



Inquiry into the 2019 Local Elections and Liquor Licensing Trust Elections, and Recent Energy Trust Elections

Report of the Justice Committee

Fifty-third Parliament
Ginny Andersen, Chairperson
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Chairperson

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Inquiry into the 2019 Local Elections and Liquor Licensing Trust Elections, and Recent Energy Trust Elections

Summary of recommendations

The Justice Committee has conducted an inquiry into the 2019 Local Elections and Liquor Licensing Trust Elections, and Recent Energy Trust Elections, and makes the following recommendations to the Government:

Centralising the running of local elections

1. We recommend that the Government:
 - make the Electoral Commission responsible for leading and co-ordinating triennial, nationwide campaigns to encourage and support people standing for and voting in local elections, using the same imagery and branding as the publicity campaigns for national elections
 - fund such campaigns by a mixture of levies on local authorities (consistent with the average amount spent by local authorities per voter in 2019) and central government funding.

Alignment between parliamentary and local elections

2. We recommend that the Government review the Local Electoral Act 2001 to ensure it is fit-for-purpose and aligns with legislation regarding parliamentary elections, after it has completed its review of the Electoral Act 1993.

Public oversight of election services

3. As a minimum, we recommend that the Government make the Electoral Commission responsible for the oversight of local elections, including the regulation of election service providers.

Foreign interference in local elections

4. We recommend that the Government align local authority elections with the legislation and regulations that apply to general elections regarding foreign donations and disclosures.
5. We recommend that the Government consider increasing the intelligence agencies' resources so that they are able to provide greater support to the local government sector.

Voting systems

6. We recommend that the Government consult widely with local authority voters on which electoral system should be used for all local elections.

Energy trust elections

7. We recommend that the Government give consideration to the legislative framework within which energy trusts operate, with a particular focus on whether it is appropriate for their elections to be governed by trust deed, and how greater public control and oversight of energy trust elections could be achieved.

The role of council staff

8. We recommend that the Government:
- produce new guidelines for local authority staff about the management of public communications during the election period
 - consider making local government chief executives responsible to an external, independent body.

Complaints about the conduct of local elections

9. We recommend that the Government consider requiring a single national organisation, such as the Electoral Commission, to investigate and resolve complaints about conduct in local elections.

Boundaries and representation arrangements

10. We recommend that the Government ensure that, where possible, the boundaries of alcohol licensing trusts:
- are aligned with local government areas
 - match the areas that trusts are active in.

Background

In December 2019, the Justice Committee of the 52nd Parliament resolved to initiate an inquiry into the 2019 local elections and liquor licensing trust elections, and recent energy trust elections.

The committee resolved the following terms of reference for the inquiry:

- 1) Examine the law and administrative procedures for the conduct of the 2019 local elections, with particular reference to:
 - a) low voter turnout at local elections
 - b) liquor licensing trusts
 - c) the role of council staff during election periods around decisions to release or not release information or any public statements that may be construed to affect the election outcome
 - d) the issue of disclosure in respect of candidates or elected members with serious criminal convictions
 - e) any irregularities or problems that could have compromised the fairness of elections.
- 2) The inquiry will not be investigating allegations of any specific illegal behaviour by any person but is focussed on the issues of general law and administrative procedures.
- 3) Consult stakeholders and the wider public about the recommendations in the Justice Committee's report on the 2016 local elections, with particular reference to:
 - a) the recommendation that the Government consider giving responsibility for running all aspects of local elections to the Electoral Commission
 - b) the recommendation that the Government consider encouraging or requiring the same voting system to be used in all local elections
 - c) feedback on the committee's recommendations on foreign interference.
- 4) Examine the law and administrative procedures for the conduct of elections for energy trusts held since 2016.

The committee was not able to thoroughly consider all the relevant issues before the closing of the 52nd Parliament. The committee produced an interim report detailing some of its consideration, but recommended that the Justice Committee of the 53rd Parliament continue with this inquiry.

Recommendations from the interim report in the 52nd Parliament

The interim report made two recommendations to the Government, reinforcing recommendations from the committee's previous inquiry into the 2017 general election and 2016 local elections.¹ The report on the *Inquiry into the 2017 General Election and 2016 Local Elections* (the 2016 report) was presented on 10 December 2019 and made 55 recommendations to the Government. The Government responded to the recommendations on 1 May 2020.²

1: Centralise the running of local elections

The committee reiterated its previous recommendation that the Government consider giving responsibility for running all aspects of local elections to the Electoral Commission. In its *Inquiry into the 2017 General Election and 2016 Local Elections*, the committee considered that centralising the running of local elections would reduce voter confusion, increase consistency of practice between councils, and likely increase voter participation.

2: Align the rules between parliamentary and local elections

The committee recommended that laws for local and parliamentary elections be better aligned. Areas proposed for better alignment included: advertising rules, third party registration and spending rules, overseas donations, and judicial recounts. The committee considered that better aligning the rules between parliamentary and local elections would increase participation and make it easier for the Electoral Commission to run elections.

Government response to the interim report

The Government published its response to the committee's interim report in February 2021.³ Its response noted that centralising the delivery of local elections would be a fundamental change that would need to be carefully worked through. The Government agreed to consider this recommendation as other priorities allow, and welcomed further advice from this committee in its final report on this inquiry.

Regarding the rules governing parliamentary and local elections, the Government agreed that better aligning these rules would make it easier for voters to understand and participate in all elections. The Government is currently conducting a two-term comprehensive review of electoral law, which was initiated after the 2020 general election. It noted that the review would consider opportunities for aligning the parliamentary and local electoral frameworks more closely.

