

# Regulatory Impact Statement

## Amendments to the Local Electoral Act 2001 and Local Electoral Regulations 2001: representation arrangements

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Internal Affairs.

In the Department's view, the investigations, analysis and consultations completed to date are sufficient for Cabinet to make decisions on whether to provide territorial authorities with greater flexibility to balance fair and effective representation when deciding their representation arrangements.

In the Department's view, none of the options considered are likely to have the effects that government has said will require a particularly strong case before regulation is considered. In particular none of them would be likely significantly to:

- impose additional costs on businesses;
- impair private property rights, market competition, or the incentives on businesses to innovate and invest; or
- override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).

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## Introduction

1. This Regulatory Impact Statement (RIS) provides an overview of options about how territorial authorities (including unitary authorities) may set their representation arrangements to achieve an appropriate balance between fair and effective representation for their communities.
2. The Local Electoral Act 2001 (LEA) provides the framework for the conduct of triennial local elections (local elections). Local elections comprise the election of members to regional councils, territorial authorities, local and community boards, district health boards and licensing trusts. The LEA also provides for the setting of representation arrangements for elections to territorial authorities, regional councils, and community boards. For territorial authorities, this includes making decisions about the number of councillors and wards, and the location of ward boundaries.
3. The Department has undertaken a targeted and largely technical assessment of the procedural efficiency of local authority elections, the information provided to electors, and representation arrangements and analysis of the options set out in this RIS. The work responds to and builds on the recommendations of the Justice and Electoral Committee's (JEC) report into conduct of the 2010 local authority elections. It also builds on the Local Government Commission's (LGC) 2008 review of the operation of the LEA, and the recommendations of JEC inquiries after the 2004 and 2007 local elections.

## Status quo and problem definition

4. At least every six years, territorial authorities must make a set of decisions about how their elections should be run. This includes deciding whether to hold elections 'at large', with wards, or a combination of both. Under the LEA, council electoral arrangements must provide for both:
  - fair representation for electors to ensure that:
    - all votes cast within a district have approximately equal value; and
    - there are around the same ratio of representatives to voters in each ward; and
  - effective representation which reflects communities of interest.<sup>1</sup>
5. To provide for fair representation, all wards must have a similar proportion of voters to elected representatives. The Act provides that the elector to representative ratio in each ward must be within 10 per cent (+/- 10 per cent) of the elector to representative ratio across the district. This requirement is designed to achieve a degree of equality in the numbers of people represented by councillors in each ward or constituency. This is known as the fair representation rule (the rule). An exception can be applied in limited circumstances to ensure effective representation for island and isolated communities.
6. Many territorial authorities have had difficulty arranging wards to meet both the +/- 10 per cent test, and the effective representation requirement of grouping communities of interest. The options considered in this RIS would provide those territorial

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<sup>1</sup> The term "communities of interest" is not defined in the LEA. The LGC's guidance (issued under the LEA) for councils making representation decisions notes that a particular community of interest can be defined in terms of the characteristics including a sense of community identity and belonging (reinforced by social and economic similarities, history, topography and physical features) and the dependence on shared facilities (such as schools, community facilities, retail outlets and transport links).

authorities that use wards for electoral purposes, greater legislative flexibility to balance both tests.

7. For example, a small community in Waikanae was placed in the Otaki ward of Kapiti Coast District Council for the 2010 local elections to comply with the fair representation rule. It's recognised community of interest is the Waikanae ward (for example residents must travel through Waikanae to reach Otaki by road). Placement in the Waikanae ward would have resulted in a variation of 21 people in excess of the rule. Similar placements of communities outside their recognised communities of interest have been necessary for communities in the Hurunui, New Plymouth and the Tasman districts.
8. The key problem with the current situation is that it results in some communities not being adequately represented. In the situation described above, decisions made in respect of Waikanae would be more relevant than decisions made by their elected representatives in Otaki and yet the electors do not have a say in who their decision-making representatives for Waikanae will be.
9. Regional council representation arrangements must also be reviewed at least every six years. When constituencies are used, the electoral arrangements for those constituencies must provide for fair and effective representation. However, the problem affecting territorial authorities (outlined above) does not affect regional councils. Non-compliance with the +/-10 per cent rule is permissible for regional councils where this is necessary for the effective representation of communities of interest (subject to LGC determination). This gives regional councils much more scope to ensure effective representation.

### ***Auckland representation arrangements***

10. The LGC was responsible for the transitional determination of Auckland ward and local board boundaries under the Local Government (Auckland Council) Act 2009. That Act provided the LGC with greater flexibility to define the wards and subdivisions, and membership distributed between them, than is provided in the LEA. It was permitted to make determinations that did not comply with the rule where communities of interest so required. This recognised the strong and long-standing communities of interest within the Auckland Council's territory. The Auckland Council must review its representation arrangements under the LEA (and comply with the rule) after the completion of the 2013 local elections (but no later than 8 September 2018).
11. The Auckland Council's transitional representation arrangements were designed outside the LEA framework to ensure effective representation for Auckland's long-standing communities of interest. The Auckland Council may have significant difficulty arranging wards to meet both the +/- 10 per cent test, and the effective representation requirement of grouping communities of interest, over its geographically large and demographically diverse territory. The Auckland Council's current ward design would likely require significant change to comply with the rule when reviewed after the 2013 local elections.

