



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Local Electoral Matters Bill

21/06/2018

Local Electoral Matters Bill

1. Introduction

- 1.1. The New Zealand Law Society welcomes the opportunity to comment on the Local Electoral Matters Bill (Bill).
- 1.2. This submission focuses on the amendments to the Electoral Act 1993 in Part 2 of the Bill, that would require the Electoral Commission (Commission) to provide date of birth information to local authorities. This raises privacy concerns, as noted by the Commission and the Privacy Commissioner.¹
- 1.3. The Law Society does not seek to be heard.

2. Part 2 Amendments to Electoral Act 1993 – amended section 113

- 2.1. Part 2 of the Bill amends section 113 of the Electoral Act 1993 (Electoral Act) to, among other things, require the Commission to provide electors' date of birth information to local authorities (on request) for the purpose of an election, by-election or poll required under any Act.²
- 2.2. The Law Society raises the following concerns about the proposed amendments to section 113 of the Electoral Act.

Date of Birth information as a method of authentication

- 2.3. The Law Society queries, as the Privacy Commissioner has, whether there are other more effective and secure ways to authenticate the identity of individuals when online voting mechanisms are used.
- 2.4. The rationale for requiring the Electoral Commission to provide date of birth information is to enhance the integrity of the electoral roll and voting system, particularly if new voting methods (such as online voting) are adopted. However, it is not clear that the use of date of birth information would necessarily achieve this; as the Privacy Commissioner has noted, date of birth information has some limitations as a method of authentication.³ These include the fact that others (the individual's friends and family) are likely to know it, and it may be available from other sources (an example would be Facebook if the individual has shared their birthday and not locked down their profile). A further limitation arises if the elector's date of birth is included in the information that is mailed out prior to the election to confirm their enrolment details.

¹ Departmental Disclosure Statement, paragraph 3.6: "The Electoral Commission agrees with the conclusion of the Privacy Commissioner that authentication using a voter's date of birth is not particularly robust. Enrolment information is provided under compulsion. We would defer to the Privacy Commissioner on his view on whether the benefit and impact justify the supply of date of birth information for local body elections."

² This information would be provided in addition to the personal information the Commission is already required to provide under section 113 of the Electoral Act, which includes the elector's name, address, occupation (if any), and electoral district. The Bill includes various safeguards relating to this information (for a summary of key safeguards see Appendix A).

³ Departmental Disclosure Statement, paragraph 3.5.1. See also Regulatory Impact Statement: Improvements to the Regulatory Framework for Local Elections, p 12.

- 2.5. Adding date of birth information as an option opens the door to a potentially insecure voting system. That would be problematic for privacy, and also for electoral integrity and trust.

Use of the word “requires” – section 113(11)

- 2.6. Clause 12 inserts a new subsection (11) into section 113 of the Electoral Act. It is not clear from the new subsection (11) what is meant by the word “requires” in the phrase “authorise a voting method that requires the use of electors’ date of birth information”:
- a. Would the regulations specify that the particular voting method does in fact require the use of date of birth information, or would the Commission rely on the information provided by the local authority in each scenario to determine whether date of birth information is actually required for the particular voting method?
 - b. If the latter, could date of birth information only be provided if it were required for the actual election, or would it be sufficient if the date of birth information was required to verify the elector’s entitlement to be enrolled prior to the election?
- 2.7. This lack of clarity also arises in relation to the proposed amendment to section 141 of the Local Electoral Act (in clause 7 of the Bill, which uses the same language).

Collection of information for another purpose

- 2.8. New subsection (11) provides that date of birth information must not be provided other than under section 113(1) (i.e. only for the purpose of an election, by-election or poll).⁴ This appears to exclude the application of section 113(6) of the Electoral Act which authorises the collection of that information by an electoral official for another purpose. If this is the intention of new subsection (11), it may be prudent to make this clear in that subsection. Alternatively, section 113(6) could be amended to make it clear that it does not apply to the date of birth information.

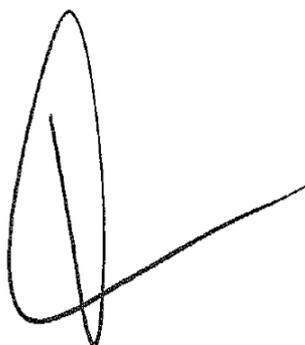
Electoral Roll not to include date of birth information

- 2.9. The Privacy Impact Assessment report states the initial intention was to amend section 38(4) and/or section 42 of the Local Electoral Act to make it clear that the electoral roll must not include electors’ date of birth information.⁵ This seems to have been bypassed in favour of the proposed amendments listed at paragraph (c) of Appendix A, which achieve the same result.

⁴ The explanatory note to the bill states that new subsection 113(11) provides “that date of birth information must not be provided by the Electoral Commission except to an electoral official of a local authority for the purposes of an election, by-election, or poll. It also provides that date of birth information may be provided for the purposes of an election, by-election or poll only if regulations have been made under section 139(1)(c) of the Local Electoral Act 2001...”

⁵ See Privacy Impact Assessment: Full report – Local authorities’ use of date of birth information, p5.

2.10. However, it would be prudent to confirm, in section 38(4) of the Local Electoral Act, that if the information obtained from the Commission includes electors' date of birth information, this must not be included on the published electoral roll.

A handwritten signature in black ink, consisting of a large, vertical, teardrop-shaped loop on the left and a long, thin horizontal stroke extending to the right.

Andrew Logan
Vice President

21 June 2018

Appendix A

Appendix A: amended section 113

The Bill amends section 113 of the Electoral Act by providing (in a new subsection (11)) that the Commission must only supply date of birth information for the purpose in subsection (1) and must not supply date of birth information unless regulations made under section 139 of the Local Electoral Act 2001 (Local Electoral Act) authorise a voting method that requires the use of electors' date of birth information to be used for the election, by-election or poll.

Under the terms of existing section 113(1), the information is to be provided in a "computer-compiled list" or "electronic storage medium". Under section 113(4), the electronic storage medium is to be returned to the Commission as soon as practicable after use.

If enacted, the Bill would provide the following further protections for the date of birth information supplied to local authorities:

- (a) An amendment to section 141 of the Local Electoral Act to ensure that default methods to protect information set out in section 89 of the Local Electoral Act would apply to the date of birth information, and that regulations must also prescribe measures to prevent unauthorised access to, or use of, this information. The intention appears to be that any list provided to the local authority under section 113(1) of the Electoral Act that contained date of birth information would be protected by the provisions in section 89 of the Local Electoral Act.
- (b) An amendment to section 142 of the Local Electoral Act to provide that regulations relating to electoral rolls must not provide for any electoral roll to include an elector's date of birth.
- (c) An amendment to regulation 11 of the Local Electoral Regulations 2001 to provide that an electoral roll must not include an elector's date of birth.