# Regulatory Impact Statement: A trial of online voting in 2016 local elections

## Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Internal Affairs (DIA). It provides an analysis of options for addressing the growing demand to enable the use of online voting for local government elections.[[1]](#footnote-1)

Cabinet has agreed there is no objection in principle to enabling a trial of online voting. However, for a trial to proceed, local government would have to take responsibility for the provision of secure and accessible online voting services as well as any associated promotion and voter education, and providing the necessary governance arrangements and funding for the trial.

Cabinet has also decided that a trial will not be enabled until the local government sector demonstrates that any online voting technology solution(s) can operate securely and meet the principles of the Local Electoral Act 2001 (LEA). This means that central government would not be directly involved in the procurement or development of any technology solutions or associated services. Instead, DIA would develop policy settings to inform what any technology solutions must achieve in terms of security and accessibility.

The Associate Minister of Local Government intends to report back to Cabinet in May 2015 with proposed policy requirements for a trial, and to seek a decision on whether to proceed with further work with the local government sector.

Delegation will also be sought for the Associate Minister to determine which local authorities will be enabled to participate in a trial.

If further work proceeds, the Associate Minister will advise Cabinet in November 2015 whether she is satisfied that the new voting method will be able to operate in a manner consistent with the principles of the LEA. While the proposed framework would enable a trial of online voting, each local authority will retain the ability to choose whether to participate in a trial. Local authorities will not be required to participate. As such, enabling a trial does not necessarily mean a trial will proceed.

In light of this limited scope, the analysis in this RIS is limited to whether a trial of online voting should be enabled. The analysis:

* does not consider *whether* online voting should be made generally available;
* does not consider online voting systems for local elections being provided by central government;
* assumes that local government will lead the implementation of online voting, including developing technical requirements, assuring any technology solutions meet those requirements, and deciding which local authorities would participate and how to cover any associated costs;
* does not focus on what specific technical requirements any technology solution will need to meet in order to operate securely and in a manner consistent with the principles of the LEA;
* does not cover other forms of electronic voting such as the use of voting machines; and
* assumes that a trial of online voting would supplement, not replace, postal voting.

Further detailed work is still needed to develop and test the proposed technical and operating requirements for any online voting technology that is deployed. Until this work is completed, it is difficult to estimate the full regulatory impacts of these proposals. Risks associated with this uncertainty are mitigated to some extent by the proposal to enable the introduction of online voting in selected trial areas only, and for final decisions to participate or not to be left to individual councils.

Steve Waldegrave, General Manager Policy

[*Signature of person*] [*Date*]

## Status quo and problem definition

1. Democracy in New Zealand is underpinned by public confidence in the integrity of the electoral system. Electoral processes and procedures are recognised as fair, effective and efficient for voters and candidates. This is true of local government elections as well as national elections, which operate under a different framework.
2. The local electoral regulatory framework is set out in the LEA and the Local Electoral Regulations 2001. Under this framework, territorial authorities are responsible for conducting local elections in their districts, including elections to regional councils, district health boards (DHBs), local boards, community boards, and licensing trusts.[[2]](#footnote-2)
3. Central Government’s responsibility is to provide and maintain the legislative framework to ensure that it enables local authorities to conduct local elections that both meet the needs of their communities and deliver trusted and legitimate results. The LEA is administered by DIA, which has a key role in liaising with local government on the maintenance and development of the LEA.

### Voting methods

1. The regulatory framework currently limits the voting methods territorial authorities can use for their elections to booth and postal voting, with all authorities choosing to use postal voting in practice.[[3]](#footnote-3)
2. The LEA anticipates other voting methods and implementation of new technology. The LEA specifies that “voting method” includes “any form of electronic voting” (section 5), and provides for new voting methods to be authorised by regulations (section 139).

