the process through which regional council proposals are referred to the Commission.

Statutory timeframe for determination of appeals

50 Under section 19Q of the LEA a local authority is required to forward to the Commission any appeals, objections and other information relevant to its proposal by 15 January in the year of the triennial local elections. The Commission is then required to consider all the information and to determine the electoral arrangements of the local authority by 10 April in the year of the triennial local elections.

51 The Commission has expressed concern over many years about the adequacy of the existing statutory timeline. While the legislation gives it the ability to make any enquiries that it considers appropriate, the volume and complexity of its task means that it has limited ability to undertake broader enquiries beyond its consideration of the matters referred to it by the local authority under section 19Q of the LEA.

52 As part of its consideration of appeals and objections, the Commission has traditionally invited appellants and objectors to appear before it in their local area to speak to their concerns. At the same meeting the affected local authority has been given the opportunity to speak to its proposal and also has a right of reply to any matters raised. Both the Commission and the local parties value this process. However, there is no statutory requirement for the Commission to hold such meetings, and given the brief timeframe, it may need to consider whether such meetings should be held in all cases if a high proportion of local authority proposals continue to be subject to appeals and objections.

53 The Commission's representation workload for the 2004 local elections was at the upper end of its capacity, given the time available. Given the large number of reviews to be held for the 2007 local elections, and what seems to

be an ongoing trend of high levels of appeals and objections, the Commission has a real concern about its ability to deal with the issues in the existing short statutory timeframe.

54 As signalled in its 2004 Annual Report, and its submission to the Justice and Electoral Select Committee earlier this year, the Commission considers that the representation review process should be advanced by a period of three months, so that all appeals and objections against the representation proposals of local authorities are lodged with it by 15 October in the year prior to the year of the triennial local elections, giving it until 10 April in election year to issue its determinations.

Community board functions

55 The Commission is of the view that when it is determining community board issues as part of its overall representation determination for a territorial authority, it should also have the power to determine the functions of each community board.

56 It believes that for community boards to be effective agents in their local communities, they need to be appropriately empowered and resourced. If it were able to prescribe community board delegations to apply for the next triennium in its determinations this could encourage a greater number of persons to stand as candidates for their community boards, thereby enhancing local representation. This would also enable the boards to play a more meaningful role in their communities and release councillors for governance and policy matters.

Commission consultation under section 19R(2)

57 Some dissatisfaction was expressed in submissions with section 19R(2) of the LEA, which sets out the grounds on which the Commission must determine appeals and objections. At present, section 19R(2) allows the Commission to make any enquiries, and hold any meetings it considers appropriate, but does not oblige it to hold meetings with affected parties. One suggestion is that section 19R(2)(b) be amended so that the Commission *must* hold meetings with the affected council, or any persons who have lodged an appeal, objection or submission and have indicated a desire to be heard. A second submission suggests that section 19R(2) be amended to require the Commission to discuss with the local authority any changes it proposes to make to the local authority's resolution before issuing its determination of appeals.

58 Amendments of the sort suggested above would depend, in the first place, on an extension to the statutory timeframe in which the Commission must determine appeals. As noted, the Commission is concerned that existing

statutory timeframes will require it to determine appeals based on documents received under section 19J, and that it will be unable to meet with relevant parties in 2006/07.

59 The Commission supports, as a matter of principle, the practice of holding meetings with affected local authorities, appellants, and objectors. Indeed, this is a long-standing Commission practice, and was certainly the case for all representation reviews in which the Commission was involved in 2003/04. It hopes it will be able to maintain this practice. It does not, however, support a *mandatory* requirement to hold hearings. It believes, for example, that there must be flexibility not to hold hearings in respect of vexatious appeals or appeals that are purely of a technical nature.

60 The Commission notes that the opportunity for consultation exists *prior* to its determination of appeals. It also issues a written document outlining its process and considerations leading to its decision. The Commission considers that enabling *submitters*, who may not have participated in the whole process, to enter the process at this appeal stage would place an unworkable burden on the process.

Timing of decisions on electoral system and representation arrangements

61 The Commission considered the suggestion that the statutory deadlines for making a decision on the electoral system to be used by a territorial authority (FPP or STV), and making a decision on representation arrangements for a local authority, be aligned so that councils have the opportunity to consider the two decisions at the same time.

62 At present, section 19M of the LEA requires local authorities to initiate public consultation of the proposals contained in their first resolution for representation arrangements no later than 8 September in the year immediately before the year of the triennial local elections. Potentially, the final stage of the review process is determined by section 19R(3), which requires the Commission to report its determination of appeals before 11 April in the year of the triennial election. Section 27 of the LEA enables a local authority to resolve to change its electoral system no later than 12 September in the year that is two years before the year in which the next local elections are to be held. This resolution must stand for two local elections. Therefore, councils make decisions on their electoral systems *before* their representation arrangements have been determined, although a council may undertake a representation review every three years.

63 While the Commission accepts that the two decisions are inter-related, it is also of the view that one decision should follow the other. This is because both statutory processes are potentially lengthy, and the Commission has reservations as to whether they could be conducted at the same time. However, while a decision on representation arrangements is determined

either by a council or by the Commission, decisions on electoral systems may be determined by a poll of electors. Therefore, it would seem more effective, in terms of assuring the compatibility between the two decisions above, that representation arrangements should be determined *after* the decision on the system of voting to be used.

Ward system as default option for local authorities with larger populations

64 The Commission considered the suggestion that the LEA be amended to provide a ward system for cities, districts, and regions above a particular population size *unless* a poll of electors supported an 'at large' system. The Commission is not satisfied that an amendment to this effect is necessary or desirable, noting that it may be seen as contrary to a fundamental purpose of the LEA, which, under section 3(c)(1a), is to "*allow diversity (through local decision-making) in relation to the regular review of representation arrangements for local authorities*."

Process through which regional council proposals are referred to the Commission

65 The Commission considered the process through which proposals made by regional councils are referred to it. As previously noted, section 19V(4) requires that any decision not complying with section 19V(2) must be referred to the Commission, regardless of appeals and objections. Subsection 19V(5) requires the Commission to treat every decision referred to it under subsection 19V(4) as if it were an appeal against the decision of council. This process contrasts with the existing process for referral to the Commission in the case of territorial authority decisions, where the Commission only becomes involved if appeals and objections are lodged against a council's final resolution.

66 A fundamental purpose of the LEA, as set out in section 3(c)(ia), is *'to allow diversity (through local decision-making) in relation to the regular review of representation arrangements for local authorities'*. There is an argument to suggest that automatic referral of proposals to the Commission in circumstances where regional councils do not comply with the +/-10% rule does not accord with this fundamental principle. However, the criteria enabling exemptions from the +/-10% rule is more flexible for regional councils than for territorial authorities, and so far only one regional council has undertaken the representation review process under the LEA. Consistent with its approach to the representation review criteria above, the Commission is of the view that the existing provisions should remain until all local authorities have undertaken this process under the existing criteria.

Extension of period between close of nominations and dispatch of voting documents

67 Submissions made to the Commission indicate strong support for an extension to the statutory timeframe between the close of nominations and dispatch of voting papers.

68 Submissions made by electoral officers and mailhouses highlight the fact that some statutory requirements introduced in the LEA have increased the pressure on organisations responsible for the preparation and dispatch of voting documents. These requirements include:

- the introduction of CPSs to the electoral process;
- the responsibility of electoral officers for arranging and conducting at-large DHB elections (often with a large number of candidates);
- deadlines imposed by mailhouses for preparing and printing voting documents and CPS booklets; and
- the introduction of the STV voting system, requiring the printing of STV voting documents and accompanying voter guidance information.

69 Despite significant pressure, all voting documents were dispatched in 2004 in accordance with the required statutory timeframe. However, in the case of some voting documents, problems were experienced with aspects of quality control, including poor layout, varying font sizes, and colouring that did not effectively distinguish between different elections and electoral systems. In the Commission's view, it is likely that such features, while avoidable, did not assist voters. It also notes that errors relating to the re-formatting and re-proofing of CPSs and voting documents resulted in additional costs to local authorities.

70 The Commission considers that extending the period between the close of nominations and the dispatch of voting documents by one week would help deal with this issue.

71 In the Commission's view, the most effective, and least disruptive means to achieve this extension is to start the whole election process one week earlier by calling for nominations on the 57th day before polling day. This will require amendments to:

(a) section 5 of the LEA, changing the definition of nomination day to the 57th day before polling day; and

(b) regulation 10 of the Local Electoral Regulations 2001 ("the LER"), as follows:

(i) change date from 7 July to 30 June in clause (1);

(ii) change date from 6 July to 29 June in clause (2);

(iii) change reference to "50th day" to "57th day" in clause (3); and

(iv) change reference to "50th day" to "57th day" in clause (4).

