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*Appendix C – Key offence provisions in *Local Electoral Act* of importance to scrutineers*
HANDBOOK FOR SCRUTINEERS

This handbook is issued for the guidance of scrutineers at the Wellington City Council 2013 local authority elections. It has been prepared by Wellington City Council, based on inputs from the SOLGM Electoral Working Party.

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

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

Disclaimer:

This handbook has been compiled to help scrutineers and other interested parties understand the requirements of the LEA and the LER.

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

1.1 The preparation of this handbook for scrutineers arose from a recommendation of the former Internal Affairs and Local Government Select Committee in its 1999 Report on the Inquiry into Early Processing of Voting Papers at Local Authority Elections.

1.2 Because of some concerns identified with scrutineers during the 1998 local authority elections, the Select Committee agreed it was important for candidates to be aware of what is expected of their scrutineers. The Select Committee noted that for parliamentary elections the Chief Electoral Officer issues a handbook that outlines the rights and obligations of scrutineers and includes forms for both the candidate to appoint a scrutineer and the required secrecy declaration. Briefings by the Chief Electoral Officer for parliamentary candidates and parties also include the role and functions of scrutineers.

2 Role of scrutineers

2.1 The general role of scrutineers is to observe election or poll procedures to help achieve ‘public confidence in, and public understanding of, local electoral processes’ as set out in the Act. It is not to give any particular candidate or party any ‘inside information’ prior to the official release of preliminary or final results based on what scrutineers believe they may have observed regarding the state of the election or poll. (Refer section 130 LEA)

2.2 Section 68 LEA sets out the general rules applying to scrutineers including when they may be present for particular election or poll procedures. These times are:

- scrutiny of roll (sections 81 and 83 LEA and regulation 55 and 100 LER). This involves marking the elector’s name off the roll as their vote is received. The key is to establish any dual voting which is disallowed;
- any step in the early processing of votes completed after the close of voting (section 80 LEA). Scrutineers (and any other person who is not an electoral official) are prohibited from attending any of these steps before the close of voting to avoid any possibility that trends in voting may be identified before the close of voting;
- counting of votes (section 84 LEA, and regulations 58, 60, 61A, 62, 103, 104A, 105A and 106 LER). The first count of votes occurs immediately after the close of voting. The outcome is the preliminary result announced on polling day. The second count follows the first count. It can begin on polling day and due to special voting issues is usually completed on the Monday or Tuesday following polling day;
- recount of votes at an election (section 90, 91 LEA). A recount takes place on the order of a District Court judge following an
application from a candidate. It involves a recount of the relevant voting documents.

2.3 In observing the processes in paragraph 2.2, a scrutineer (and a candidate) may request from the electoral officer before the close of voting the names of persons from whom voting documents have been received (section 68(6) LEA). The disclosure of this information is permitted under the Act but the passing on of any other information is prohibited – see section 6 of this handbook relating to offences.

2.4 Given that the practice has been for all local authority elections to be conducted by postal voting and not by booth voting as in parliamentary elections, and with the early processing of voting documents, scrutineers are less involved in the local elections process than for parliamentary elections.

2.5 Scrutineers are not entitled or empowered to interfere with the conduct of an election or poll or raise questions of procedure or law with electoral officials. If a scrutineer believes that electoral procedures are not being followed, he or she should draw the matter to the attention of the electoral officer.

3 Appointment of scrutineers

3.1 For a local authority election a candidate may, by notice in writing, appoint one or more scrutineers (section 66 LEA). However, only one scrutineer per candidate may be present at any one time.

3.2 Every scrutineer appointed under sections 66 or 67 of the Act must be appointed in writing (a model letter of appointment is contained in Appendix A).

3.3 An appointment as scrutineer is not valid unless a copy of the notice of appointment is delivered by the candidate to the electoral officer. The electoral officer must receive this notice not less than 24 hours before the close of voting at the election or poll. It is recommended that scrutineers always carry a copy of this notice when undertaking scrutineering duties.

3.4 Section 68(3) LEA contains three restrictions on who may be appointed a scrutineer. No person can be a scrutineer if that person is:
   • a candidate in the elections; or
   • a member or employee of any local authority or community board for whom the election or poll is being held; or
   • under 18 years of age.
4 Declaration

4.1 No person appointed as a scrutineer can carry out scrutineering duties until he or she has completed a declaration (section 68(2) LEA and regulation 137 LER).

4.2 A model declaration form for scrutineers is contained in Appendix B.

4.3 The key obligations for a scrutineer arising from the declaration are that he or she:

- will properly exercise the powers conferred on a scrutineer;
- is not a person to whom section 68(3) LEA applies, ie is not a candidate or a member or employee of any local authority or community board for whom the election or poll is being conducted, or under the age of 18; and
- will not directly or indirectly disclose any fact coming to his or her knowledge at the election or poll that he or she is required by the LEA or LER not to disclose.

4.4 A person appointed as a scrutineer should report to the electoral officer on the first day on which he or she is to undertake any scrutineering duty to complete the required declaration. Upon completing the declaration, the scrutineer will be given a scrutineer nametag. This nametag should be returned to the electoral officer when the scrutineer leaves the premises where he or she is acting as a scrutineer.