### Demand for online voting

1. The Justice and Electoral Committee has supported a trial of online voting for local elections.[[4]](#footnote-4) Local Government New Zealand (LGNZ) and the New Zealand Society of Local Government Managers (SOLGM), as well as some local authorities, have requested that online voting be authorised for local elections because of existing and emerging issues with the postal method of voting, including:
   * electors that are not able to vote without assistance and, therefore, not able to vote in secret because they may be blind or visually-impaired, not able to speak Māori or English or not be proficient in literacy;
   * electors overseas not being able to vote conveniently or in a timely manner;
   * voting forms not being completed correctly and, therefore, not being counted as a formal vote;
   * reduced postal services and increased costs of postage; and
   * not meeting the expectations of a growing proportion of electors who are increasingly using online transactions to access public services as well as for commerce.
2. Local government considers that online voting could address these issues. Some local authorities would like to provide their communities with the option of voting online, especially those groups that are currently unable to vote in secret because they require another person to assist them.
3. Local government seeks to provide more services to their communities online. Being able to vote online would complement these efforts. However, local government cannot provide this option as the processes associated with online voting need to be authorised by regulations.
4. Before online voting can be authorised by regulations, the Minister of Local Government must advise that he/she is satisfied that the voting method will be able to operate in a manner consistent with the principles of the LEA (section 139(2)). This responsibility has been delegated to the Associate Minister of Local Government.
5. This means that central government would not be directly involved in the procurement or development of any technology solutions or associated services. Instead, DIA would develop policy settings to inform what any technology solutions must achieve in terms of security and accessibility.

### Problem definition

1. Based on experiences with the status quo, the problems are that:

* there are accessibility and convenience issues with the current postal voting system (described in paragraph 6);
* online voting cannot be used for local elections unless authorised by or under the LEA;
* the Associate Minister cannot recommend the authorisation of online voting unless satisfied it can comply in a manner consistent with the principles of the LEA; and
* online voting intrinsically raises additional risks in terms of those principles, which means that policy settings are needed for the local government sector to demonstrate that online voting solutions can operate in a manner consistent with the principles of the LEA.

## Previous Government consideration

1. In 2013, the Government established the Online Voting Working Party to consider the options, costs and security issues involved in online voting. The Working Party found that online voting is feasible, but found that there are significant risks associated with online voting.[[5]](#footnote-5) These include risks relating to security, accuracy, usability, reliability and availability of any technology solutions used for voting online.
2. The Working Party concluded that a staged approach to the introduction of online voting would be appropriate, as this would allow all parties and stakeholders to become familiar with the opportunities and challenges it presents. This would enable local authorities to adopt measures to maintain public confidence in New Zealand’s electoral system, if online voting is eventually made available in all local elections.
3. In December 2014, Cabinet agreed there is no principled objection to enabling local government to trial online voting in the 2016 elections. This is subject to:
   * local government leading the development or procurement of secure and accessible online voting services as well as any associated promotion and voter education, and provide the necessary governance arrangements, and funding for the trial, in line with current local electoral responsibilities; and
   * central government providing an enabling regulatory framework that ensures the process meets the requirements of the LEA and maintains public confidence in the electoral system overall, in line with its existing role.
4. The Associate Minister intends to report back to Cabinet in May 2015 with proposals on detailed settings for a trial. The Associate Minister seeks a decision to delegate to herself the authority to decide policy on any further minor or technical matters that may arise as part of the development of technical requirements and enabling regulations.
5. If further work proceeds, it is proposed that the Associate Minister will advise Cabinet in late 2015 on whether she is satisfied that the new voting method will be able to operate in a manner consistent with the principles of the LEA. If the Associate Minister is satisfied of these matters, she will also seek approval to regulations formally authorising the trial and prescribing relevant procedural requirements.

## Proposals for trial

1. Cabinet agreement will be sought in May 2015 to proceed with proposals on detailed settings for a trial, involving the following:
   * The responsibility for, and the costs of, the development of minimum operation specifications and a safe and secure online voting tool is placed on local authorities and so, by extension, on their commercial election service providers.[[6]](#footnote-6) This includes demonstrating how minimum operation specifications meet technical requirements for the online voting tool, such as the minimum security and encryption requirements, in order to ensure that online voting can operate in accordance with the LEA principles; and
   * Trial councils will be responsible for demonstrating that the system they want to use can operate securely in accordance with specified standards and requirements before regulations enabling their participation in the trial would be made. This will include completing independent security testing and developing process assurance measures.
2. Delegation will be sought for the Associate Minister to determine which local authorities will be authorised to participate in a trial. It is proposed that, before making a decision on trial participants, the Associate Minister will seek a recommendation on this from LGNZ, based on a set of guiding considerations (as agreed by Cabinet). Nine local authorities have currently expressed an interest and further expressions of interest will be sought from other councils.
3. Delegation will also be sought for the Associate Minister to issue drafting instructions for regulations to implement the policy decisions taken by Cabinet (subject to any refinement indicated by the development of technical standards). The regulations would also reflect the Associate Minister’s decisions concerning which councils are to be authorised to participate in the trial. Cabinet agreement to the regulations is expected to be sought in late 2015.
4. This policy proposal relates to a trial in the 2016 local elections. However, practicalities or other circumstances may require a trial to be deferred to a later date, for example, a by-election in 2017. DIA does not anticipate this occurring, although this is a consideration for the local government sector in determining whether it wishes to participate in a trial.