Shortening the voting period

72 The Commission received five submissions requesting that it reduce the current three-week voting period to two weeks. In the main, submitters hypothesised that the three-week period encourages a languid approach to voting, resulting in lower voter turnout than would likely occur if the voting period were reduced.

73 The Commission does not support reducing the voting period from three weeks to two weeks. Largely, this is due to the absence of substantive evidence to suggest that the longer voting period contributes to voter apathy and lower turnout at elections. While overall voter turnout has reduced since the introduction of the three-week voting period, there is little evidence to link this trend to the extended voting period.

74 The Commission also considers that reducing the voting period to two weeks would require widespread publicity, and create the risk of voters, familiar with the three week period, failing to return their voting documents within the reduced timeframe. It also notes that overseas voters would have greater difficulty in returning voting documents if the voting period were reduced.

Internet voting

75 The Commission considered the suggestion that the LER be amended to permit the use of electronic voting as a voting method, in addition to booth voting and postal voting. Although section 5(c) of the LEA provides for "any form of electronic voting", the voting methods currently prescribed in the LER are limited to booth voting and postal voting.

76 The Commission is aware that different forms of e-voting are already used by some organisations and companies. It further understands that some countries are considering the introduction of e-voting and are running a variety of pilot projects, including Australia, Austria, Belgium, Brazil, Estonia, the Netherlands and the United Kingdom, amongst others.

77 While the Commission supports, in principle, the concept of enabling local authorities, through amendments to the LER, to consider internet voting as an additional form of voting, it also has reservations that such a recommendation is appropriate within the context of this report. This is because:

(a) security issues have not been adequately resolved; and
(b) a certification process would need to be developed, and this would not likely be in place for the 2007 local elections.

78 The Commission envisages that a certification process similar to that required by section 19AB of the LEA for counting programmes for STV

elections would provide a suitable model for the introduction of an internet voting method.

Ratepayer electors

79 The Commission considered submissions relating to the process for ratepayer elector enrolment. Sections 24, 38 and 39 of the LEA provide for the enrolment of ratepayer electors in particular circumstances. Clauses 19 and 20 of the LER provide for the application for enrolment as a ratepayer elector. Schedule 1 of the LER prescribes an enrolment application form for ratepayer electors.

80 The first suggestion arose from SOLGM's electoral debrief forum. It was considered that, for greater clarity, and based on the experience of ratepayer enrolments from the 2004 elections, that Section B of the enrolment application form, contained in schedule 1 of the LER, should include a reference to a "trust". At present the form makes reference to "…a firm, company, corporation, society (etc)…" The Commission is satisfied that inclusion of "trusts" is appropriate within the context of this list, and that the "(etc)" would conceivably include a "trust". It supports this amendment on the basis that it will add clarity to the process of ratepayer enrolment.

81 The Commission also considered the general suggestion that it review existing procedures for ratepayer enrolment, with a view to recommending some form of automatic enrolment process. While some local authorities report many enquiries from ratepayer electors who had not received voting documents, the Commission is satisfied that the provisions contained in section 39 of the LEA are sufficient to ensure that eligible ratepayers are informed of the procedures to become enrolled. An automatic procedure for ratepayer enrolment would, by necessity, be administratively complex, and might not be completed before the 2007 local elections.

Electoral systems for elections

82 Some submissions suggested that the STV voting system, or some form of preferential voting system, should be made compulsory for all local authority elections and polls. The Commission does not support this suggestion, noting that a fundamental purpose of the LEA is to allow diversity (through local decision-making) in relation to the particular electoral system to be used for local elections and polls.

83 The Commission also received submissions suggesting that it review the potential for regional councils, district health boards, territorial authorities and licensing trusts within the same territorial authority administered area to use different voting systems. The implication here is that there should be uniformity of voting systems for all elections within a single territorial authority

area. Some submissions suggested that the territorial authority should have greater discretion to determine the voting system for all elections within that area.

84 As discussed below, the Commission considers that to date there is insufficient evidence to suggest that different systems for regional councils, district health boards, territorial authorities and licensing trust elections within the same territorial authority administered area causes confusion for voters. The Commission maintains that this aspect of decision-making is best left to individual councils and communities, in accordance with the purposes of the LEA.

Candidacy

85 A range of submissions suggested amendments to the candidacy requirements under subpart 3 of the LEA. These related to:

- residency requirements for candidates;
- prohibitions on candidacy to community boards;
- clarification of citizenship requirements; and
- public inspection of nomination forms.

Residency

86 Submissions reflect debate within the sector regarding residency requirements for candidates to mayoral, councillor, and community board positions. Key themes expressed were that:

- the legislation be changed to require that a candidate for election as mayor or councillor of a territorial authority, or as a community board member, should reside within the territorial authority to which the election applies;
- ward residency should not be a requirement of ward or constituency, or community board nomination; and
- CPSs and voting documents should advise electors if someone lives outside the constituency or territorial authority area.

87 Sections 57 and 58 of the LEA detail existing prohibitions on candidacy. It would appear that the key purposes of these provisions are to avoid:

- reduced representation on a council by prohibiting candidates standing for two positions on the same council;
- conflicts of interest between regional councils and territorial authorities, and territorial authorities and community boards; and
- the possibility of a by-election being necessary should a person be elected to conflicting positions.

88 While the Commission supports the principle that local government representatives should have knowledge of, and involvement with, the

community they represent, it does not consider that this principle warrants additional prohibitions on candidacy based on the residency of the candidate. It is reasonable for a candidate to have traditional, business or other interests in an electoral area, but for other reasons to choose to live elsewhere. In the Commission's view, the extent to which residency is an issue of significance in any particular election is best determined through the campaign process.

89 The Commission also notes that section 26 of the LEA requires the two nominators of a candidate to be residents of the electoral subdivision in which the candidate is standing.

90 It does not consider it appropriate to require candidates, through legislation, to have their residency details disclosed in CPS and voting documents. If that submission was applied there could be an equal case for including other information on these documents.

Prohibitions on candidacy for community boards

91 The Commission considered submissions seeking prohibitions on candidacy for community board positions. These were to:

- prohibit a candidate standing for more than one community board; and
- prohibit employees of a council standing for community board membership.

92 In considering the first suggestion, the Commission notes that section 57A prohibits candidates from standing for a council in more than one ward. This is because having one member representing two wards would reduce the size of the council and proportionally decrease representation for of the wards concerned. These factors do not apply to community board membership.

93 The Commission also considered sections 50 to 53 of the LGA, regarding the membership, status, role, and powers of community boards, and came to the view that there are no factors that would prevent a person serving on two separate community boards from representing both communities effectively. It therefore considers that this matter is best determined by candidates and electors involved in particular elections, rather than through legislation.

94 In considering the second suggestion above, the Commission notes that section 41 of the LGA requires employees of a local authority to resign if elected to the council. The Commission understands that this is because the council is a governing body, and has a *contractual* relationship with council staff, through its chief executive officer. No contractual relationship exists between community boards and council employees. The Commission is not aware of any other conflict of interest that would necessarily exist if an

employee of council were elected to membership of a community board, and therefore does not support this suggestion.

Citizenship requirements

95 The 2004 local elections included, for the first time, a requirement under section 25(1) of the LEA, that all candidates be New Zealand citizens as well as being on the electoral roll. While the requirement to be on the electoral roll is easily checked, the requirement to be a New Zealand citizen is not easily verified, other than by requiring candidates to provide proof of citizenship. In the Commission's view, section 25 of the LEA is not clear as to whether the electoral officer has the ability to refuse a nomination if citizenship is not proved. The Commission is aware of at least one situation following the announcement of election results in the 2004 local elections when it was discovered that a successful candidate was not, in fact, a New Zealand citizen, thus requiring a by election to select a new candidate, at additional cost to the territorial authority.

96 The potential cost and risk of such circumstances are, in the Commission's view, sufficient to warrant legislative clarification as to whether the electoral officer has the ability to refuse a nomination if citizenship is not proved.

Inspection of nomination forms by members of the public

97 Section 55(5) of the LEA states that *"any person may inspect any nomination or consent without payment of any fee at any time during ordinary office hours at the office of the electoral officer".* In the Commission's view, the intention of this provision is unclear as to whether it means that the public are able to inspect nomination forms as soon as the electoral officer has received them, or whether this provision only takes effect once the electoral officer has accepted the nomination in accordance with section 55(2) of the LEA.