Re-adoption of the inquiry by the Justice Committee of the 53rd Parliament

The Justice Committee of the 53rd Parliament re-adopted this inquiry at its first meeting on 3 December 2020. The committee worked to develop six priority areas in accordance with the

¹ [Justice Committee of the 52nd Parliament, *Inquiry into the 2017 General Election and 2016 Local Elections*, December 2019.](#)

² [Government Response to Report of the Justice Committee on Inquiry into the 2017 General Election and 2016 Local Elections.](#)

³ [Government Response to Interim Report of the Justice Committee on Inquiry into the 2019 Local Elections and Liquor Licensing Trust Elections, and Recent Energy Trust Elections.](#)

terms of reference which would inform the substance of its consideration. These six areas form the chapter headings of this report. In determining these priorities, the committee considered:

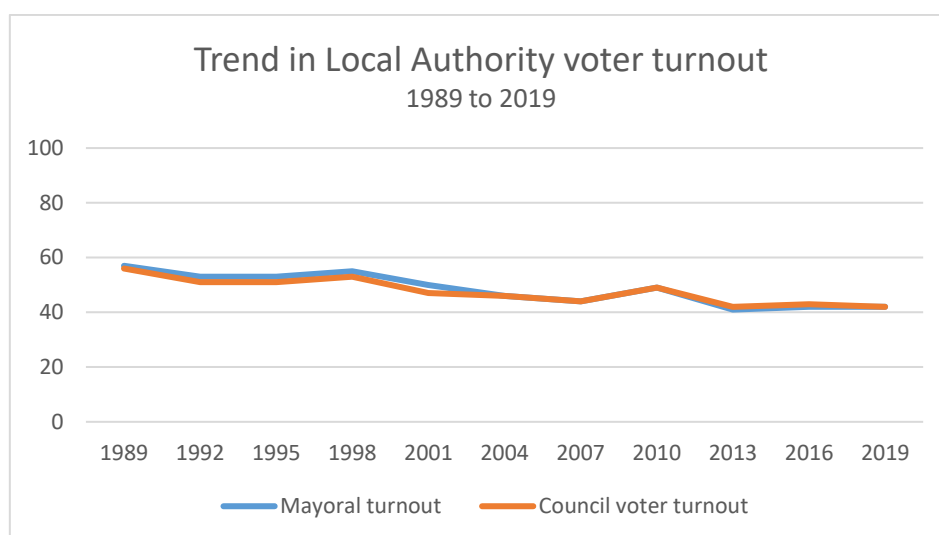
- the evidence and advice that had been presented to the previous committee
- the Government responses to the previous committee's *Inquiry into the 2017 General Election and 2016 Local Elections* and *Inquiry into the 2019 Local Elections and Liquor Licensing Trust Elections, and Recent Energy Trust Elections (Interim Report)*
- the work being undertaken in the Government's current two-term review of electoral law.

Chapter 1: Participation rates

New Zealand has 78 local authorities: 11 regional councils and 67 territorial authorities (city councils, district councils, and unitary authorities⁴). Under the Local Electoral Act 2001, local elections are held every three years for roles such as mayors, councillors, community board members, and local board members. In addition to local authorities, voters in some regions also elect licensing trust members, and members of a small number of other entities.

Low voter turnout

We were told by the Department of Internal Affairs that voter turnout in the 2019 local elections averaged 42 percent. This is similar to the turnouts in 2013 and 2016.⁵ The department said that although voter turnout is currently stable, it has decreased on the whole since 1989 and is lower than voter turnout in general elections.



The Local Government Act 2002 was amended in 2019 to make local authority chief executives responsible for “facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001”. The department told us that this came into effect for the first time at the 2019 local elections and was implemented by chief executives in a variety of ways. We were told that it will take time to see how practices to facilitate and foster electoral participation are developed, and how the operation of these practices affects voter turnout.

⁴ Unitary authorities are territorial authorities with the additional powers of a regional council. There are six unitary authorities: Auckland, Chatham Islands, Gisborne District, Marlborough District, Nelson City, and Tasman District Councils.

⁵ Source: [Department of Internal Affairs data](#).

Submitters who commented on voter turnout suggested that it may be low because of:

- a lack of information, including about candidates and the role of local government
- system complexity, such as adapting to different voting systems or casting a special vote
- impact of other elections (such as for mayor or other trusts), making voting time-consuming or complex
- representation ratio—smaller communities typically have higher turnout rates, suggesting it is easier to know elected members and candidates
- socio-economic reasons
- voters are busy.

We consider that one of the main reasons for voter turnout decreasing since 1989 is the poor coordination and resourcing of local election campaigns. We believe that information campaigns for general elections are usually better resourced than those for local elections, which has led to a higher voter turnout in general elections. Although election promotion budgets for the Wellington City Council and the Auckland Council increased between 2016 and 2019, the amount of money spent per elector was lower than the amount spent per elector for the general election.

Election promotion budgets and voter turnout 2016 and 2019						
	2016			2019		
	Spending (\$) ⁶	percent turnout (%)	spending per elector (\$)	Spending (\$)	percent turnout (%)	spending per elector (\$)
Wellington City Council	80,000	46.2	0.56	120,000	41.2	0.81
Christchurch City Council	80,000	38.6	0.33	80,000	41.8	0.32
Auckland Council	1,300,000	38.5	1.26	1,600,000	35.2	1.50
General Election (2017/2020)	14,530,000	79.8	5.52	7,332,186 ⁷	82.2	2.07

⁶ Spending figures for City Council election promotion budgets were taken from Stuff article, *Millions spent on election promotion not enough to bring back turned off voters*.

⁷ We note that the amount shown here for spending on the 2020 general election promotion does not include the costs of face to face activity by the Electoral Commission's enrolment and community engagement teams. The 2017 general election promotion budget figures do include this.

Later in our report we discuss our view that the running of local elections should be centralised, and that there should be alignment between local elections and general elections. We consider that, if our recommendations in this area were accepted, there would be an increase in budget as a result.

Suggestions for increasing voter turnout

We received a number of suggestions for increasing voter turnout from submitters. They included:

- providing relevant, engaging, and accessible information about:
 - the role, responsibilities, and impact of councils
 - candidates, including current and previous political affiliations and positions on key issues
- making voting easier, for example by simpler forms and a single voting system
- providing more ways to vote, such as booth voting and online voting
- promoting civics education
- using the orange branding and marketing devices that are used to encourage people to vote in general elections
- increasing councils' role in promoting elections, for example, enabling councils to host election debates
- using positive messaging rather than negative; for example: "74 percent of Aucklanders are planning to vote. Join them and vote this election!"

We support some of these suggestions. We also note that new civics education resources have become available for teachers of Year 7 and older students. We hope that the new resources will help teachers inspire their students to vote in local elections when they are adults.

Although we support the introduction of alternative methods of voting such as booth voting, we do not support online voting.

The Department of Internal Affairs told us that it last researched the introduction of online voting and the effect on electoral turnout in 2018. It said the international experience was that online voting did not increase voter turnout in the long term. It noted that despite an initial spike in voter turnout, which was likely due to the novelty factor, an online voting option affected how people chose to cast their vote rather than whether or not they voted.