## Objectives

1. The overarching policy objective is to strengthen local democracy in New Zealand by enhancing the accessibility and convenience of the voting experience while maintaining the integrity of, and public confidence in, the local electoral system.
2. The particular policy objective is to consider how to inform the possible introduction of online voting in local elections. This means maintaining the status quo is not an option. The use of an initial trial in 2016 will allow progress towards this by mitigating actual and perceived risks relating to the security, accuracy, usability reliability and availability of any technology solutions used for online voting, and thus maintain and enhance confidence in both online voting and the wider electoral system.

## Options and impact analysis

#### Option 1: Enable a limited number of local authorities to have the option of trialling online voting in the 2016 local elections (preferred option)

1. Under this option, an initial trial of online voting would be enabled for a limited number of local authorities. This is in line with the staged approach recommended by the Online Voting Working Party and the Justice and Electoral Committee.
2. Trial councils would be responsible for ensuring that online voting can operate securely in accordance with specified requirements before regulations enabling their participation in the trial would be made. This will include completing independent security testing and implementing process assurance measures.
3. Trial councils would be responsible for meeting the costs of their election services, including any costs associated with the development of a safe and secure online voting system. The local government sector would decide how it meets these costs and, ultimately, whether they wish to participate in a trial.
4. DIA would enable a trial by developing regulations to authorise online voting once the Associate Minister is satisfied that online voting can operate securely in accordance with specified standards and requirements. DIA would work with the local government sector to ensure online voting can operate securely by developing and refining policy settings that would determine the minimum operating requirements. The operating specifications would be developed by local government in an iterative process with refinement of policy settings.
5. The policy settings for online voting would be a translation of the requirements for postal voting, effectively ensuring that online voting operates in a manner consistent with current expectations for voting under the LEA. This means that, where the risks of online voting are the same as postal voting, the settings would also be the same. For risks associated with online voting, but not postal voting, new settings would be designed. The finalised policy settings may require adjustment to subsequent regulations.
6. DIA would work with trial councils and their providers to evaluate the trial. The evaluation methodology would be determined in consultation with stakeholders.

#### Option 2: Enable a trial of online voting in by-elections after the 2016 local elections

1. Under this option, a trial of online voting would not be enabled for local elections in 2016. Instead, a trial would be enabled for subsequent by-elections.
2. Like option 1, the local government sector would be responsible for ensuring that online voting can operate in accordance with specified requirements before regulations to enable their participation would be made. Local government would remain responsible for the costs associated with online voting services.
3. Also like option 1, DIA would enable a trial by developing regulations to authorise online voting for specific local authorities once the Associate Minister is satisfied that online voting can operate securely in accordance with specified requirements. DIA would work with the local government sector with the intent of providing for this by developing policy settings. These settings would be a translation of the requirements for postal voting, effectively ensuring that online voting operates in manner consistent with current expectations for voting under the LEA.
4. DIA would work with trial councils and their providers to evaluate the trial. The evaluation methodology would be determined in consultation with stakeholders.

#### Option 3: Enable a trial of online voting in local elections after 2016 (not in by-elections)

1. Under this option, a trial of online voting would not be enabled in the 2016 local elections, but would be enabled for local elections in 2019 or subsequent local elections. This option would not include by-elections.
2. The implementation of this option would be the same as options 1 and 2, but the timeframes in which minimum operation requirements would be developed would be extended and enabling regulations would not need to be introduced by early 2016.

#### Option 4: Enable online voting without a trial after 2016

1. Under this option, a trial would not be enabled in the 2016 local elections. Rather, local authorities would be enabled to use online voting in local elections after 2016. This is inconsistent with the recommendations of the Online Voting Working Party, the Justice and Electoral Committee, and recent Cabinet decisions for online voting to be implemented through a trial.

