



# Local Government Commission

Mana Kāwanatanga ā Rohe

## Guidelines

for advertising after issue of a final reorganisation  
proposal

July 2017

Title: Guidelines for advertising after issue of a final reorganisation proposal  
Author: Local Government Commission  
Publisher: Local Government Commission  
Place of publication: Wellington, New Zealand  
Date of publication: July 2017  
Web: [www.lgc.govt.nz](http://www.lgc.govt.nz)  
ISBN (Digital) – 978-0-9941245-0-0

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# Introduction

1. The Local Government Act 2002 sets out a process for the reorganisation of local authorities. When, as part of that process, the Local Government Commission issues a final reorganisation proposal, electors have the opportunity to petition for a poll on the proposal. A poll will be held if 10% or more of the affected electors of any one of the territorial authorities affected by the proposal submit a petition.
2. The Local Government Act 2002 (the Act) as amended contains a set of rules regulating advertising from the time a final proposal is publicly notified until the period to demand a poll has concluded and, if a poll has been demanded, the poll has been conducted.
3. These guidelines have been prepared by the Commission to explain and provide clarity about the rules on advertising relating to final reorganisation proposals.
4. The guidelines should be read in conjunction with the relevant provisions of the Act, in particular clauses 29 to 32, Subpart 3 of Schedule 3. These are reproduced at the end of these guidelines (see Appendix A).

## Are these guidelines legally binding?

5. The statutory rules described in these guidelines are binding. These guidelines are not legally binding. They do, however, reflect the Commission's interpretation of the law and, in the case of rulings under clause 31, how it intends to apply the law.

## Supplementary information

6. The Commission may consider issuing supplementary or revised guidelines if it identifies a need to expand on any issues.
7. The Commission may, from time to time, also issue further information to assist local authorities and other participants in the reorganisation process.

## Feedback

8. Feedback on these guidelines is welcome. Comments may be sent to:

By post: Chief Executive Officer  
Local Government Commission  
PO Box 5362  
WELLINGTON 6140

By email: [info@lgc.govt.nz](mailto:info@lgc.govt.nz)

# Statutory framework

9. The Act contains a set of rules regulating advertising from the time a final proposal is publicly notified until the period to demand a poll has concluded and, if a poll has been demanded, the poll has been conducted. Briefly these rules:
  - prohibit local authorities from doing anything (including publishing and advertising) that involves the expenditure of the authority's money or use of its resources, and promotes or opposes the final proposal
  - permit local authorities to provide referential information about a final proposal
  - enable local authorities to seek a ruling from the Commission as to whether proposed information complies with the rules
  - requires any advertising initiated or instigated by a person to state the name and address of that person.
  
10. These rules are set out in clauses 29 to 32 of Schedule 3 of the Act (see Appendix A).
  
11. The period in which advertising is restricted is the period commencing on the day after the date on which public notice of the final proposal is first given and ending with the close of the day on which the poll is held
  
12. A petition for a poll to be held may be demanded on certain reorganisation *proposals*. These are proposals for one or more of the following:
  - the union of districts or regions
  - the constitution of a new district or region
  - the abolition of a district or region
  - the assumption by a territorial authority of the powers of a regional council, i.e. the territorial authority becoming a unitary authority.
  
13. Polls may not be demanded for proposals dealing solely with one or more of:
  - the alteration of the boundaries of a district or region
  - the transfer of statutory obligations from one local authority to another
  - local board arrangements.

14. When a poll is held on a final proposal, there are two sets of rules applying to advertising – one applying to local authorities (paragraphs 17 to 21) and one applying to other persons, including individual members of local authorities, and organisations (paragraphs 40 to 48).

15. For both circumstances (clause 29):

*advertising* means advertising in any medium

*publish*, in relation to advertising—

- means to bring to the notice of a person in any manner, including (but not limited to)—
  - displaying in any medium
  - distributing by any means
  - delivering to an address
  - leaving at a place
  - sending by post or otherwise
  - printing in a newspaper or other periodical
  - broadcasting by any means
  - disseminating by means of the internet or any other electronic medium
  - storing electronically in a way that is accessible to the public
  - incorporating in a device for use with a computer
  - inserting in a film or video but
- excludes addressing 1 or more persons face to face.

16. The definition of publish includes publishing advertising material on websites or social media. It does not however include the publication of any news or comment by a person other than a local authority.

# Advertising by local authorities

17. A local authority affected by a final proposal may not, at any time during the petition or poll period, do anything (including publishing any advertising) that—

- involves the expenditure of the authority's money or use of the authority's resources, and
- promotes or opposes the implementation of the final proposal or a provision of the final proposal.