98 Section 55(2) of the LEA requires that an electoral officer must not accept the nomination of a candidate if the candidate is disqualified under section 58 of the LEA. Section 58(2) of the LEA states that no person may, at the same time, be both a candidate for election to a regional council for a region and a candidate for election to a constituent authority of that region. Therefore, in effect, an electoral officer can only accept that the nomination meets the requirements of section 55(2) after the close of nominations.

99 In considering the two possible interpretations of section 55(5) above, the Commission notes two difficulties resulting from the ability of the public to inspect nomination forms as soon as they are lodged, these being that:

- this interpretation of the provisions provides an incentive for candidates to delay the lodging of their nominations, adding to pressure on electoral officers following close of nominations; and

- nominations that are inspected before the close of nominations might later be declined because they failed to meet the requirements under section 55(2).

100 Therefore, the Commission recommends that section 55(5) of the LEA be amended so that nominations can only be inspected by a member of the public after nominations have been accepted, which is after the close of nominations.

Candidate profile statements ("CPSs")

101 The Commission received a range of submissions, and comment, related to the provisions for CPSs. Issues raised were:

- whether CPSs and nomination forms should be lodged at the same time or separately;
- CPS formatting issues, including:
  - the use of bullet points and paragraghs;
  - national standardisation of CPS format; and
  - rules for photographs in CPSs; and
- clarification around the time of publication or display of CPSs.

102 Relevant areas of the LEA include:

- section 61 of the LEA, which sets out the CPS information requirements for candidates, and the obligations of the electoral officer in ensuring these requirements are met; and
- section 62 of the LEA, which requires electoral officers to comply with all prescribed requirements relating to the publication, display or distribution of CPSs to electors.

Lodging of CPS and nomination forms separately or at the same time

103 Section 61(2)(b) of the LEA as initially enacted required the CPS and nomination form to be submitted at the same time. However, this provision was substituted by section 24(1) of the Local Electoral Amendment Act 2002, which enables candidates to submit their CPS separate from their nomination form, but before the close of nominations.

104 The Commission understands that the rationale for this amendment was that, in 2001, most candidates submitted their nominations just prior to the deadline. A reason for this may have been that, under section 55(5) of the LEA, or through the procedures of the Local Government Official Information and Meetings Act 1987 ("the LGOIMA"), nominations can be inspected at any time during ordinary office hours at the Electoral Officer's office, and candidates feel disadvantaged at the prospect of another candidate seeing or 'stealing' ideas and policies from their CPS. The propensity for candidates to lodge their CPS and nomination form just prior to the deadline increases the

administrative pressure on electoral officers. The Commission understands that, at the time of the 2002 amendment, it was thought that enabling candidates to submit their nomination form and CPS separately would encourage candidates to submit their nomination early, and then focus on their CPS, and that this would reduce the administrative burden on electoral officers following the close of nominations.

105 Feedback from electoral officers involved in the 2004 local elections indicates that the majority of candidates continued to submit their nomination forms at the end of the nomination period. Where the nomination form and CPS were submitted separately, the electoral officer had to deal with the candidate at least twice when any issues arising could have been dealt with at their first interaction. In summary, it would appear that separating the time for lodging of nomination form and CPS has increased the pressure on electoral officers. The Commission therefore recommends that section 61 of the LEA be amended to require candidates to submit their CPS with their nomination form.

106 The Commission notes that its recommended amendment to section 55(5) would deal with the issue of other candidates being able to inspect nomination forms prior to the close of nominations.

Publishing or display of CPS

107 Clause 29(1) of the LER requires all voting documents issued to be accompanied by CPSs. Subclause 29(2) of the LER provides that "*a local authority may, during the voting period, publish or display CPSs in any manner that it considers appropriate."*

108 However, legal advice obtained by SOLGM concludes that section 62 of the LEA, and clause 29 of the LER, do not override the provisions of the LGOIMA. The LGOIMA provides a regime for persons to request official information from local authorities. It operates on the principle of availability, whereby information must be available unless there is good reason for withholding it. SOLGM's advice concludes that a CPS is "official information", and doubts whether a request for either inspection or a copy of the CPS could be denied under sections 6 or 7 of the LGOIMA.

109 While different practices have been adopted by local authorities in respect to the publication or display of CPSs, some local authorities, in light of the above advice, have put CPSs on their website following the close of nominations rather than waiting until the voting period. This provides a convenient way for interested parties to see the CPSs rather than having to use the LGOIMA procedures. The Commission notes that this practice also allows electors, the media, and candidates more time to study the CPS.

110 In light of the above, the Commission recommends that clause 29(2) of the LER be amended to make it clear that local authorities may publish or display CPSs following close of nominations rather than solely during the voting period.

CPS formatting (bullet points, paragraphs, and photographs)

111 Some submitters suggested that a new clause 26(a) be inserted in the LER clarifying candidates' ability to submit their CPS as one paragraph, in several paragraphs, in bullet points, or a combination of paragraphs and bullet points. At present, neither the LEA or the LER provide guidance on this matter. However, some electoral officers have imposed standardization of CPS formats for the elections they are conducting. The situation therefore arises where CPSs must be printed as one paragraph in some areas, while other areas are able to use several paragraphs or even bullet points.

112 It is reasonable to assume that the use of bullet points and paragraphing in CPSs assists voters to read and assess them. However, the use of bullet points in CPSs dramatically expands the quantity of space required for their presentation. Should the majority of candidates take the opportunity to present their CPS using bullet points, this would likely increase the cost of production and mailing. Clearly, these considerations will apply differently to different districts, depending, in particular, on the number of candidates seeking election. The Commission considers it appropriate for electoral officers, responsible for the conduct of elections in different territorial authority-administered areas, to determine CPS formatting requirements for particular elections.

Requirements for candidates' photographs in CPS

113 Some submitters suggested that greater clarity was required in the provisions dealing with candidates' photographs in the CPSs. One submission suggested that the practice of electoral officers taking a digital photograph of candidates when they submitted their nomination form be made compulsory for all candidates.

114 The Commission notes that section 61(2)(e) of the LEA provides that a CPS may include a recent photograph of the candidate alone, while clause 28 of the LER requires that photograph to be passport size. The practice of electoral officers taking digital photographs at a candidate's request is recommended in the SOLGM Code of Good Practice. Clearly and it is in the best interests of a candidate to provide a photograph that meets the requirements of the LEA and the LER. These factors provide a sufficiently robust check against the risks of poor quality photographs being included in CPSs.

Scrutineers *(Supply of voters' names during election)*

115 The Commission considered the suggestion to repeal section 68(6) of the LEA, which enables electoral officers to supply a scrutineer or candidate on request with the names of persons from whom voting documents have been received. The suggestion follows complaints made during the 2004 local elections, where some people on the electoral roll felt their privacy had been invaded after receiving enquiries from candidates who had identified them as not yet having voted. The Commission is also aware that this provision creates an additional administrative pressure for electoral officers.

116 It considers that section 68(6) places an onus on candidates to determine the degree to which they act on the information obtainable under this provision. Clearly, it is to the benefit of the candidate to exercise discretion in this respect. The Commission also observes that this provision can be seen to encourage and facilitate higher voter participation in elections. It does not, therefore, support the repeal of section 68(6).

Voting, processing, and counting of votes

117 The Commission received submissions relating to voting, processing, and counting of votes, which it considered under the following themes:

- the processing of voting documents during the voting period;
- separation of voting documents by STV and FPP voting systems;
- the format of voting documents; and
- the order of candidates' names on voting documents.

The processing of voting documents during the voting period

118 The provisions enabling electoral officers to begin the processing of votes before the close of voting attracted widespread support from the local government sector. Submissions highlight the fact that, while the risks associated with progressive processing of votes are negligible, the benefits of progressive processing of votes are numerous, including:

- cost efficiencies in respect to staffing, equipment, and space;
- more efficient use of staff and time, enabling greater emphasis on accuracy, and greater ability to deal with technical problems; and
- easier announcement of results.