### Assessment of options

1. Each option has been assessed against the objectives outlined in paragraphs 21 and 22, using the following criteria:

* *Public accessibility* – whether voters are able to vote and vote in secret
* *Public convenience* – whether voters are able enabled to vote in a way that they are comfortable with, including overseas voters
* *Public confidence* – whether voters will have confidence in the electoral result
* *Risk minimisation* – protecting the integrity of the local electoral system by mitigating risks

#### Assessment of Option 1 (preferred option)

1. Enabling a trial of online voting would allow the opportunities of *accessibility* and *convenience* associated with online voting to be better understood. Enabling a trial in the 2016 local elections would improve understanding of these opportunities at the earliest opportunity. Postal voting would still be an option in a trial, which means that electors who do not have access to the internet can still vote, if they want to.
2. A trial would build trust and *public confidence* by demonstrating that the online voting technology solutions are able to deliver accurate and timely results, and meet security and loading requirements. It would also allow those delivering a technology solution to identify potential improvements, to maximise usability and accessibility.
3. Limiting the number of local authorities and total electors involved in a trial would provide public assurance that any risks associated with the trial are *minimised*, contained and manageable. It will ensure, and be seen to ensure, that costs and disruption to the public can be minimised and contained, in the event that any technology issues prevent or delay a clear election result.

#### Assessment of Option 2

1. If a trial is not enabled for online voting in the 2016 local elections, but is enabled for subsequent by-elections, the opportunities of *accessibility* and *convenience* associated with online voting may be better understood.
2. Like Option 1, limiting the number of local authorities and total electors involved in a trial would provide public assurance that any risks associated with online voting will be contained and, therefore, *minimised*.
3. As the occurrence and frequency of by-elections is uncertain, however, a trial may not occur or may not provide sufficient evidence of the opportunities and risks associated with online voting. As a result, unlike Option 1, the risks in any subsequent local elections may not be appropriately *minimised*.
4. Undertaking this option may build trust and *public confidence* by demonstrating that the online voting technology solutions are able to deliver accurate and timely results, and meet security and loading requirements. It may also allow those delivering a technology solution to identify potential improvements, to maximise usability and accessibility.

#### Assessment of Option 3

1. If a trial is not enabled for online voting in the 2016 local elections, but is enabled for local elections in 2019 or subsequent local elections, the opportunities of *accessibility* and *convenience* associated with online voting would be better understood. However, this option involves maintaining the status quo for a potentially indefinite time.
2. Like Option 2, maintaining the status quo would ensure the continued integrity of the electoral system in the short term by avoiding the perceived and actual risks associated with online voting. However, local electoral processes would be increasingly out of step with other public and commercial transactions, which will itself lead to a lack of *public* *confidence*. For this reason, this option is not considered to strengthen local democracy.
3. Not enabling a trial in the 2016 local elections could provide more time to understand the opportunities and risks by monitoring online voting undertaken for local elections overseas. Also, the investment needed to apply those learnings to further development of online voting technology solutions can be spread over a greater time span.

#### Assessment of Option 4

1. Enabling online voting, without a trial, would allow the opportunities of *accessibility* and *convenience* associated with online voting to be better understood. Postal voting would still be an option in a trial, which means that electors that do not have access to the internet can still vote, if they want to.
2. If online voting is subsequently implemented, without a trial, the risks associated with online voting would not be contained and, therefore, not appropriately *minimised*. Although this option would be consistent with increasing public expectations to be able to make transactions online, there may be lower *public confidence* because the risks would not be proactively minimised.

## Consultation

1. Engagement with the local government sector included discussions with the Society of Local Government Managers (SOLGM) and Local Government New Zealand (LGNZ), and a roundtable discussion with local authorities that had expressed an interest in online voting.[[7]](#footnote-7)
2. A roundtable discussion was held with a selection of IT and security experts. The discussion informed the analysis of the security risks of online voting, and mitigation measures, such as the setting of requirements and security testing of technology solutions. The majority considered that the risks should be balanced against the potential benefits online voting offers. However, some expressed opposition to the enabling of online voting, particularly as proposed. They considered the reliance on current election service providers to develop technology solutions on behalf of local government as a risk to the integrity of the local electoral system, although these election service providers have contributed to building and maintaining the integrity of the system.
3. Central government agencies consulted were the Ministry of Justice, Ministry of Health, the Office of the Privacy Commissioner and the Electoral Commission. These agencies expressed an interest in being kept informed of further policy developments, as the risks associated with a trial of online voting for local elections also has implications for these agencies’ areas of work.

## Conclusions and recommendations

1. DIA supports proceeding with a trial of online voting in the 2016 local elections on the basis of an approach where individual local authorities procure or build their own technology solution, and central government sets minimum operating requirements needed to protect integrity of the local electoral system.