Further research by the department into the effects of online voting in local elections in international jurisdictions showed a similar outcome. It noted that online voting had benefits of convenience and accessibility, but in cases where convenient voting methods already existed, the evidence indicated that online voting had little or no effect. We note that many countries that have trialled online voting in local elections no longer use this voting method.

The Justice Committee of the 52nd Parliament wrote about its concerns regarding the risks associated with online voting in its report: *Inquiry into the 2017 General Election and 2016*

Local Elections. The report noted that the committee had received strong evidence from the security agencies and other submitters about the security risks associated with online voting systems. It considered that any proposals by councils to undertake online voting trials should be approached with caution. We have not heard any evidence to convince us otherwise and thus are of the same view as the previous Justice Committee. That is, we believe there are significant risks associated with online voting that must be taken into account when assessing the desirability of online voting in local elections.

Given the lack of evidence that online voting improves voting rates, and the security risks associated with online voting, we believe online voting is not the solution to local democracy's long-standing participation problem.

We discuss our views on postal voting and booth voting in chapter 6 of this report.

Centralising the running of local elections

Recommendation 15 of the report *Inquiry into the 2017 General Election and 2016 Local Elections* recommended that the Government consider giving responsibility for running all aspects of local elections to the Electoral Commission. We consider that centralising the running of local elections would encourage voter turnout by:

- ensuring greater consistency of practice between local authorities, reducing confusion for voters
- developing and implementing best-practice of election management across local authorities
- providing expertise to assist local authorities in running well-managed and transparent campaigns, fostering public confidence and trust in local election processes
- lifting the profile of local government elections through nationwide promotion and advertising.

The Government response to the recommendation made in the 2016 report was that centralising the running of local elections was a fundamental change that would need to be carefully worked through. It noted that the committee had called for further public feedback on the issue and looked forward to receiving further advice as a result of this current inquiry.

In this inquiry we received 38 submissions about centralisation.

Current role of the Electoral Commission in local elections

The Electoral Commission told us that centralisation of local elections would affect legislative, institutional, and funding arrangements. It said it would welcome the opportunity to work with stakeholders on the current challenges, options for change, and feasibility work.

We heard that the Electoral Commission's role in the 2019 local elections consisted of information and background services:

- encouraging people to update their enrolment details
- promoting community engagement and working with local councils

- providing roll data to electoral officers
- checking special vote declarations to confirm voting eligibility.

Most submissions supported centralising the running of local elections

Twenty-one submitters supported giving responsibility for all aspects of local elections to the Electoral Commission. A further 13 supported some aspects being managed centrally but others staying with local authorities. Six opposed the idea, emphasising the importance of local input to local elections.

Many submitters said that transferring functions to the Electoral Commission would improve consistency in the interpretation and application of local electoral law. The Society of Local Government Managers (SOLGM) disagreed, saying that contracting out election management to a private provider standardises the application of local electoral law. SOLGM also said its Code of Electoral Practice provides a set of templates, advice, and interpretations that is seen as “industry standard”.

Other proposals for the Electoral Commission

We also heard proposals that the Electoral Commission could:

- issue and receive ordinary and special votes
- process and count votes
- declare results
- receive donation and expense returns
- receive complaints, investigate possible breaches of electoral law, and report alleged offences to the Police
- host a website containing comprehensive information about candidates
- research, develop, and implement new voting methods.

Proposed roles for local authorities

Some said that local authorities should retain responsibility for certain duties, including:

- publishing public notices and receiving nominations for that local authority
- administering the ratepayer franchise⁸ and issuing special votes
- conducting the representation review process.

Costs

SOLGM was concerned about the costs that might be charged to local government for centrally run elections. It believed costs tended to be higher when central government was a monopoly provider of services. As an example, it said that costs were high when central

⁸ The main voters in local elections are residents of the local authority area. Non-residents who enrol as “ratepayer electors” may also vote. Ratepayer electors are either property owners who do not live in the local authority area (such as holiday-home owners or investment property owners) or ratepayers such as companies and trusts (who nominate a natural person to vote on their behalf).

government held a monopoly on property valuation services. SOLGM also doubted the Electoral Commission's ability to attract and retain staff, including in the regions.

Although it expressed views against the centralisation of local body elections, SOLGM also submitted that there is "enough of a case for centralising some or all local electoral functions that a more in-depth investigation of such a delivery model is warranted".

Centralising the promotion of local elections

A key issue that we have found is the lack of a co-ordinated nationwide advertising campaign.

Many submitters (including those who were not in favour of the Electoral Commission taking over the running of local elections) said that the commission should take a broader role in promoting local elections. We agree with this as a minimum change. We note that there is wide variation between councils' campaigns encouraging people to vote—some councils are almost silent, and some advertise extensively. The promotion of local elections should be consistent across New Zealand.

We believe that local election promotion campaigns should include use of the Electoral Commission's branding. This would streamline voter awareness between local and national elections, and increase the public perception of the importance of participating in local elections.

This is consistent with recommendation 24 of the 2016 report on elections, which was to make the Electoral Commission responsible for leading and co-ordinating triennial, nationwide campaigns to encourage and support people standing for and voting in local elections.

National publicity campaign should be funded by a combination of government funding and levies on councils

Councils spend much less per voter on publicising local electoral campaigns than the amount spent per voter on publicity for parliamentary elections. We expect that increasing the average amount spent per voter on publicising local elections would improve turnout.

In our view, the promotion of local elections should be funded by a mix of government funding and contributions from local authorities. This would mean a triennial per-electoral levy on every local authority for the publicity campaign. For fairness, the levy should be the average amount that councils currently spend on publicity campaigns.

Recommendation 1

We recommend that the Government:

- make the Electoral Commission responsible for leading and co-ordinating triennial, nationwide campaigns to encourage and support people standing for and voting in local elections, using the same imagery and branding as the publicity campaigns for national elections
- fund such campaigns by a mixture of levies on local authorities (consistent with the average amount spent by local authorities per voter in 2019) and central government funding.

Alignment between parliamentary and local elections

We also heard that the law governing local and parliamentary elections should be better aligned. It was suggested that this would make it easier for the Electoral Commission to run elections, and that it might increase participation. Areas proposed for better alignment included:

- the voting system and method
- advertising rules
- third party registration and spending rules
- overseas donations
- accessibility requirements
- judicial recounts
- entrenchment of some local electoral provisions (requiring a 75 percent majority in Parliament to change the law).