119 The Commission notes that early processing has been available to electoral officers since the 1998 local elections, dependent, until 2004, on the territorial authority resolving to use it. Prior to 2004 this resolution automatically applied to all other elections (regional council, DHB and licensing trust) conducted by the territorial authority's electoral officer. Amendments enacted in 2004 to sections 18 and 79 of the LEA changed this situation by requiring

all local authorities (territorial authorities, regional councils, DHBs and licensing trusts) to resolve to adopt early processing. This amendment created some confusion within the sector, leading to the DIA writing to all local authorities pointing out the advantages of progressive processing and the desirability of a standard approach in an area. Without a combined approach by all local authorities in an area, early processing of votes would not be possible. Following this communication all local authorities in New Zealand made the appropriate resolution. In light of this, the Commission is of the view that an amendment to the LEA is necessary, and has considered two suggestions proffered to it from the sector.

120 The first of these is the repeal of existing provisions requiring all local authorities in an area to resolve to undertake progressive processing. The Commission agrees that responsibility for this decision should rest solely with the territorial authority, as it is the electoral officer of the territorial authority who is responsible for the running of elections in that area. While a decision on early processing has little bearing on the local authority, it will have significant impact on electoral officers charged with conducting elections for all local authorities in that territorial authority area. In the Commission's view, the requirement for all local authorities to resolve to undertake progressive processing adds an unnecessary hurdle to the efficient conduct of elections.

121 However, given the benefits of progressive processing identified above, and the strong support for this practice across the sector, the Commission recommends an appropriate legislative amendment whereby progressive processing of voting documents applies *by default* to all elections where postal voting is used, *unless resolved otherwise by the territorial authority responsible for elections in that area*. In the Commission's view, the number of days when progressive processing should begin to operate within the three-week voting period should be left to the discretion of the electoral officer responsible for conducting elections.

Separation of voting documents by STV and FPP electoral systems

122 The Commission received many submissions suggesting both that voting documents for the STV and FPP electoral systems should be provided for in separate voting packs, or provided for on separate voting documents within the same envelope. Primarily, submitters cited the following anecdotal reports:

- that confusion with the STV voting system impacted on FPP elections;
- that a high proportion of voters were confused as to which voting system applied to which election, employing STV numbering to FPP elections, ticks to STV elections, using a new number series in each STV column, or any variety of invalid vote; and
- electors who did not return any voting papers because they believed that an incomplete set of voting papers would be invalid.

123 It is difficult to corroborate these anecdotal reports from an analysis of local election statistics. While elections using STV had the highest reduction in turnout between 2001 and 2004, STV elections continued to have higher turnout than FPP elections in 2004. In respect to territorial authority elections, district councils using STV had 51% overall turnout, compared to 51% overall turnout for district councils using FPP. STV city council elections had 46% overall turnout, compared to 42% overall turnout in FPP city council elections. The Commission is not satisfied that available statistical data in respect to blank and informal voting documents permits an indication of trends.

124 It also believes that the introduction of different voting envelopes for STV and FPP voting systems would serve to complicate the voting process, both for voters, and for those responsible for the processing of voting documents. In the Commission's view, a separate-document process would:

- create additional risks such as voters sending back one envelope only, or the wrong envelope;
- create additional pressure on electoral officers responsible for producing voting documents;
- further complicate the efficient and effective processing of voting documents; and
- dramatically increase the costs of producing and posting voting documents.

125 The Commission notes that these significant disadvantages also apply to the separation of voting documents (though within the same envelope) by electoral system.

126 Regardless of the fact that it is difficult to substantiate claims that the use of two systems during the same election period causes unnecessary confusion for voters, it is the Commission's view that the separation of voting documents by voting system would not provide for an efficient and effective election. Any efforts to reduce voter confusion through improvements to the format of voting documents should begin with the aim of distinguishing between different elections, rather than the system of voting to be used in each election.

127 As noted, the Commission considers that the potential for voter confusion, including that described in the anecdotal reports above, is best addressed by:

- ensuring the high quality of voting documents by:
  - o extending the timeframe for producing voting documents; and
  - o the continued promulgation of best practice; and
- continued voter education (bearing in mind that the STV voting system has been in effect for one local election).

Provisions applying to the format of voting documents

128 The existing provisions relating to the format of voting documents are:

- section 75 of the LEA, which prescribes particular information requirements for both FPP and STV voting documents;
- section 77 of the LEA, which provides for the Secretary for Local Government ("the Secretary") to approve general voting document formats to be used at elections and polls; and
- clauses 31 to 33 of the LER, which provide for the order of candidates' names on the voting document, and for voting documents to be able to be combined, double-sided, and coloured differently for different issues.

129 The Commission is also aware that the process leading to the approval of general voting document formats by the Secretary under section 77 of the LEA involves significant practical input from the local government sector.

130 While the vast majority of voting documents used in the 2004 local elections appeared to be produced in accordance with the Secretary's approved format, it is clear that some voting documents could have been more user friendly. The following factors were identified throughout the Commission's submission process, in particular through the SOLGM electoral forum, as factors likely to have contributed to aspects of poor quality in voting documents in some areas:

- local electoral officer preferences;
- complexity of number of issues to be voted on;
- the large number of candidates in DHB elections;
- cost factors;
- time pressures; and
- production of documents by mailhouses.

131 A number of positive submissions were received, primarily from the SOLGM electoral working party, for improving the general voting document format, these being:

(a) clear colour distinctions between STV and FPP voting documents. The STV voting documents developed by the SOLGM electoral working party recommended PMS yellow 116 (with a 10 percent screen value) for 2004 voting documents. However, this recommendation was not fully implemented in several cases;

(b) all election issues relating to a local authority being listed in consecutive order on the voting document (i.e. issues of different local authorities are not mixed throughout the voting document for reasons of efficient layout/costs);

(c) standardised terminology used for elected members. In some cases voting documents used “councillors” whereas others used “members”. It is suggested that the term “members” be used, as it is the generic term used in the LEA;
(d) a standardised, easy to read, font size being set for voting documents irrespective of number of issues and candidates;
(e) issues not subject to election, including names of elected members, being listed on the voting documents to alleviate voter confusion as to why they do not have a vote for a particular office(s); and
(f) where there are two sides to a voting document, the first page ending with the words “Please turn over”.

132 The Commission then considered the most effective means to achieve the overall purpose of minimising voter confusion, and maximising the potential for the production of consistently high quality voting documents specific to particular elections.

133 These matters could be variously dealt with in the LEA, LER, the Secretary’s approved voting document format, and SOLGM’s Code of Good Practice for the Management of Local Authority Elections and Polls.

134 While the Commission supports the above recommendations for prescriptive changes to voting documents, it is also conscious that future elections will pose a range of options requiring specific tailoring of voting documents. In this respect, a key purpose of the LEA is to provide sufficient flexibility in the law to readily accommodate new technologies and processes as they are developed, while the LER provides a means to prescribe matters of detail that will be subject to future change.

135 Bearing in mind those factors contributing to poor quality voting documents, and the purposes of the LEA, the Commission is not satisfied that it is necessary to prescribe additional formatting requirements within the LEA or the LER. However, in approving future voting document formats the Secretary should consider the issues identified above. The Commission considers that existing processes for identifying best practice standards for voting document formats, in combination with existing statutory requirements, work well. It also notes that this process includes widespread involvement from the sector, and that electoral officers and mailhouses endeavour to meet these standards.

136 As previously noted, the Commission considers that extending the statutory timeframe between the close of nominations and the dispatch of voting documents by one week will ease pressure on, and reduce the scope for error of, electoral officers and mailhouses responsible for the production of voting documents.

Provisions applying to the order of candidates' names on voting documents

137 At present, regulation 31 of the LER provides that the order of candidates' names on voting documents is determined by council resolution. One submission was received suggesting that this provision be amended to require all names to be listed in random order for all issues at future local authority and DHB elections. However, the Commission, mindful of the purposes contained in section 3 of the LEA, and noting that different listing methods each have cost, as well as electoral fairness implications, is of the view that flexibility in local decision-making should be retained in respect of this issue.

138 The Commission is also aware of a small body of evidence to suggest that the order of candidates' names on voting papers may impact on voters' choice, particularly where a large number of candidates are listed. It will continue to monitor this issue, with a view to reporting on a more substantial basis as part of its statutory obligations under section 32 of the LGA.

Electoral advertising and expenses

139 Local authorities and electoral officers submitted a range of concerns about Parts 5 and 7 of the LEA, dealing with electoral advertising and electoral expenses, including:

- election expenditure limits for community board positions;
- concern about the advantages of TV or radio personalities standing as candidates; and
- concerns about the purpose and effect of the requirement for authorisation statements on all election advertising.

Election expenditure limits for community board positions

140 Some submitters observed that the total election expenditure of all candidates standing for community board positions within their local authority area was well below the limits allowed under section 111 of the LEA, and considered that the required checks on electoral expenditure served merely as an administrative inconvenience both for candidates and electoral officers.