18. This, however, does not prevent –

- any investigations or research undertaken by, or on behalf of, the local authority that relate to the final proposal or its effects, or
- the making of submissions or other representations to the Commission by the local authority, or
- the publication of any news or comment relating to the final proposal or the poll in any medium by any person other than the local authority, or
- anything done to comply with the requirements of Part 7 of the Local Government Official Information and Meetings Act 1987.<sup>1</sup>

19. In addition, a local authority may provide referential information relating to a proposal. Clause 31 describes this as being material that:

- does not expressly or impliedly promote or oppose the final proposal but
- contains factual or referential material presented –
  - in a balanced way, and
  - to assist electors considering promoting or signing a petition seeking a poll, or voting in a poll, to make a better-informed decision.

20. Where a local authority wishes to publish referential material, it may, but does not have to, seek a ruling on its compliance with the rules from the Commission. The process for doing this is set out in paragraphs 22 to 39. These paragraphs also provide further guidance on particular issues relating to referential material.

## What activities would involve the use of a local authority's money or resources?

21. The restrictions on activities apply where the advertising “involves the expenditure of the authority's money or use of the authority's resources”. Examples of an

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<sup>1</sup> Part 7 relates to the notification of meetings, the admission of the public to meetings and the availability of minutes, agendas and reports.

affected local authority using money or resources are (but are not limited to) where the local authority:

- pays for or contributes to the advertising
- uses its staff to prepare information or distribute information (e.g. photocopying and mail outs)
- uses its resources such as printers, paper, postage, or envelopes for distribution of advertising
- uses its website, newsletters or other channels to distribute advertising
- pays for newspaper advertising
- pays an external agent to undertake advertising
- pays for radio advertising for public meetings.

## What questions have been asked at previous polls?

22. A number of questions have been raised at previous polls about the use of council resources during the restricted period. Some of these are set out below along with the answers provided.

Question	Answer
<p>Many elected members and council staff have tablets or smart phones provided by their council. For convenience, they often receive and send personal e-mails from these devices. Can elected members and staff use council devices to send communications commenting in favour of or in opposition to the Commission's proposal?</p>	<p>No, elected members and staff cannot use council tablets or smart phones if they are communicating a view for or against the proposal. Using a device provided by council is a use of the council's resources.</p>
<p>What involvement, if any, can councils have in conducting public meetings and debate on the proposal? For example:</p> <ul style="list-style-type: none"> <li>• can a council organize and host a public meeting to discuss and debate the Commission's proposal?</li> <li>• can a public debate on the proposal be held in a council facility if it is organised by someone else?</li> <li>• can a council advertise a public meeting on the Commission's proposal, if the meeting is organized by someone else?</li> </ul>	<p>Organising the meeting and advertising it would clearly involve the use of council resources. It would be difficult for such a meeting to be controlled in a way that ensures there is no promotion of, or opposition to, the proposal. The very nature of a debate is that there will be people speaking for and against it. On that basis, the council could not organise and advertise such a meeting.</p> <p>There is nothing, however, preventing a third party organising a meeting at a council venue, subject to the following:</p> <ul style="list-style-type: none"> <li>• The council applying its usual policies for venue hire</li> <li>• The council not advertising or promoting the meeting as this would involve the use of council resources</li> </ul>

# Rulings by the Commission

23. Clause 31(2) provides that a local authority may seek a ruling from the Commission that material is referential information in that it:

- does not expressly or impliedly promote or oppose a final proposal
- contains factual or referential material presented in a balanced way to assist electors considering promoting or signing a petition, or voting in a poll, to make a better-informed decision.

24. When examining a request for a ruling, the Commission will consider the following:

- whether the material is exempted by clause 30(2) and therefore, it is not necessary for the Commission to provide a ruling
- whether the material to be provided is captured by the definition of “publish” and therefore is published material
- whether the material “expressly or impliedly promotes or opposes the final proposal”
- whether the material is “factual” or “referential” material presented in a “balanced way”
- whether the material is aimed at assisting electors to make better-informed decisions on promoting or signing a petition or on voting in a poll.

## **Is it covered by clause 30(2)?**

25. The Commission will consider whether the material is covered by any of the exemptions listed in clause 30(2) (see paragraph 17).

## **Is the material published?**

26. The Commission will consider if the material meets the definition of “publish” set out in clause 29. Broadly, most activities to distribute, display, post, print or deliver would be captured by the definition of publish.