Several submitters recommended a comprehensive review of the Local Electoral Act, which has seen many elections as well as technology and media changes since its enactment in 2001.

We consider that there should be better alignment between parliamentary and local elections. This is consistent with recommendation 26 of the report of the Justice Committee of the 52nd Parliament.⁹ In its response to that report, the Government agreed to consider our recommendation but noted that this would be best considered after its review of the Electoral Act 1993. We look forward to the Government's consideration of our recommendation.

We discuss the idea of a single voting system for all local elections in Chapter 4 of this report.

Recommendation 2

We recommend that the Government review the Local Electoral Act 2001 to ensure it is fit-for-purpose and aligns with legislation regarding parliamentary elections, after it has completed its review of the Electoral Act 1993.

⁹ Justice Committee of the 52nd Parliament, *Inquiry into the 2017 General Election and 2016 Local Elections*, December 2019.

Chapter 2: The role of private companies in providing election services

Private providers of election services

Of the 78 local authorities, 74 contract their election management to one of two private election service providers. These are Independent Election Services and electionz.com. The services they provide include: filling the statutory position of electoral officer, provision of an independent returning officer, electoral roll maintenance, candidate management, advertising, mail-outs, email and text reminders, voting material design and printing, election helplines, and media releases. We heard that the providers' systems are audited every three years.

Independent Election Services and electionz.com submitted to us that generally the current system works well. They pointed out that they are accessible and available to all candidates (not just incumbents). They said that the current model allows local authorities flexibility and choice to manage their electoral processes in a way that best reflects the characteristics of their communities and people. For example, councils can request materials that are translated for demographic communities and choose appropriate voting systems.

Independent Election Services and electionz.com reported that having councils contract out their election management ensures the impartiality, integrity, and independence of the electoral process. The providers also suggested that the local electoral system is more complex than the general electoral system and that it would take substantial upskilling and resourcing for the Electoral Commission to gain this capability. As well, they argued that keeping a competitive model for the provision of election services would save costs for local authorities and ratepayers.

Some submitters opposed the provision of election services by private companies. They argued that:

- the independence, experience, and reputation of the Electoral Commission offered a significant advantage
- the contracting-out of election services to private companies left councils vulnerable to risks around capacity, transparency, security, consistency, and duplication of services
- having the Electoral Commission manage election services would bring more consistency among local authorities in the interpretation and application of local electoral law and regulations, which would reduce voter confusion and increase voter participation
- the coordination, resourcing, and expertise that the Electoral Commission could provide would better assist councils in navigating the increasingly complex electoral landscape, as challenges and opportunities posed by technology continue to emerge.

When we asked for the providers' views on regulatory oversight of their work, they suggested that the Local Government Commission could be responsible for some oversight because it is experienced in local representation and boundary issues.

We recognise the experience and knowledge of the private providers. We certainly were not convinced of any impropriety on the part of either provider. However, we are uneasy that the crucial job of protecting local democracy seems to have drifted to private companies.

There was no evidence that the use of private providers has reduced voter turnout. However, we wonder whether moving some or all local election services to a public body would improve voter turnout.

We believe that the ultimate responsibility for local elections should be with a public body. More work is needed on defining this responsibility. It should include examining whether to move the current role of private providers entirely to the Electoral Commission, or to have a system of election service providers approved by, or subcontracted to provide services on behalf, of the Electoral Commission. There could well be a role for private election service providers, with very strong public oversight.

We acknowledge that detailed work needs to be done on the cost implications of greater centralisation, and that moving in the direction of greater centralisation may be more expensive than the status quo. We are of the view that the health of local democracy in New Zealand is fundamental to the country's future, and that proposals to improve participation should not be dismissed because they may be more expensive than what we are currently doing.

Public oversight is needed

We agree with the Government that the idea of centralising the running of local elections needs further development. We have considered the submissions and advice, and conclude that the benefits of centralisation outweigh its disadvantages. Whether to centralise all aspects of local elections needs further consideration, but the Electoral Commission should at least be responsible for:

- statutory and regulatory oversight
- registration requirements
- auditing
- managing complaints procedures.

Managing complaints is discussed in more detail in Chapter 6 of this report.

Recommendation 3

As a minimum, we recommend that the Government make the Electoral Commission responsible for the oversight of local elections, including the regulation of election service providers.

Chapter 3: Foreign interference in local elections

The 2016 report on elections made 21 recommendations relating to foreign interference. Although many of them focused on parliamentary elections, it was clear that they should also apply to local government as much as possible.¹⁰ The Government responded to those recommendations on 1 May 2020.¹¹

This inquiry received 17 submissions about foreign interference.

The risks posed by foreign interference are not as acute in local authority elections as they are in general elections. However, candidates and councils involved in local elections may not be as well-resourced or informed as those involved in national elections. Professor Anne-Marie Brady submitted that local government is at risk. Local authorities can be a strategic target for foreign interference due to the influence that local government has over planning decisions, including over water rights and land use. She noted that local authorities do not have foreign policy expertise or advisers, or access to regular national security briefings.

Donations and funding of candidates

Several submitters recommended that all foreign political donations be banned. We heard that only New Zealand citizens and residents should be able to make donations and they should have to provide their address. We heard that the public funding of political candidates and parties could disrupt inappropriate foreign interference.

We note that parties and affiliations at the level of local elections do not have the formal status of parliamentary political parties. The Electoral Amendment Act 2019 created a ban on overseas donations to political parties and candidates. However, the Act only applies to parliamentary elections.

We consider that the legislation and regulations regarding foreign donations and disclosures that apply to general elections should also apply to local authority elections. Bringing local government electoral systems and governance measures in line with central government will strengthen New Zealand's ability to identify and resist foreign interference. It would also enhance public confidence in the transparency and integrity of electoral processes, and allow participants in local authority elections to draw on an enhanced level of resourcing, expertise, and protective advice. We consider that aligning general and local electoral law in this area would require an increase in resources and expertise available to local authorities to protect against foreign interference. Because of this, we recommend that the Government consider increasing resourcing for the intelligence agencies.

¹⁰ Justice Committee, *Inquiry into the 2017 General Election and 2016 Local Elections*, p. 74.

¹¹ *Government response to Justice Committee Report*, p. 6.

Recommendation 4 and 5

We recommend that the Government align local authority elections with the legislation and regulations that apply to general elections regarding foreign donations and disclosures.

We recommend that the Government consider increasing the intelligence agencies' resources so that they are able to provide greater support to the local government sector.