141 The primary purpose of campaign spending limits is to set an upper limit for expenditure, which is necessary in providing electoral fairness for all candidates. The Commission supports this provision. However, the level at which spending limits are set is a different, and more complex, matter. While election expenditure statistics from the 2001 local elections have recently been provided to the Commission, the availability of 2004 electoral expense statistics are beyond the statutory timeframe of this report. Based on existing information, the Commission is not satisfied that legislative amendment to campaign expense limits is justified at this stage.

TV or radio personalities standing as candidates

142 One submission suggested that the LEA be amended to deem any appearance of a candidate on TV or radio to be an "electoral activity". In the Commission's view, an amendment of this sort would be impractical to administer and would, almost certainly, contradict section 104(d), which specifies that "electoral activity" relates exclusively to the campaign for the election of a candidate.

Purpose and effect of the requirement for authorisation statements on all election advertising

143 Initial investigations by the Commission suggest some doubt within the sector about the efficacy of section 113 of the LEA, which sets out the requirements for an authorisation statement to be included on all electoral advertising; and section 135 of the LEA, which creates an offence of any breach of section 113. The primary intention behind these provisions is for the monitoring of electoral expense limits.

144 The Commission is concerned at the impact of these provisions as identified by the local government sector. In particular, a number of electoral officers report that these provisions led to many calls over alleged breaches, creating additional pressure during an already busy period. It has been suggested that the majority of these calls were of a petty nature, often resulting in tit-for-tat allegations between political opponents. It is suggested that administration of these disagreements is not an effective use of electoral officers' time.

145 Concern, primarily in respect to candidates' safety, has also been expressed about the requirement to include a candidate's address on all electoral advertising. The Commission observes that some incumbent candidates met this requirement through the use of a council address, or some alternative to their own residential address.

146 The Commission also observes that the existing provisions do not address the issue of electoral advertising that seeks to undermine the election campaign of a particular candidate without explicitly endorsing another

candidate or candidates. The 2004 local elections highlighted a number of instances of this sort of advertising, although the tendency is that such 'anti-campaigning' is anonymous and, potentially, the subject of litigation under the Defamation Act 1992.

147 Despite the number of allegations of breaches of section 113 of the LEA, the Commission is not aware of any prosecutions being made under section 135, either during or following the 2004 local elections.

148 While sections 113 and 135 of the LEA have only been in effect for one election, the Commission considers that the points identified above raise questions about the purpose and effect of these provisions. At this stage, the Commission considers it prudent to bring these matters to the attention of the Minister, with a view to monitoring the impact of these provisions during the 2007 local elections.

Term of elected members and extraordinary vacancies

149 The Commission is aware that some confusion was experienced in 2004 in respect to the transitional provisions following the election of a new council. In most instances the delay in the announcement of some election results contributed to this confusion. Section 115 of the LEA provides for members coming into office, while section 116 of the LEA provides for members leaving office. Sections 63 and 86 provide for electoral officers' declaration of results. Schedule 7 of the LGA contains provisions dealing with the election of a new council. This includes clause 14 of Schedule 7, which requires a person to make an oral declaration before they are able to act as a member of a local authority, and clause 21 of Schedule 7, which sets out the procedures for the first meeting of a local authority following the triennial election of members.

When members come into office

150 The Commission considered requests to clarify section 115(2) of the LEA, which provides for members coming into office who have been elected before polling day. It states:

> *"(2) In any other case [i.e. a candidate who is declared to be elected before polling day], a candidate at any election comes into office on the day after the day on which the candidate is declared to be elected."*

151 The concern here is that section 86 of the LEA requires electoral officers to declare the official result of the election by public notice. The Commission notes that there may be a small time lag between the time when the electoral officer prepares a declaration of the election results, and when it is publicly notified. It therefore recommends a minor amendment to section 115(2) of

the LEA to make it clear that an elected candidate comes into office on the day after the day on which the candidate is declared elected by public notice under section 86 of the LEA.

Transitional provisions in respect to chairperson and deputy chairperson positions

152 The Commission received suggestions for clarification (and amendment if necessary) of the provisions dealing with the time that a chairperson and a deputy chairperson leave, and take up, office.

153 As previously noted, section 116(1)(a) requires all members of local authorities to leave office when the newly elected members come into office after an election. This will usually be the date when the electoral officer declares the result of the election by public notice, as required under section 86 of the LEA. However, in cases where there are fewer or an equal number of candidates for available positions, the electoral officer will act under section 63 of the LEA, declaring all nominees to be elected. In such a case, the new members come into office on polling day, in accordance with section 115(1) of the LEA.

154 The Commission understands that a chairperson ceases to be chairperson on the day that newly elected members come into office after an election. The position of chairperson cannot be filled until the new council acts under clause 21(5)(b) of Schedule 7 of the LGA to elect a chairperson.

155 However, in the case of deputy chairpersons and deputy mayors, clause 17(5) applies, which states:

"A deputy mayor or deputy chairperson continues to hold his or her office as deputy mayor or deputy chairperson, so long as he or she continues to be a member of the territorial authority or regional council, until the election of his or her successor."

156 One implication of the above is that there will be a period when nobody is acting in the role of chairperson, and there may be a period when nobody is acting in the role of deputy chairperson, if the incumbent deputy chairperson is not elected to his or her council.

157 This period where neither chairperson nor deputy positions are filled does not appear to create any problems. Clause 21 of Schedule 7 of the LGA requires the chief executive officer to call the first council meeting on at least seven days notice after election results are known, although subclause 21(3) of Schedule 7 allows this notice to be reduced in the case of an emergency. In the case of declarations of local emergencies, section 25(4) of the Civil Defence Emergency Management Act 2002 enables any member of the group to effect the declaration.

Members entering office on preliminary results

158 It was suggested that legislation should provide for members elected (based on preliminary results at a specified percentage of votes counted (98%)) to come into office (provisionally) until the electoral officer's declaration. This would not be possible in elections using the STV voting system, and would be difficult in elections using the FPP voting system and, therefore, the Commission does not support this suggestion.

Filling of vacancies on community boards

159 The Commission received some suggestions from local authorities about amending sections 64 and 117 of the LEA, which set out the requirements for filling an extraordinary vacancy for a local authority or community board. The idea was to give councils wider powers to appoint community board members, rather than requiring a by-election. Voter participation in some community board byelections has been low, and the cost to local authorities of conducting a by-election remains the same despite the level of community interest.

160 At present, section 117 provides the same process for filling an extraordinary vacancy for both local authority and community board members. Section 117A of the LEA provides for the appointment of a community board member where the procedures under section 117 have failed to fill the vacancy. The Commission considers it appropriate that the same provision applies to community boards and local authorities. This is because the LEA and the LGA place significant emphasis on community representation. In its view, suggestions to extend the powers of local authorities to appoint community board members imply a lack of significance of community boards, which runs counter to the spirit of the LEA and the LGA.

Civic participation and awareness

161 There are concerns in some quarters of the local government sector about overall decreasing voter turnout in local government elections. Suggestions offered by the sector to address this matter have been, in the main, practical, and are best organised as follows:

- improving voter education through:
  - effective, centrally funded, advertising campaigns both encouraging candidates to stand for election, and voter participation in elections; and
  - long-term education initiatives such as the introduction of a civics subject as part of the standard school curriculum.
- making it easier for voters to cast their vote through better provision of strategically placed ballot boxes, in addition to postal voting.

162 The Commission does not consider that current, available indicators of the level of civic participation in, and awareness of, local government elections are a cause for alarm, compared with say three years ago. As previously noted, while 2004 local election statistics demonstrate lower voter turnout in some areas, other areas showed higher than previous turnout. Clearly, there is a myriad of factors that contribute to voter turnout at any particular election. Analysis in this respect is beyond the scope of this report. However, the Commission is aware of research being undertaken in this area, which it will monitor as part of its wider review following the 2007 local elections.

163 In relation to the suggestion for ballot box placement in a greater range of public places, the Commission notes that section 53 of the LER states that "*an electoral officer must keep their offices open during normal office hours until the close of nominations"*. The Commission's reading of this provision is that the plural implies no limitation on how many 'offices' an electoral officer might operate, nor that these offices preclude libraries and service centres. This provision implies discretion on the part of the electoral officer, who must consider issues of security and practicality.

Contracting out of electoral functions

164 There is also concern within the sector about the contracting out of electoral functions. Two themes in particular were expressed in submissions:

- that local knowledge of electoral processes will be lost over time if contracting out continues; and
- that the additional pressure of DHB elections compels local authorities to seek contracting options.