5 Information to be supplied by electoral officer

5.1 As soon as practicable following the appointment of a scrutineer, the electoral officer will advise that person of:

- arrangements for the election or poll process for which he or she has been appointed;
- what restrictions apply to scrutineers; and
- how that person is expected to conduct themselves.

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

5.2 The electoral officer will advise the scrutineer:

- where he or she should go, and at what time, to complete the required declaration before any scrutineering duties can be undertaken;
- when and where any planned briefing of candidates and scrutineers about election processes is to be held;
- when and where any planned briefing of electoral officials about the election or poll process is to be held;
- in relation to the scrutiny of the roll
  - where it will be conducted (address and office), and
  - on what days and time the scrutiny of the roll will take place;
that the first count of voting documents will commence at 12 noon on what day and where. (In the case of the 2013 local authority elections, the day and time will be 12 noon on Saturday 12 October 2013);

• when and where the second count will begin and on what days it will extend over if there are special votes to clear with the Registrar of Electors;

• on how the first and second counts will be undertaken manually or electronically;

• of any local authority transport arrangements (buses, car etc) if the first and second counts are being conducted at premises outside the district and how a scrutineer can book a seat if interested in attending the counts;

• if a recount has been ordered by a District Court judge, where and when that recount will take place;

• that no remuneration will be paid to any scrutineer by the local authority for the undertaking of scrutineering duties.

Restrictions on scrutineers during election and poll processes

5.3 An electoral officer can now decide, under section 80 of the Act, whether or not to process voting documents during the voting period. Scrutineers are prohibited under section 81 LEA from being present during the early processing of voting documents unless any steps are being completed after the close of voting. Early processing of voting documents does not involve counting or totalling votes for any candidate for election or for or against any proposal in a poll. Counting of votes can only begin after the close of voting.

5.4 In an election, a candidate can appoint more than one scrutineer. However, only one scrutineer for any candidate can be present at the same place to undertake scrutineering duties. The same restriction applies in the case of scrutineers appointed for or against a proposal in a poll (sections 68(4) and 91(3) LEA).

5.5 Scrutineers can at any time leave and return to the undertaking of the roll scrutiny, and after close of voting, the first and second counts. Upon returning to the process, a scrutineer has no power or right to demand the electoral officer go back for his or her benefit and repeat the activities in relation to voting documents that were dealt with in his or her absence. The same practice will apply if a scrutineer is late for the start of any of these processes.

Conduct of scrutineer

5.6 As stated in section 2 of this handbook, the general role of scrutineers is to observe particular procedures at an election or poll to help achieve ‘public confidence in, and public understanding of, local electoral processes’. As the emphasis in the scrutineer’s role is on observing, scrutineers must not talk to electoral officials involved in the roll scrutiny, the first or second counts or in any recount. As stated under
paragraph 2.5, if a scrutineer believes that electoral procedures are not being followed he or she should draw the matter to the attention of the electoral officer. It should not be raised with other electoral officials.

5.7 A scrutineer must not seek from the electoral officer or other electoral officials any progressive voting trends during the first count.

5.8 The scrutiny and the first and second counts are critical processes to the outcome of an election or poll and demand a high level of concentration from electoral officials. Accordingly, scrutineers must not distract, annoy, linger close by or talk loudly to one another so as to disrupt or upset any electoral officials.

5.9 In keeping with the needs of electoral staff as explained under paragraph 5.8, scrutineers are not allowed to use nor have mobile phones switched on within the area where scrutiny of the roll, the first or second count or a recount is being conducted.

5.10 The LEA and LER are silent on the display of any group or organisation affiliation by scrutineers. This handbook therefore adopts the policy that applies to scrutineers at parliamentary elections. This means the following items, in a group or organisation’s colours but without its name, emblem, slogan or logo, may be worn on the person or displayed in a vehicle:

(a) streamers;
(b) ribbons;
(c) rosettes (but see also the special rule about group or organisation lapel badges below);
(d) items of a similar nature.

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

5.11 Scrutineers should also bring their own refreshments which should be consumed outside the scrutiny area. The electoral officer will not provide meals and refreshments for scrutineers.
6 Offences

6.1 Scrutineers can be present at election and poll processes, which will expose them to returned voting documents and information about voting. While scrutineers are permitted to tell any person the names of persons who have voted, as mentioned in section 4 of this handbook, under the declaration a scrutineer must not directly or indirectly disclose any fact coming to his or her knowledge at the election or poll that he or she is required by the LEA or LER not to disclose.

6.2 If a scrutineer fails to observe their declaration and discloses information that is prohibited then they are likely to have committed an offence under one or more of the following provisions of the LEA:

(a) Section 123, Offences in respect of official documents;
(b) Section 129, Infringement of secrecy;
(c) Section 130, Disclosing voting or state of election or poll.