Inappropriate use of social media

We heard about the use of false profiles in social media to spread false information during local elections. We also heard about hacking attempts.

Suggestions to respond to these issues included:

- strengthening the local electoral legislative framework and making the Electoral Commission responsible for policing the legislation, should local elections become centralised
- increasing the responsibility of online platforms to ensure transparency in online advertising and social media
- introducing a code of practice for election participants' use of people's personal information.

Evidence about foreign government interference

Several submitters were concerned about the influence of the Chinese Communist Party (CCP). One said that certain candidates in the 2019 local elections were supported by organisations that represent Chinese Government interests. Other submitters suggested that the New Zealand Chinese community experienced social pressure from CCP-affiliated individuals, particularly in content presented in Chinese-language media.

It was suggested that:

- the NZSIS, the GCSB, and the New Zealand Police should have more authority to deal with "non-traditional" espionage
- legislation should be enacted to require associations and personnel serving foreign interests to be transparent.

We heard that influence is often expressed in Chinese-language media content. We discuss this in detail below.

Media use in diaspora communities in New Zealand

The previous Justice Committee observed in its 2016 report on elections that some foreign states try to control their diaspora communities in New Zealand. We heard similar submissions in relation to the 2019 local elections. In particular, we received submissions that the Chinese Government monitors content and encourages self-censorship by Chinese-language social media users and media organisations.

The 2016 report on elections expressed concern about foreign governments limiting the rights of free speech of New Zealand citizens and residents. We are also concerned about this.

Removal of media content that is considered subversive

Evidence about foreign interference has highlighted the censorship that occurs in some social media forums. We are happy that the Government is undertaking or considering work on misleading advertising and disinformation. However, it also needs to address the issue of social media platforms removing content that is considered by some to be subversive, thereby limiting the right to freedom of speech and expression.

We are particularly interested in freedom of speech in New Zealand Chinese-language news media and social media platforms. We note that evidence was heard relating to these matters during the 2016 inquiry. We also heard evidence relating to these matters during this inquiry. Based on the evidence we have heard we do have concerns about the freedom of the press and the freedom of speech in Chinese-language news media and social media in New Zealand.

Chapter 4: Voting systems

A single voting system for all local elections

Currently, each local authority chooses whether to use First Past the Post (FPP) or Single Transferable Voting (STV) as its voting system.¹²

Recommendation 16 of the 2016 report on elections was:

As part of centralising the management of local elections, we recommend that the Government consider encouraging or requiring the same voting system to be used in all local elections.

Most submissions that we received on this topic supported the use of a single system in all local elections. Many preferred one system over another:

- Seven submitters preferred FPP. Reasons included that FPP is simpler and easy to understand.
- Fourteen submitters preferred STV. They said that it is fairer, more representative, and more inclusive than FPP, and that it prevents wasted votes. One submitter said that STV would be more transparent as a voting system if results were published at each iteration. We note that some electoral officers do publish results at each iteration.¹³

We agree that a simplified, standardised voting system would reduce voter confusion, and less voter confusion would increase turnout.

The STV system of voting was more popular with submitters. It was also more popular with submitters to the inquiry into the 2017 general election and 2016 local elections. However, there are differing views among committee members about which system is preferable. We recommend that the Government consult on voters' electoral system preferences as part of its consideration of its work on centralising the administration of local elections.

Recommendation 6

We recommend that the Government consult widely with local authority voters on which electoral system should be used for all local elections.

¹² FPP requires voters to choose candidates up to the number of vacancies to be filled; an example of FPP instructions is "place a tick beside up to five candidates". STV requires voters to rank candidates in order of preference.

¹³ For an example, see Wellington City Council's 2019 final result report at <https://wellington.govt.nz/-/media/your-council/elections/2019/wellington-city-council-2019-elections-final-stv-result-report.pdf?la=en>.

Chapter 5: Alcohol Licensing Trusts and Energy Trusts

Alcohol licensing trusts

Alcohol licensing trusts are community-owned companies that sell alcohol in their area. They aim to enhance the wellbeing of their communities by distributing their profits back to their communities. There are 19 licensing trusts in New Zealand.

Licensing trusts are governed under the Sale and Supply of Alcohol Act 2012. Their elections are governed by the Local Electoral Act.

We received 19 submissions on the licensing trust elections. Submitters' main points are summarised below.

Election management

Some submitters said that the same voting system should be used for all elections on the ballot paper (including those for licensing trusts). Most did not express a preference for FPP or STV.

We note the submissions that many areas do not have easy access to post boxes; they recommended booth voting over postal voting.

One submitter commented that candidates who were standing for a licensing trust as well as for another post in the local elections were advantaged by the higher profile. That submitter suggested that trust elections be held at a different time to local government elections.

In relation to licensing trusts, eight submitters commented on the 2016 report's recommendation that the Electoral Commission take over the running of all aspects of local elections. All supported the Electoral Commission running licensing trust elections.

Other issues

We heard from the West Auckland Licensing Trust Action Group (WALTAG) that some alcohol licensing trusts were using community support and grants for political purposes. WALTAG said that public resources had been used to support electoral campaigns, which undermined the fairness of the alcohol licensing trust elections. This involved a significant increase of advertising spend during the election year. The licensing trusts, in their response to these claims, denied the characterisations put forward by WALTAG.

A regular triennial parliamentary inquiry is not a mechanism for resolving specific complaints over the conduct of elections, as our terms of reference made clear at the outset of this inquiry. However, we wish to thank both WALTAG and the licensing trusts for engaging with our process to provide valuable illustrations of the nature of the issues facing liquor licensing trust elections.

Other submissions discussed the need for multilingual support for licensing trust elections and the suggestion that terms should be limited.

We discuss boundary alignment issues, which affect both local councils and licensing trusts, in Chapter 6 of this report.

Energy trusts

One of this inquiry's terms of reference was to examine the law and administrative procedures for the conduct of elections for energy trusts held since 2016.

Energy trusts were set up to own local electricity distribution businesses in New Zealand. There are over 20 energy trusts. Their beneficiaries are electricity consumers. Each energy trust is governed by the terms of its trust deed.

Payouts to beneficiaries

Some energy trusts pay dividends to their beneficiaries according to their trust deeds. Auckland's Entrust, for example, owns 75 percent of the electricity lines company Vector Limited. Each year, it collects a dividend from Vector's profits which it shares with its beneficiaries. The amount varies depending on profits, and can be several hundred dollars for each electricity consumer. Some energy trusts distribute the dividends through credits on consumers' power bills.