165 In the Commission's view, further investigation of these concerns is warranted within the context of section 32(3)(c) of the LGA. At this stage, it observes that the option to contract out electoral functions is dependent on a council resolution. It is therefore the responsibility of the local authorities to ensure both the competency of their contractors, and that contracts with external agencies are thorough and well provided for. Provisional reports indicate that some local authorities which contracted out electoral functions in 2004 may conduct elections in-house in 2007. The Commission's view is that it would seem in keeping with the LEA and the LER to maintain this aspect of local decision-making.

District health board ("DHB") elections

166 Through its submission process, the Commission has been made aware of a range of concerns and suggestions regarding DHB elections, these being:

- that the linkage between DHB elections and local authority elections be removed, and that DHB elections be held in a year other than those of the territorial authority elections;
- that section 9B of the New Zealand Public Health and Disability Act 2000 be repealed to allow any person to be appointed the electoral officer for a DHB;
- the return to a constituency system for DHB elections; and
- the creation of a reserve power to appoint a DHB electoral officer in situations where no territorial electoral officer in the relevant area is willing to act as the DHB's electoral officer. It is suggested that the Minister or the Commission make such appointments, with appointees' consent. It could also be stipulated that the appointee must be an electoral officer of a territorial authority.

167 While these matters fall outside of the scope of this report, the Commission nonetheless considers it prudent to bring them to the attention of the Minister.

Alignment of licensing trust boundaries with meshblocks

168 The Commission is concerned that the external boundaries of some licensing trust districts do not coincide with meshblock boundaries, and that some actually dissect individual property boundaries. A consequence of this is that electoral officers need to manually, rather than electronically, check and allocate electors from split meshblocks onto the electoral roll for licensing trusts. This is a time-consuming and costly exercise, and has not always been error-free. Subsequent investigations by the Commission indicate that 20 out of 23 licensing trusts have boundaries that do not conform with meshblocks.

169 While this issue does not relate directly to the LEA or the LGA, it does impact on the effective operation of the LEA and the administration of local elections. The Commission therefore considers it appropriate to bring the matter to the attention of the Minister, recommending an amendment to the Sale of Liquor Act 1989 to introduce a process to align licensing trust boundaries with meshblocks prior to the compilation of electoral rolls in July 2007. Advancing such an amendment would be the responsibility of the Minister of Justice.

170 To progress this matter the Commission is considering whether it should report in more detail to the Minister of Local Government under section 31(1) of the LGA.

THE LOCAL GOVERNMENT ACT 2002

Summary of legislative change

171 A key policy intention behind the LGA was to move away from the prescriptive approach of the Local Government Act 1974 ("the LGA 1974"). The LGA confers a power of general competency on local authorities, allowing them to take different approaches in recognising and meeting the needs of their communities. It allows local authorities greater flexibility in conducting their activities, but increases their responsibility in respect to engagement with their communities.

172 As opposed to the approach contained within the LGA 1974 of prescribing all the functions that local government were allowed to undertake within the law, the LGA sets out the purpose of local government, which is:

> *"(a) to enable democratic local decision-making and action by, and on behalf of, communities; and*
> *(b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future."*

173 The LGA is a principle-based legislative framework. Section 14 sets out high-level principles, which local authorities must take into account when exercising power of general competency toward achieving the purposes of local government. Where appropriate, most notably in Part 6 of the LGA, which deals with decision-making, consultation, and the planning framework of local authorities, these principles are further detailed, emphasising:

- the role of local authorities in facilitating processes whereby communities identify desirable future outcomes for themselves;
- ongoing community involvement throughout local authority decision-making processes; and
- that approaches to local authority decision-making be focused on sustainable development, taking account of all areas of well-being identified above, both for the present, and for the future.

174 Part 6 of the LGA provides a broad framework for planning, decision-making, and accountability. The provisions contained here are designed to enable local authorities to make their own judgements in accordance with the principles of community involvement, and appropriate to the relative significance of each decision.

175 Part 8 of the LGA provides local authorities with modern bylaw making powers. While restrictions apply to regional councils, the LGA sets out the general purposes for which local authorities can make their own bylaws, while placing emphasis on community involvement in the bylaw making process.

176 Other changes include:

- new responsibilities for local authorities in assessing water and other sanitary services available to communities in their districts;
- enabling local authorities to adopt a development contributions policy so as to levy for development contributions where the effect of a development would be to increase the territorial authorities' capital expenditure to provide appropriately for reserves, network infrastructure, and community infrastructure; and
- provisions designed to strengthen the governance framework within local authorities.

Overview of Commission's consideration of submissions relating to the LGA

177 As previously noted, the Commission considers that the LGA is still a new statute, and that too little time has passed since the legislation became law for the LGA to be properly evaluated at this stage.

178 Reports from the sector indicate that, in the main, and to a reasonable degree, understanding of the LGA's constitutional, principle-based framework has been developing within the sector over the three years since its enactment.

179 No substantive matters have been identified throughout the course of the Commission's investigations to suggest that there are any aspects of the LGA that are clearly inoperable.

180 Much of the criticism directed at the LGA relates to the application of the principle-based approach to decision-making in a meaningful way, and the level of compliance required by the consultation and planning frameworks. While the Commission has given necessarily broad consideration to these concerns, it would seem difficult to justify amendments beyond a technical nature given that these provisions have yet to be tested through a full three-year cycle, and prior to the alignment of long term council community plans ("LTCCPs") in 2006. Clearly, a much broader assessment of these provisions is required under section 32(3) of the LGA.

181 Notwithstanding the generality of concerns and suggestions regarding decision-making, consultation, and planning, the sector has identified a small number of technical concerns affecting these provisions, which the Commission has considered.

182 These areas of concern highlighted by the sector include:

- the relationship between the LGA and other legislation;
- the power to advance monies for drainage and water repairs;
- powers of local authorities to make bylaws;

- development contributions; and
- local authorities making donations.

183 The Commission also considered suggestions regarding:
- the status of councillors at community board meetings;
- the compatibility between the continued operation of the remaining parts of the LGA 1974 and the LGA.

General concerns about decision-making, consultation, and accountability

184 As previously noted, the vast majority of submissions concerning decision-making, consultation, and accountability under Part 6 of the LGA were of a general nature, expressing the following key themes:
- the decision-making provisions are too prescriptive, too onerous, and are counter to the tenet of general empowerment central to the LGA;
- the drafting of the provisions dealing with consultation and decision-making could be improved by condensing the wording so that it flows, and obviates the need for constant cross-referencing;
- the existing flexibility under subpart 1 of Part 6 of the LGA creates the potential for increased disputes or arguments (and even litigation) about process, rather than substantive issues;
- legal advice is often required to clarify the decision-making and planning requirements of the LGA, and it appears this will continue to be necessary on an ongoing basis;
- the requirements for consultation do not relate to actual information requirements of the public;
- an increased number of submitters have unrealistic expectations of how their input should be reflected in decision-making, and sections 82 to 90 contribute largely to these unrealistic expectations;
- guidance on consultation would be better served through the development of industry best practice standards, grounded on case study, and developed on an ongoing basis; and
- it would be preferable for the LGA to give direction in relation to ongoing communication with the community, which if practised could overcome some of the unnecessary direction for persistent consultation.

185 The Commission notes that, in the main, submitters raising the above concerns did not anticipate immediate legislative amendment but, rather, sought inclusion of these matters and concerns within the terms of the Commission's wider review obligations under section 32 of the LGA.

186 At this time, the Commission considers that the issues raised above do not indicate any fundamental defect with the legislation itself. An alternative aspect to these submissions is the manner in which they reflect the different ways in which local authorities are becoming accustomed to the new legislative framework. Indeed, a number of local authorities acknowledged in

their submissions that it will take some time to become familiar with the new regime. It is to be expected that the provisions contained in subpart 1 of Part 6 of the LGA will provide challenges to local authorities, and their communities, as they seek to develop sustainable relationships, and effective planning frameworks, consistent with the purpose of local government, and the principles contained within the LGA.

187 Broadly speaking, the Commission is satisfied that the provisions contained in subpart 1 of Part 6 of the LGA are consistent with the central tenet of general empowerment for local authorities implicit in the LGA. In its view, there is scope within these provisions for local authorities to "own" responsibility for their decision-making and consultation practices, and means through which they remain accountable to their communities. A fundamental aspect of these provisions is that local authorities are enabled to make their own judgements as to how best to comply with the requirements of subpart 1 of Part 6 of the LGA, having regard to the relative significance of each decision, in accordance with section 79 of the LGA.