## Implementation plan

1. The preferred option would be given effect by creating regulations for an online voting trial under section 139 of the LEA. The regulations would not enable online voting in subsequent local elections.
2. Subject to Cabinet agreement for the Associate Minister to determine which local authorities will participate in a trial, the Associate Minister would seek a recommendation on which local authorities would participate from LGNZ, based on a set of guiding considerations (as agreed by Cabinet).
3. The key implementation risks relate to the security, accuracy, usability and availability of technology solutions deployed. Enabling only a limited trial of online voting is a measure to contain these risks.
4. Another mitigation measure is the setting of minimum operating requirements to protect the integrity of the local electoral system. Among other things, they would include security requirements and a requirement to obtain independent assurance. On top of this, assurance oversight of trial projects by the Government Chief Technology Officer could also be a requirement for a trial. This would respond to some concerns that exist around the risk of over-reliance on the market to protect local democracy under the preferred option.
5. There is also a risk as to whether any operating requirements developed set the benchmark at an appropriate level, given that the regulation of online voting is in its infancy internationally and there is limited experience to draw on. Good process, including engaging with technical experts and with international counterparts, will be important to mitigate this risk.
6. If there is an agreement to proceed with a trial of online voting, detailed policy decisions will need to be made as part of establishing the appropriate requirements for the trial.
7. Local authorities that choose to participate in a trial will be responsible for leading the development or procurement of secure and accessible online voting services as well as any associated promotion and voter education, and provide the necessary governance arrangements, and funding for the trial, in line with current local electoral responsibilities.
8. The extent to which the costs of undertaking the trial are borne only by participating councils or are shared across the local government sector as a whole is a decision for that sector. To the extent that costs are the responsibility only of participating councils, a limited trial may limit the investment that is possible in developing and testing technology solutions. Although there would be bottom line requirements that a technology solution would have to meet, less funding may have implications for the calibre of technology solution deployed as part of a trial. These will be matters for the sector to weigh in determining how the costs of the trial will be met.
9. Central government’s role is to enable and regulate a trial of online voting through regulations. Before promoting such regulations, the Associate Minister of Local Government must be satisfied that the online voting method will be able to operate in a manner consistent with the principles of the LEA. It will be up to the trial councils to provide sufficient evidence to demonstrate this.
10. Central government will not be directly involved in running local elections or providing any funding to support a trial of online voting in the local elections.

## Monitoring, evaluation and review

1. As part of any trial of online voting, DIA would work with participating local authorities and other stakeholders to evaluate the trial. Criteria against which the trial would be evaluated would include the criteria – public confidence, risk minimisation, local flexibility, and local responsibility – which form the basis of the analysis in this RIS.
2. Starting well before the trial, local government would proceed to clarify the data needs for evaluation, and ensure election service providers are in a position to deliver the data following the elections. The local government sector would lead on the evaluation of a trial. Should there be Cabinet agreement to proceed with a trial, the evaluation methodology would be determined in consultation with stakeholders. Local government has an interest in testing a variety of hypotheses in relation the uptake of online voting, for example whether there is an increase in voter turn-out in different demographics. Central government shares this interest in whether online voting serves to strengthen local democracy. It also has an interest in evaluating the performance of the regulatory framework and how to best protect the integrity of the local electoral system against the inherent risks of a technological approach to voting. The evaluation led by local government would inform an overview of how the local electoral system operated in the online context and how it could be improved. An evaluation strategy needs to be developed for the evaluation of a trial, which would encompass all of the relevant questions.

1. Online voting is defined as voting remotely, using the internet, on the voter’s own device. [↑](#footnote-ref-1)
2. Local authorities are responsible for deciding the system of voting used (First Past the Post or Single Transferable Vote); deciding the method of voting used (postal voting, booth voting, or both); appointing electoral officials; and the conduct of local elections and polls, including the option of contracting companies to process and count votes. [↑](#footnote-ref-2)
3. Booth voting was last used for local elections in 1992, by Hutt City Council. [↑](#footnote-ref-3)
4. In its inquiries into the 2010 and 2013 local elections. [↑](#footnote-ref-4)
5. Retrieved 29 October 2014, from http://www.dia.govt.nz/pubforms.nsf/URL/Online-Voting-in-New-Zealand-report.pdf/$file/Online-Voting-in-New-Zealand-report.pdf. [↑](#footnote-ref-5)
6. In theory, under this model, a council could decide to develop an online voting system itself, but that is considered highly unlikely so is not discussed further. [↑](#footnote-ref-6)
7. These are: Marlborough, Nelson, Porirua, Manawatu, Auckland, Hamilton, Dunedin, Wellington, and Hastings. [↑](#footnote-ref-7)