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

Model letter of appointment of scrutineer

To the Electoral Officer
Wellington City Council
P O Box 2199
Wellington 6140

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

Delete those election or poll processes below that the scrutineer is not appointed for:
1 Scrutiny of the roll
2 Preliminary count
3 Official count
4 Recount

Signed ____________________________________________
Candidate name

Notes for candidates and scrutineers:

1 A copy of this letter of appointment must be given to the electoral officer no later than 24 hours before the close of voting (ie by 12 noon Friday, 11 October 2013).
2 Scrutineers should carry this letter at all times when undertaking their scrutineering duties.
3 At any of the election processes only one scrutineer for each candidate may be present at any one time. The same limitation also applies in the case of scrutineers for a poll.
Appendix B

Declaration by scrutineers

I, ___________________________________________________

(Name)

___________________________________________________

(Address)

___________________________________________________

(Occupation)

declare that

(i) I will serve in the office of scrutineer:

            at any election held in Wellington City Council on 12 October 2013

(ii) I am not a person to whom section 68(3) of the Local Electoral Act 2001 applies**; and

(iii) I will not, directly or indirectly, disclose any fact coming to my knowledge at any election or poll which I am required by the Local Electoral Act 2001 and the Local Electoral Regulations 2001, not to disclose.

Signature:______________________________________________

Declared at: ____________________ this ______________ day of

_________________ (month_________________ (year)

Before me: ___________________________________________________

* Justice of the Peace or other authorised person (lawyer, Notary Public or court official)

* Delete what doesn’t apply.

** No person can be a scrutineer if that person is:
  • a candidate in the elections; or
  • a member or employee of any local authority or community board for whom the election or poll is being held; or
  • under 18 years of age.
Appendix C

Main offence provisions in the Local Electoral Act relating to scrutineers

Section 123, Offences in respect of official documents

(1) Every person commits an offence who:
   (a) intentionally removes, obliterates, or alters any official mark or
       official writing on any voting document, or other official document
       used at an election or poll;
   (b) intentionally places any mark or writing that might be mistaken
       for an official mark or official writing on any voting document, or
       other official document used at an election or poll;
   (c) forges, counterfeits, fraudulently marks, defaces, or fraudulently
       destroys any voting document, or other official document used at
       an election or poll, or the official mark on that document;
   (d) supplies, without authority, a voting document to any person;
   (e) obtains or has possession of any voting document, other than
       one issued to that person under this Act or any Regulations
       made under this Act for the purpose of recording his or her vote,
       without authority;
   (f) intentionally destroys, opens, or otherwise interferes with any
       ballot box or box or parcel of voting documents without authority.

(2) Every person who commits an offence against subsection (1) is liable
    on conviction on indictment:
    (a) in the case of an electoral officer or other electoral official, to
        imprisonment for a term not exceeding two years;
    (b) in the case of any other person, to imprisonment for a term not
        exceeding six months.

Section 129, Infringement of secrecy

(1) Every electoral officer, deputy electoral officer, and other electoral
    official:
    (a) must maintain and assist in maintaining the secrecy of the
        voting; and
    (b) must not communicate to any person, except for a purpose
        authorised by law, any information likely to compromise the
        secrecy of the voting.

(2) No person, except as provided by this Act or Regulations made under
    this Act, may:
    (a) interfere with or attempt to interfere with a voter when marking or
        recording his or her vote; or
    (b) attempt to obtain, in the building or other place where the voter
        has marked or recorded his or her vote and immediately before
        or after that vote has been marked or recorded, any information
as to any candidate for whom, or the proposal for or against which, the voter is about to vote or has voted; or
(c) communicate at any time to any person any information obtained in the building or other place where the voter has marked or recorded his or her vote and immediately before or after that vote has been marked or recorded, as to
   (i) any candidate for whom, or the proposal for or against which, the voter is about to vote or has voted, or
   (ii) any number on a voting document marked or transmitted by the voter.

3) Every person present at the counting of votes must:
   (a) maintain and assist in maintaining the secrecy of the voting; and
   (b) must not, except as is provided by this Act or Regulations made under this Act, communicate any information obtained at that counting as to any candidate for whom, or proposal for or against which, any vote is cast by a particular voter.

4) No person may, directly or indirectly, induce any voter to display or provide access to his or her voting document or any copy of that document after it has been marked or transmitted, so as to make known to any person the name of any candidate for or against whom, or proposal for or against which, the voter has voted.

5) Every person commits an offence who contravenes or fails to comply with this section.

6) Every person who commits an offence against subsection (5) is liable on summary conviction to imprisonment for a term not exceeding six months.

Section 130, Disclosing voting or state of election or poll

1) Every electoral officer, deputy electoral officer, other electoral official, Justice of the Peace, or scrutineer commits an offence who:
   (a) makes known for what candidate or candidates or for which proposal any particular voter has voted for or against, except as provided by this Act or Regulations made under this Act; or
   (b) before the close of voting, makes known the state of the election or poll or gives or pretends to give any information by which the state of the election or poll may be known.

2) Subsection (1)(b) does not prevent an electoral officer from disclosing the total number of voting documents so far returned at an election or poll at any time during the voting period.

3) A person who commits an offence against subsection (1) is liable on summary conviction to a fine:
   (a) not exceeding $5000 for an electoral officer or deputy electoral officer;
   (b) not exceeding $2000 for any other person.