188 While the new provisions provide for best practice requirements for decision-making and consultation, these do not preclude innovative approaches from local authorities in developing effective channels of communication with their communities beyond the minimum requirements. Indeed, such approaches would seem in keeping with the broader principles of the LGA. The Commission is aware of a number of innovations in this respect, such as the early consultation and surveying of community views initiated by some local authorities. In the Commission's view, best practice implies that the requirements of Part 6 of the LGA be viewed as components of the overall approach sought by the introduction of the legislation.

189 The Commission is aware of a number of legal challenges over councils' decision-making processes. This might be expected as local authorities and their communities become accustomed to their roles within the new legislative framework. There have been no significant court challenges to council decisions that have questioned either the fundamental intention to generally empower local authorities or the application of the various principles. Neither is the Commission aware of any court, or other, action that has suggested any fundamental defect in the framework provided by the LGA.

Relationship between decision-making requirements of the LGA and other legislation

190 The Commission considered a suggestion to amend section 76(5) of the LGA, to clarify the relationship between the general decision-making requirements set out in sections 77, 78, 81, and 82 of the LGA, and other specific requirements set out in the LGA, or any other enactment (such as the Resource Management Act 1991 ("the RMA")), or bylaw. The implication here

is that the general decision-making requirements set out in the LGA should not apply when an alternative, specific procedure is set out for a particular decision (such as resource consent applications under the RMA).

191 The LGA's general framework in relation to decision-making would apply to decisions made under or subject to other legislation except, as provided under section 82(5) of the LGA, where this would be inconsistent with the specific requirements of that other legislation.

192 The Commission notes that the general requirements for decision-making contained in the LGA provide a best practice approach to decision-making, and considers that this general decision-making framework does not add additional requirements to processes under the RMA or impose inappropriate or unreasonable expectations on those processes. It is therefore not satisfied of the necessity for legislative amendment.

Auditing Requirements

193 A range of submissions expressed general concern regarding the requirements for auditing of LTCCPs under section 94, and annual reports under section 99 of the LGA. Themes covered in these submissions include:

- the auditing requirements reinforce a 'compliance mentality';
- the auditing requirements place non-sector representatives in the driving seat of best practice;
- the auditing approach contained within the LGA is internationally untested;
- the auditing requirements are unnecessary, given the robustness of the remaining provisions dealing with planning; and
- the requirement to audit amended LTCCPs should only apply when a section 97 decision is made.

194 Implicit in many of these submissions is the suggestion that the cost to local authorities of meeting these auditing requirements exceeds the benefit, in terms of actual assurance provided to communities.

195 From the outset, the Commission is not satisfied that the auditing requirements under sections 94 and 99 of the LGA are sufficiently tested to warrant substantive conclusions on their effectiveness. Clearly, the efficacy of these provisions may be observed over the next three years, as all local authorities must prepare an LTCCP by 1 July 2006, which is the first LTCCP that must meet *all* the requirements of the LGA. As a means to balance the concerns raised in submissions, the Commission has elsewhere observed a reasonable level of positive engagement between the Office of the Controller and Auditor-General ("OAG"), audit providers, sector organisations, and local authorities. Clearly, the effectiveness of these auditing requirements depends on these organisations working together toward their common aim. The

Commission is therefore concerned that local authorities do not narrow their approach to these requirements.

196 The LTCCP provides a ten-year foundation for the relationship between a local authority and its communities, and the intention of the requirement to include an auditor's report within the LTCCP is to provide assurance, both to local authorities and their communities, of the robustness of the LTCCP, in terms of:

- a council's general compliance with LTCCP requirements;
- the quality of information and forecasting in the LTCCP;
- the relevance and reliability of documents such as asset management plans; and
- the process for local communities to debate strategic directions for their community.

197 The LGA specifically prohibits auditors from commenting on the policy content of the LTCCP.

198 While it is difficult to quantify the benefits of the auditing requirements at this stage, it is likely that one significant benefit will be to reduce the risk of contestability, and the breakdown of relationships between a local authority and its communities. Such benefits may well serve to mitigate concerns raised elsewhere in this report. At this stage the Commission views the auditing requirements within the LGA as a value-added component of the overall planning framework, and integral to the purposes of local government, as set out in section 10 of the LGA.

199 However, it will continue to engage with local authorities, OAG, audit providers, and sector groups regarding the concerns identified above, with a view to reporting to the Minister following the 2007 local government elections.

Community outcomes

200 The Commission considered a submission suggesting that the community outcomes process would be strengthened by the inclusion of a clause that compels government departments and agencies to co-operate and give effect to the community outcomes process. While it considers it impractical to amend legislation to achieve this purpose, it is satisfied that existing initiatives, such as the *Sharing Good Practice Between Central and Local Government on the Community Outcomes Processes* workshop, held on 29 April 2005, reflect a willingness from within central government to maximise the community outcomes process.

Powers of local authorities to make bylaws

201 The Commission considered three submissions in whole, or in part, related to the powers of local authorities to make bylaws, as provided for under Part 8 of the LGA.

Procedures for temporary bylaws

202 Some submissions sought clarity for section 156(2)(a) of the LGA, which states:

> *"(2) A local authority may, by resolution publicly notified, amend a bylaw—*
> *(a) by making editorial changes or amendments of minor effect."*

203 Two concerns can be identified in respect to this subsection:

- that the wording is unclear as to what qualifies as a "minor amendment"; and
- that it is too restrictive in that it currently prevents councils from making urgent changes to bylaws for public health reasons.

204 It is likely that local authorities will face circumstances affecting public health and safety when an urgent but temporary change to a bylaw will be of benefit. Clearly, such circumstances, by their nature, do not allow time for a local authority to follow the special consultation procedure, as is currently required when making bylaws under section 156(1) of the LGA.

205 However, the Commission notes that the introduction of a temporary bylaw may have significant impacts on some members of the community, and considers that the potential for these impacts must be balanced, in respect to procedures for consultation and decision-making, with the identified benefits to the wider community of the introduction of a temporary bylaw. It therefore supports the following amendment to section 156(2) of the LGA:

> *"(2) A local authority may, by resolution publicly notified, amend a bylaw—*
> *(a) by making editorial changes to clarify meaning, or by making amendments of a temporary nature, provided that amendments of a temporary nature shall only be made after notification of those who in the opinion of the local authority are likely to be affected by the amendment and after public notification of the amendment and its duration."*

206 The proposed amendment would not lessen a local authority's obligation to determine whether a bylaw is the most appropriate way of addressing a perceived problem, as provided for under section 155 of the LGA.

Ability to impose infringement fines for breach of council bylaws

207 The Commission received submissions seeking action to ensure that local authorities have the necessary regulatory tools to enforce bylaws, namely the ability to issue infringement notices for the breach of bylaws.

208 At present, the LGA provides that offences in respect of bylaws may be enforced by the use of infringement notices and fees. However, this provision, in common with the use of this enforcement mechanism in other Acts, requires regulations to make them operable. The regulations must:

- specify the bylaws to which infringement notices apply; and
- specify the maximum fee that can be imposed.

209 To date this provision has only been applied in respect of regional council bylaws, primarily navigation safety offences. However, the Commission is aware that some territorial authorities deal with large numbers of incidents of non-compliance with bylaws, related largely to public nuisance, amenity and health matters. The experience of some local authorities is that prosecution of these incidents is an expensive option, subject to delay. Some local authorities also report that their experience with infringement notices under the RMA strongly suggests that this compliance mechanism is more effective and less costly.

210 The Commission understands that the Minister is aware of the sector's keen interest in the development of regulations to enable territorial authorities to issue infringement notices for the breach of bylaws. Provisional advice indicates that the DIA is attempting to include this work in its 2005/06 work programme.

Powers to recover monies (advanced to repair water reticulation by way of rates or registering a statutory land charge against the property to secure a loan)

211 Section 465 of the LGA 1974 provided that money payable in respect of drainage was a charge on land. No similar provision exists in the LGA. However, section 12 of the LGA provides that local authorities have the full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction, and have full rights, powers, and privileges for performing its role. In the Commission's view, the LGA does not contain any provision that would prevent a local authority from entering a charge on the land. Indeed, section 188 of the LGA would appear to imply the opposite, stating:

> *"188. Liability for payments in respect of private land—*
> *If, under this Act or any other enactment, money paid for expenses incurred by the local authority in relation to private land is a charge on the land, the omission to register the charge does not affect—*

(a) the liability of the person who is liable to pay the amount; or
(b) the rights of the local authority under the charge as against the person."