Energy trust elections

Trustees are elected by electricity consumers under the terms of the trust's trust deed. Some trust deeds require elections to be conducted in accordance with relevant provisions of the Local Electoral Act; however, these are not elections conducted under that legislation. Elections are supervised by each trust's returning officer. Trust deeds can only be changed by order of the High Court.

While energy trusts are not local elections in terms of statutory law, they borrow from the mana of the local electoral framework. Moreover, they involve local constituents choosing how significant public assets are governed.

Energy Trusts of New Zealand believes that turnout of between 13 and 30 percent represents a "reasonably high level of customer satisfaction". It considers that energy trust elections are of limited interest to the public because they focus on local issues about electricity delivery and performance.

We asked Entrust about the timing of its payouts and elections. We learnt that payouts are based on the end of the financial year, on 30 June. Entrust receives its dividend from Vector in late August. It takes about a month to calculate and pay beneficiaries their dividends, so payments are made in about late September. As for its elections, Entrust's trust deed requires elections to be held in October every three years. Entrust told us that making a change to the trust deed would require a court process.

Payouts should not be made in election periods

While we acknowledge the differing views on this issue and make no findings in respect of the conduct of any particular election, we are concerned that the timing of payouts generally could affect perceptions of the integrity of elections. We believe that dividends should not be paid within a certain period of an energy trust election. In particular, payouts made just prior to an energy trust election could be seen as influencing voters in favour of the existing board. Even if their intentions are innocent, energy trusts risk being seen as inappropriately trying to influence voters.

One submitter noted their concern with the timing of payouts. They told us that when raising this concern with the relevant trust, they were told that payouts of dividends were part of business as usual and not related to the election.

We also are concerned that, as smaller-scale elections of limited interest to the public, energy trust elections are vulnerable to other integrity risks. As well as the issue we noted above, of the payout period advantaging incumbent candidates, we agree with a submitter who commented that limited information about energy trust candidates means that voters may make uninformed decisions. The submitter also noted that it is easy for special interest groups to gain election to energy trusts, and recommended that term limits be introduced.

Amending a trust deed would require an application to the High Court. While we are concerned about the potential for the timing of payouts to affect how beneficiaries vote, we consider that we have limited mechanisms to influence how energy trust elections should be conducted within established frameworks. We note too that similar concerns have been raised in Parliament before, in the petition of Leilani Tamu and 44 others, reported on by the Justice and Electoral Committee in 2016.

We recommend that the Government give consideration to the legislative framework within which energy trusts operate, with a particular focus on whether it is appropriate for their elections to be governed by trust deed, and how greater public control and oversight of energy trust elections could be achieved.

We also strongly encourage energy trusts to proactively address voters' concerns by considering the arrangements in their trust deeds to ensure there is little room for perceptions of improbity to arise.

Recommendation 7

We recommend that the Government give consideration to the legislative framework within which energy trusts operate, with a particular focus on whether it is appropriate for their elections to be governed by trust deed, and how greater public control and oversight of energy trust elections could be achieved.

Chapter 6: Other matters

Postal or booth voting?

All local elections have used postal voting since 1992, although booth voting remains a legal option.

Many submitters opposed postal voting, for the following reasons:

- Voting papers do not arrive on time. This is exacerbated by the change to alternate-day mail delivery in 2015. New Zealand Post suggested that the statutory time frame for delivering voting documents be extended by three days.
- Postal voting is not convenient.
- Some communities do not have a post box.
- There is a security risk in mailing voting documents.
- There is no confirmation that your vote has been received.

LGNZ commented that submitters' concern about the lack of confirmation that votes have been received is widespread. It said that voter turnout is likely to decrease when confidence in the postal voting system is lacking. The Justice Committee of the 52nd Parliament wrote in its 2016 report about its concerns with the security of postal voting, the increasing unreliability, and the difficulty for overseas voters to cast a postal vote within the voting period. We consider that these concerns remain.

We acknowledge that in situations of national emergency, postal voting may be appropriate. For example, during a COVID-19 outbreak, booth voting would not allow for some legal restrictions (such as physical distancing) to be followed, and postal voting would be a safer option for communities. We consider that in situations of national emergency postal voting should remain an option.

Many submitters supported a move to booth voting. We heard that the Electoral Commission's techniques, such as locating booths at places where people regularly visit, would help to increase turnout. We support this approach being applied to local elections. Some commented on a hybrid postal/booth method, using the special vote process to deliver an approximate booth voting experience. SOLGM noted that, currently, a special vote may be issued only to people whose voting paper is lost or spoiled. It suggested that a "replacement" ordinary vote be permitted at booths. This would allow a staff member to print off the voting paper (including the bar code).

We note that the Government agreed to consider recommendation 20 of the 2016 report on elections, to trial advance booth voting in 2022. We look forward to seeing how this goes.

Candidates with criminal convictions

If a councillor or mayor is convicted of a crime punishable by imprisonment for two years or more, they are removed from office. If they appeal, they are required to take a leave of absence from office during the appeal.

We were troubled to hear that a councillor who is removed from office for a criminal conviction can contest subsequent elections—even the by-election that was caused by their removal.¹⁴ We note the legislative intent that electors should be able to determine whether the candidate is capable of fulfilling the role of an elected member.

We heard differing views on how candidates with criminal convictions should be treated. They included the following:

- A candidate convicted of a crime punishable by more than two years' imprisonment should not be allowed to stand for election.
- Candidates should have to disclose any serious criminal convictions, and this information should go into the candidate profile statement.
- All candidates should have to submit an application for a Ministry of Justice criminal conviction history report with their nomination documents.
- Candidates should be subject to the same disclosure requirements as for ordinary job applicants.
- There should be no disclosure requirements.

Local Government New Zealand (LGNZ) submitted that the ability to search for information about candidates on the internet is “probably sufficient to ensure that any such matters are brought to public attention”.

We note that offenders make reparation to society for their crimes; penalties include fines and imprisonment. It is not appropriate to further punish offenders by not allowing them to stand for election. We also wish to encourage people to participate in local elections, which includes standing as a candidate. In addition, we note that the Criminal Records (Clean Slate) Act 2004 deems that an offender who satisfies certain eligibility criteria (relating to details of the conviction and the time that has since passed) has no criminal record for the purposes of any question asked of them.