### ***Cost of not addressing the problem***

12. The costs of not addressing the problem include:
  - a continued risk of ineffective representation arrangements for some communities;

- future wards in Auckland not reflecting long standing communities of interest; and
  - a continued risk of ward design that may not reflect the views and preferences of some communities.
13. The fiscal costs of not addressing the problem (which relates to democratic representation) are minor.

## Objectives

14. The options in this RIS have been considered as part of a package of proposals for technical and procedural changes to aspects of the local electoral framework, broadly consistent with JEC and LGC recommendations, to:
- advance the operation of the principles of the LEA;
  - improve procedural efficiency and reduce compliance costs where possible; and
  - help in the effective running of local elections.
15. The Treasury has confirmed that the proposals (apart from the options below) do not require a RIS.

## Regulatory impact analysis

16. The options are broadly:

**1. The status quo – i.e. local authorities must comply with the LEA**

The first section of the RIS examines the status quo and the costs of not changing it. The status quo option would mean continued non-compliance with the present provisions. It would also mean significant change will be required to the Auckland Council's ward boundaries after 2013. This option is not preferred.

**2. Changing the permissible tolerance level in population to member ratio**

Increasing the maximum 10 per cent variation (+/- 10 per cent) between the ratio of population per councillor in each ward to the ratio to +/- 15 or 20 per cent has been considered. However, this option is inappropriate as it undermines the concept of 'one vote one value'.<sup>2</sup>

This option would increase the difference between the Parliamentary electoral model, where the permissible variation between the ratio of population to member ratio in each constituency is +/- 5 per cent from the overall national ratio, and the local electoral model. The option does not address the question of effective representation. This option is not preferred.

**3. Allowing councils to average the population to member ratio of two adjoining wards/constituencies**

This would allow certain recognised communities of interest to be retained in circumstances such as the Kapiti Coast District Council example described above, and may ensure more effective representation for such communities.

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<sup>2</sup> 'One vote one value' refers to votes being of equal value when electing representatives i.e. each member represents approximately the same number of people within a territory or region.

While it would address the question of both fair and effective representation, the option has the potential to distort the +/-10% rule and undermine the concept of 'one vote one value.' This option is not preferred.

#### **4. Providing two additional exceptions to the +/-10% rule**

This option is to amend the LEA to provide for further flexibility for deviations from the +/- 10 per cent rule by providing additional exceptions. Under this option, the exceptions may only be invoked on the explicitly identified grounds set out below, and the use of them would be subject to the LGC's determination. This option permits deviation from the rule only where necessary to ensure that effective divisions or boundaries can be set to:

- provide effective representation for island and isolated communities of interest (currently the only exception provided for territorial authorities by the LEA);
- avoid splitting recognisable communities of interest;
- avoid grouping communities of interest with few commonalities; and

This option best balances the need for both fair and effective representation. It would provide territorial authorities a similar level flexibility that regional councils have. The LGC's involvement may result in minor additional regulatory costs for the LGC. This is the preferred option.

### **Consultation**

17. The Ministry of Health, the Ministry of Justice, Te Puni Kōkiri, the Treasury, the Department of Building and Housing, the Ministry for the Environment, the Ministry of Transport, the Ministry of Agriculture and Forestry, the New Zealand Police, Local Government New Zealand and the New Zealand Society of Local Government Managers were consulted on the proposals.
18. Concerns were raised that option 4 may create public concerns over the potential manipulation of boundaries for personal/political gain and, therefore, generally decrease confidence in the local government system.
19. Tightly prescribed process and criteria around the option were suggested to address the concern and ensure a transparent process. Furthermore, the Department of Internal Affairs will work with relevant agencies, including the Ministry of Justice, on this matter in drafting any legislative changes. The requirement for the LGC to make a determination approving the use of the extra exemptions will mitigate the risk.

### **Conclusions and recommendations**

20. In the Department's view the preferred way forward is option 4. This will provide limited exceptions to apply in specified circumstances where necessary. It retains the meaning of fair representation, while allowing discretion where the rule would create representation outcomes that are ineffective. The Department recognises the importance of tightly prescribing the circumstances and criteria for invoking exceptions to the rule, with independent assurance from the LGC. The option would have a consequence of providing greater clarity around the meaning of "effective representation" and "communities of interest", to assist councils to balance the fair and effective representation requirements.

## Implementation

21. The preferred option would, if agreed by Cabinet, be given effect through a proposed Local Electoral Amendment Bill, for which there is provision in the 2011 legislation programme (with a category 4 priority). Option 4 is expected to entail amendments to section 19V of the LEA and is supported by the LGC and Local Government New Zealand.
22. If these amendments are progressed in the first half of the 2012 calendar year, then they would come into force in the second half of the 2012 calendar year, in time for the representation reviews for the 2013 local authority elections. If sufficient progress is not made in the 2012 calendar year for the commencement of the option in advance of the 2013 elections, the relevant provisions could be adapted to commence in advance of the 2016 elections.

## Monitoring, evaluation and review

23. The Department will work with the local government sector and the LGC to establish appropriate monitoring of any changes implemented.