212 The Commission further notes that the Statutory Land Charges Registration Act 1928 provides the machinery for the registration of statutory land charges arising from any enactment in force or in force in the future.

213 Therefore, on the basis above, the Commission is not satisfied of the need to create specific provision for local authorities to recover monies advanced to repair water reticulation by way of rates or registering a statutory land charge against the property to secure a loan.

Development contributions

214 The Commission considered three submissions in whole or in part relating to development contributions, as provided for under Part 8 of the LGA, as follows:

Crown exemption from development contributions under the LGA

215 Submissions questioned the fairness of Crown exemption from development contributions under the LGA. The Commission understands this to be a matter of government policy, and notes that the Crown was not formerly bound to pay development contributions under the LGA 1974.

216 A potential anomaly arises in respect to the fact that the RMA does bind the Crown to pay financial contributions. The Commission is aware that some councils, in preparing their development contributions policy, left intact provisions under their district plan. However, this situation does not apply to councils which have established a development contributions policy under the LGA.

217 The Commission considers that the matters raised above are of a wider scope than the requirements of this report, under section 32(4) of the LGA. It understands, however, that the matter of Crown exemption from development contributions is being considered by the DIA as part of a review of local government funding.

Inclusion of information on selected infrastructure capital projects for periods exceeding the minimum 10-year LTCCP period, for the purposes of collecting development contributions

218 One submission suggested that councils be enabled to note planning decisions for infrastructure that might not be constructed within a 10-year LTCCP period, without the need to extend the whole of the LTCCP period to

include these impacts. The submission also suggests that these impacts should be included as a factor that could be taken into account for the purpose of levying development contributions.

219 The Commission notes that section 93 of the LGA provides that the LTCCP "*must cover a period of **not less** than 10 consecutive financial years*." Part 1 of Schedule 10 sets out the information to be included in LTCCPs, which includes information on asset management, and the implications of, and responses to, changes to demand or consumption of services and changes to the level of service provided. The Commission's view is that the existing framework of the LGA sufficiently provides for the collecting of development contributions for longer-term projects.

Recoverability of capital expended in the anticipation of growth by way of development contributions

220 A related submission sought clarification (and amendment if necessary) of the recoverability of capital expended in the anticipation of growth by way of development contributions. The Commission considers that section 199(2) of the LGA is clear that development contributions can recover capital previously expended in the anticipation of growth, provided the other requirements of the LGA are met. These requirements are set out in sections 102, 106, 201, 202, and Schedule 13 of the LGA. The Commission notes that the requirements of a policy on development contributions included in the LTCCP must contain financial information pertaining to the contributions to be sought, together with their explanation and justification, and reference to the occasions on which it will be required. Therefore, it considers that the LGA makes sufficient provision for the setting and collection of development contributions in respect of capital previously expended in the anticipation of growth, where explicit provision is made in the policy for development contributions in the LTCCP.

Other matters

221 The Commission received a range of miscellaneous suggestions better dealt with separately than under those sections provided above. Consideration of these matters is provided below:

Local authorities making donations for purposes outside their district

222 Concerns were expressed about the appropriateness of local authorities making donations for purposes outside their district. These concerns relate to the decision of a number of councils to make donations to assist with flood relief in the lower North Island in early 2004, and to the international tsunami relief in 2005. The specific concern expressed is that such actions are contrary to section 12(4) of the LGA, which states that "*A territorial authority*

must exercise its powers under this section wholly or principally for the benefit of its district."

223 The Commission is satisfied that the intent of section 12(4) is not to prevent councils from contributing to national and international aid efforts where it considers such action appropriate. It also considers that such actions accord with the purpose of local government set out in section 10 of the LGA, and with a number of the principles of local government set out in section 14 of the LGA. In its view, the most important aspect to such a decision is that a local authority acts in accordance with the key principle contained in section 14(1)(a) of the LGA, in that it:

"(a) conducts its business in an open, transparent, and democratically accountable manner; and
(b) gives effect to its identified priorities and desired outcomes in an efficient and effective manner."

224 However, the Commission considers that, for the avoidance of doubt, the LGA should be amended to make it clear that local authorities are able to make donations for purposes outside their city, district, or region.

Status of councillors at community board meetings

225 The Commission received one submission recommending that it review the status of councillors at community board meetings. The concern here is about a council's accountability for decisions made at the recommendation of a community board. This submitter observed that, in the case of public excluded community board meetings, councillors are not entitled to attend the session of the community board, and that this places councillors in a position of having to make a decision based on the minutes of the community board meeting.

226 The Commission does not support any changes to the LGA in relation to this issue. A council may exercise the following existing options to enhance its understanding of community board recommendations:

- appoint a councillor as a member of the community board; and/or
- invite community board members to speak to council.

Compatibility between the continued operation of the remaining parts of the LGA 1974 and the LGA

227 The Commission is aware of concerns within the sector regarding the continued operation of some aspects of the LGA 1974, and the compatibility of these provisions with the principle-based framework of the LGA. It notes that amendment of these provisions is dependent on a range of reviews (into roads, waste management, drainage, navigation safety, and issues specific

to the Auckland area) being undertaken by a number of government departments (the Ministry of Transport, the Ministry for the Environment, and the DIA). While the Commission is not in a position to make recommendations on this issue, it considers it prudent to bring this matter to the attention of the Minister.

RECOMMENDATIONS

228 The Local Government Commission recommends the following amendments to the Local Electoral Act 2001:

(a) all consecutive statutory deadlines under Part 1A of the Local Electoral Act 2001 should be moved forward by three months, and the final date for forwarding appeals and objections on representation reviews to the Commission under section 19Q should be changed to 15 October in the year preceding the triennial election of members, with the Commission continuing to have until 10 April in election year to issue its determinations;
(b) the Commission, in its determinations on representation arrangements under Part 1A of the Local Electoral Act 2001 should be able to prescribe community board delegations to apply for the next triennium;
(c) the statutory timeframe between the close of nominations and the dispatch of voting documents should be extended by one week, starting the whole election process one week earlier and calling for nominations on the 57th day before polling day. This will require amendments to:
    - section 5 of the Local Electoral Act 2001, changing the definition of nomination day to the 57th day before polling day; and
    - regulation 10 of the Local Electoral Regulations 2001, as follows:
        (e) in clause (1), changing the date from 7 July to 30 June
        (f) in clause (2), changing the date from 6 July to 29 June
        (g) in clause (3), changing the reference from “50th day” to “57th day”
        (h) in clause (4), changing the reference from “50th day” to “57th day”
(d) the word “trust” should be included in section B of the ratepayer enrolment application form, contained in schedule 1 of the Local Electoral Regulations 2001;
(e) section 25 of the Local Electoral Act 2001 should state that an electoral officer has the ability to refuse a nomination if proof of citizenship is not provided;
(f) section 55(5) of the Local Electoral Act 2001 should be amended so that nominations can only be inspected by a member of the public after nominations have been accepted, being after the close of nominations;
(g) section 61 of the Local Electoral Act 2001 should be amended to require candidates to submit their candidate profile statement at the same time as their nomination form;
(h) clause 29(2) of the Local Electoral Regulations should be amended to make it clear that local authorities may publish or display candidate profile statements following the close of nominations rather than during the voting period;
(i) sections 18 and 79 of the Local Electoral Act 2001 should be amended to provide that progressive processing of voting documents applies by

default to all elections where postal voting is used, unless resolved otherwise by the territorial authority responsible for elections in that local government electoral area; and

(j) section 115(2) of the Local Electoral Act 2001 should be amended to clarify that an elected candidate comes into office on the day after the day on which the candidate is declared elected by public notice under section 86 of the Local Electoral Act 2001.

229 The Commission recommends the following amendments to the Local Government Act 2002:

(a) section 156(2) of the Local Government Act 2002 should be amended as follows:

(2) A local authority may, by resolution publicly notified, amend a bylaw—

(a) by making editorial changes to clarify meaning, or to make amendments of a temporary nature, provided that amendments of a temporary nature shall only be made after notification of those who in the opinion of the local

(b) authority are likely to be affected by the amendment and after public notification of the amendment and its duration; and

(b) the Local Government Act 2002 should be amended to make it clear that local authorities are able to make donations for purposes outside their city, district, or region.

THE LOCAL GOVERNMENT COMMISSION

Grant Kirby (Chairman)

Gwen Bull (Commissioner)

Sue Piper (Commissioner)

Date: 1 July 2005