We are also aware that very few New Zealand public bodies to whom people can be elected or appointed require the disclosure of candidates' criminal records. The same is true for candidates in Australian or UK elections. Neither local election nor parliamentary candidates have to disclose criminal convictions. It is more common for candidates to be prohibited from standing if they have received a conviction over a certain threshold.

Although we believe that voters should be entitled to know whether candidates have been convicted of a serious offence, mandating a disclosure regime for local election candidates

¹⁴ The statutes involved are the Local Electoral Act 2001 and the Local Government Act 2002.

would not be consistent with practice for general election candidates. We note that requirements for standing for local election are:

- to be a New Zealand citizen
- to be enrolled as a parliamentary elector.

Someone is disqualified from being a parliamentary elector if they are serving a prison sentence of more than three years. This means that someone who is currently serving a prison sentence of more than three years would not be eligible to stand for local election.

We are concerned about candidates who are removed from office after being convicted of an offence against a council staff member. They are entitled to contest subsequent elections (even, as mentioned above, the by-election created by their removal from office) and potentially be returned to office. We are concerned about the effect on council staff members who were victims of the offence. However, we note that the democratic process could alleviate this type of situation if voters use their judgement about whether the candidate is fit for office. We also note that LGNZ has developed guidance for local authorities that suggests several options for councils to consider where elected representatives have breached codes of conduct. Options include restricting access to council offices and limiting dealings with council staff. Chief executives could also provide arrangements that allow the staff member to avoid working with the offender.

The role of council staff

We note that usual council business should continue during election periods. Obviously, it is important that staff maintain political neutrality at all times, especially in election periods.

Council staff release information during election periods, including official information requests, communications to current council members in their elected roles, responses to requests by candidates, and media statements. We heard that information release practices are inconsistent between councils. For example, we learnt that some councils publish all information that has been officially requested by candidates.

Guidelines on communicating during elections

Submitters commented on advice published by the Office of the Auditor-General (OAG) about managing public communications in the pre-election period. The OAG is withdrawing this advice and not replacing it, because:

- it is out of date because of the changing role technology has played in communications
- it is not frequently used
- the OAG does not have core expertise in public communications.

Submitters said that the advice is still useful and its withdrawal leaves a vacuum. They called for new guidelines.

This issue touches on a theme running throughout our consideration: the lack of central coordination in certain matters that may affect the integrity of local electoral processes. While we acknowledge the Auditor-General's reasons for withdrawing the guidelines, we

believe there is merit in there being best practice guidance for councils on conduct during an election period.

Chief executives must be politically neutral

The relationship between mayors and chief executives can be difficult to manage during election periods. We want a politically neutral local government public service. Impartiality between the chief executive (and other staff) and the mayor (and other elected members) should be part of council culture. Thought is needed about how to ensure neutrality, especially during election periods.

We discussed the possibility of making chief executives responsible to an independent body in the same way that government department chief executives are responsible to the Public Services Commission. One way of achieving this could be to establish a position of Deputy Public Services Commissioner responsible for local government. The deputy commissioner could make regular reports to mayors on how well their council is managed. We believe this idea is worth developing. Alternatively, if a central body was given responsibility for overseeing or administering part or all of local elections, this responsibility would fall to that body.

Recommendation 8

We recommend that the Government:

- produce new guidelines for local authority staff about the management of public communications during the election period
 - consider making local government chief executives responsible to an external, independent body.
-

Candidates' profile statements

Candidates provide a photograph and a 150-word profile statement about themselves for inclusion in a booklet that is sent out with the voting documents. We understand that the original intent of the profile statements was to refresh voters' information about candidates as they make their final voting decisions. However, the booklet is now a primary vehicle for voters to learn about candidates.

It was submitted that all candidate profile statements should be hosted on one national website. Another submission was that profile statements should provide answers to specific questions on key issues or a standard set of questions. Some suggested that profile statements should be fact-checked before publication. We also heard that candidates should be able to give video statements. Another submission pointed out that reo Māori statements contain approximately 30 percent more words than the same information in English. This means that, if a candidate wishes to provide their statement in both languages, the English version must be considerably shorter than 150 words so that the reo Māori version will be within the word limit.

We note that candidates must state whether they live inside the area they are standing in. It was suggested that this requirement be removed as candidates may work and spend time in an area they do not live in.

Complaints about the conduct of local elections

Some submitters told us about issues that may have compromised the fairness of the elections. This inquiry did not seek to investigate allegations of specific illegal behaviour by any person. However, we found it appropriate to consider issues of general law and administrative procedures in response to these submissions.

Recommendation 34 in the 2016 report on elections was that, consistent with broader recommendations for alignment with general elections and a greater role for the Electoral Commission, the Government improve mechanisms for the investigation and resolution of complaints related to the conduct of local elections. The Government responded that it would consider this, and other recommendations relating to the centralisation of local election delivery, “as other priorities allow”.¹⁵

We heard that the electoral officer is the primary avenue of complaint for people unhappy about an irregularity in their local election. Concerns were raised that the electoral officer is often not sufficiently independent, either because they are employed by the council or the election services provider, or because they themselves may be the subject of the complaint.

If a written complaint contains allegations of an offence, the electoral officer must forward the allegation to the Police. In rare cases, a district court may inquire into the conduct of an election, a candidate, or any other person at an election.¹⁶ The alternative of a district court inquiry is seen by some submitters as prohibitively time-consuming and expensive.

The specific complaints that we received demonstrate the inadequacy of processes for handling complaints about irregularities that could have compromised a local election. This problem could be solved by the centralising of the running of local elections, or at least, a central service to handle complaints about local elections.

Two submitters proposed the Local Government Commission as an oversight body. One suggested that the commission could oversee electoral officers in particular, by receiving, assessing, investigating, and seeking remedy for complaints about electoral officer conduct, as well as passing complaints to the Police or Serious Fraud Office and making submissions to the District Court on behalf of the public.

We note that the Local Government Commission’s role is centred on decisions about how local government is structured. In our view, the Electoral Commission is more appropriate as an oversight body for elections.

¹⁵ [Government response to Justice Committee Report, p. 4.](#)

¹⁶ A candidate or a group of at least 10 electors must petition the District Court demanding the inquiry. The Judge must then determine whether the election outcome was materially affected, and if so, whether the election should be void.

Recommendation 9

We recommend that the Government consider requiring a single national organisation, such as the Electoral Commission, to investigate and resolve complaints about conduct in local elections.

Boundaries and representation arrangements, including boundaries of alcohol licensing trusts

All councils must review their representation arrangements at least every six years. Most representation reviews cover the number of councillors, how they are elected, and decisions about wards and community boards.

We heard that misaligned boundaries between regional and territorial councils, wards, and local boards are confusing. For example, submitters told us that some local government boundaries are different to licensing trust boundaries. We heard that misalignments can increase the complexity of an election, cause confusion, and reduce voter turnout. The Oamaru Licensing Trust noted that some of its voters live 92 km from Oamaru and the trust's services, while some communities nearer the trust's operations are not eligible to vote. Some other submitters are content with the existing arrangements.

We also received submissions about the alignment of licensing trust boundaries with meshblocks.¹⁷ If electoral areas do not align with meshblocks, it is difficult to compile information about them. We were pleased to hear that the Local Government Commission intends to review licensing trust boundaries and attempt to make them conform with meshblock boundaries before the 2022 election.

Recommendation 10

We recommend that the Government ensure that, where possible, the boundaries of alcohol licensing trusts:

- are aligned with local government areas
 - match the areas that trusts are active in.
-

By-elections, including for alcohol licensing trusts

Licensing trusts must hold a by-election if a position becomes vacant. However, if the vacancy occurs less than 12 months before the next triennial election, the trust does not have to run a by-election and may appoint a person to the position. The Governor-General may appoint members if there are fewer candidates than positions available.

¹⁷ A meshblock is the smallest geographic unit for which statistical data is collected and processed by Stats NZ. It can vary in size, from part of a city block to a large area of rural land.

By-elections are not frequent but they are expensive. We heard that each by-election costs about \$32,000. We heard that this cost reduces trusts' total profits that are available for community benefit.

Some submitters suggested removing the by-election requirements because of the expense and the challenge of attracting enough, and appropriate, candidates. Proposed alternatives included:

- offering the position to the next highest polling candidate at the previous triennial election
- appointing a person to the position, regardless of the time before the next election (we heard that this practice would align with the way school boards operate)
- giving the trust (rather than the Governor-General) the power to appoint members if there are fewer candidates than positions available.

Others felt that the current by-election arrangements should stay. We also received submissions that trustees who live in another ward or who move out of their ward should stay as trustees.¹⁸

The 2016 report on elections recommended that the Government introduce legislation to require that, when a non-mayoral vacancy occurs within 12 months after a triennial local body election, the position be filled by the next highest polling candidate (or STV equivalent) at that election. This recommendation could also apply to alcohol licensing trusts. However, the Government responded that this approach would “contravene democratic principles and adversely impact effective voter representation”.

District Health Board elections

We do not discuss District Health Board (DHB) elections in this report, although we considered them during this inquiry. This is because the Minister of Health announced in April 2021 that all DHBs will be abolished and that DHB elections will not take place in 2022.

¹⁸ Subsection 323(1) of the Sale and Supply of Alcohol Act 2012 provides that a trustee is disqualified from continuing to be a member of a licensing trust if they move outside the boundaries of a trust district or ward.

Appendix A—Committee process

Committee procedure

The Justice Committee of the 52nd Parliament initiated this inquiry on 12 December 2019. It called for public submissions with a closing date of 29 February 2020. It received 92 submissions from organisations and individuals and heard oral evidence from 32 submitters. It received advice from the Department of Internal Affairs.

The committee produced an interim report on 10 August 2020.

The Justice Committee of the 53rd Parliament re-adopted the inquiry on 3 December 2020. It met between December 2020 and 8 July 2021 to consider the inquiry. It received advice from the Department of Internal Affairs.

Committee members

Ginny Andersen (Chairperson)

Hon Simon Bridges

Simeon Brown

Dr Emily Henderson

Harete Hipango

Nicole McKee

Willow-Jean Prime

Vanushi Walters

Arena Williams

Advice and evidence received

The documents that we received as advice and evidence for this inquiry are available on the Parliament website, www.parliament.nz.

Appendix B—List of submitters

The Justice Committee of the 52nd Parliament considered submissions from the following individuals and organisations. These submissions informed our consideration and the matters we raise in this report.

ActionStation	Judith Reinken
Alec van Helsdingen	Kaiwan Gan
Amanda Miller	Kapiti Coast District Council
Andrew Riddell	Karen Lee
Andy Asquith	Katarina Gray-Sharp
Anne-Marie Brady	Keep Our Assets Canterbury (KOA)
Auckland Council	Lance Wiggs
Birkenhead Licensing Trust	Lee Vandervis
Cheviot Licensing Trust	Lianne Dalziel
Chlöe Swarbrick	Local Government Commission
Christchurch City Council	Local Government New Zealand (LGNZ)
Conor Hill	Make it 16
Darren Mason	Martyn Bradbury
Dr Jean Drage	Mary McDonald
Dunedin City Council	Massey Birdwood Settlers Association Inc
Eileen Brown	Matamata-Piako District Council
electionz.com	Mataura Licensing Trust
Electoral Commission	Max Shierlaw
Elisabeth Donaldson	Metro-Auckland District Health Boards
Energy Trusts of New Zealand Inc	Michael Campbell
Entrust	Mt Wellington Licensing Trust
Federation of Ratepayers NZ	New Zealand Post
Freeman YU	Nicholas Penrose
Generation Zero	Nicky Hager
Gwynn Compton	NZ Licensing Trusts Association
Hamilton City Council Staff	Oamaru Licensing Trust
Hauora Tairāwhiti	Office of the Auditor-General
Hutt City Council	Oliver Krollmann
Independent Election Services Limited	Paula Birnie
Institute for Governance and Policy Studies, Victoria University	Porirua City Council
Invercargill Licensing Trust	Portage Licensing Trust
Jason Howarth	Public Health Association NZ
Jo Daly	Ray Wallace
John Edie	Rolf Mueller-Glodde
John Minto	Rosemary Neave
Jonathon Webber	Ross Lill
	Sarah Campbell

SEA CHANGE

Sean Kirton

Shane Henderson

Society of Local Government Managers
(SOLGM)

Steven Law

Steven Nichols

Susan Shepherd

Tasman District Council

Tiffany Long

Titahi Bay Residents Association
Incorporated

Transparency International NZ

Vincent Feng

Waitakere Licensing Trust

Warwick Lampp

WeiJian Chen

Weixing Che

Wellington City Council

West Auckland Licensing Trusts Action
Group

Whanganui District Council