## **Promotes or opposes the final proposal**

27. The Commission will consider whether the material “expressly or impliedly promotes the final proposal”.

28. If the Commission is asked to make a judgement on whether an activity promotes or opposes the final proposal it will consider if:

- the material discusses the final proposal in an unbalanced or biased way and rejects part of or all of the proposal
- the overall tone of the information leads a reader to one view on a final proposal either opposing or supporting the proposal.

## **Factual and referential material presented in a balanced way**

29. When considering whether factual or referential information is presented in a balanced way in order to assist electors make a better-informed decision about a petition or a poll, the Commission will consider the Office of Auditor-General's (OAG) good practice guide for managing public communications by local authorities<sup>2</sup>, and in particular Principle 6:

*'Factual and explanatory information should be presented in a way that is accurate, complete, fairly expressed and politically neutral'.<sup>3</sup>*

30. The OAG guide goes on to state:

- **Accurate** means what it says. That which is held to be true should be carefully and precisely expressed consistently with those facts. No claim or statement should be made that cannot be substantiated.
- A communication will be **complete** when it consists of all the information necessary for the audience to make a full and proper assessment of the subject matter.
- Information will be **fairly expressed** when it is presented in an objective, unbiased, and equitable way. In particular:
  - The audience should always be able to distinguish facts from analysis, comment or opinion; and
  - When making a comparison, information should state fully and accurately the nature of what is being compared, and informs the audience of the comparison in a way that does not mislead or exaggerate.<sup>4</sup>

31. The Commission, when considering whether information is complete, will examine whether the main advantages and disadvantages of any issue are set out to allow the reader to make a better-informed decision. If a key element is missing that

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<sup>2</sup> Controller and Auditor General, "Good Practice for Managing Public Communications by Local Authorities", April 2004. Available at [www.oag.govt.nz](http://www.oag.govt.nz)

<sup>3</sup> p. 17, OAG Guide

<sup>4</sup> Paragraphs 4.19 to 4.21, OAG Guide

would help provide a complete picture for the reader, the Commission may consider that the material is unbalanced.

32. Information that is unbiased considers a range of views whereas information that is biased tends to reflect only one way or option is possible and does not provide a fair or equal assessment of other ways or views. For example, it does not discuss the main advantages or disadvantages of each option fairly. Another example is that information can be biased if it only highlights the matters which are likely to attract support for an option.
33. Another example of bias would be statements like 'our area will be a low priority'. This statement would not be factual because this outcome cannot be substantiated. In addition, the information is likely to be considered biased as it points the reader towards particular options without any balancing arguments.
34. When considering information that compares two or more elements the Commission will consider if there is inaccurate information that may mislead a reader, or whether any statements in the information are exaggerated in a way that would lead the reader to conclude one option is preferable to another option.
35. The key matters to consider when determining if material is factual or referential are:
  - is the information based on ascertainable facts, e.g? can the facts be substantiated? and
  - is information referenced from available material, e.g. a published study?
36. To help illustrate this point, the table below includes some examples of what may and may not comply with information being factual or referential material.

Likely to comply	Unlikely to comply
<p><i>Kusher et al (2003) found that in the amalgamations they studied that provincial government achieved its objective of reducing the number of politicians without reducing accessibility to local elected officials.</i></p> <p>Why: This material is from a published study in a reputable journal.</p>	<p><i>There will be loss of local democracy if the status quo is not followed.</i></p> <p>Why: This is an opinion without any factual or referential information to support it.</p>
<p><i>The final proposal affects 3 councils.</i></p> <p>Why: If the final proposal did affect 3 councils this would be a factual statement.</p>	<p><i>Rates are likely to go up under the final proposal.</i></p> <p>Why: This is an opinion rather than factual or referential information. It speculates on a matter that has yet to be decided.</p>

Likely to comply	Unlikely to comply
<p><i>A survey of residents within the district found 70% preferred the status quo.</i></p> <p><i>Why: Research is exempt from the definition of advertising.</i></p>	<p><i>Our consultation showed that residents do not support a combined council.</i></p> <p><i>This statement would be incorrect unless there was evidence that <u>every</u> resident did not support a combined council.</i></p>

## Is the material aimed at assisting electors to make better-informed decisions?

37. In considering whether material is aimed at assisting electors make better-informed decisions to promote or sign a petition or to vote in a poll, the Commission will consider whether information is relevant to the proposal and results in electors being better-informed about signing a petition or voting in a poll.

## Requesting a ruling

38. Any requests should be given to the Commission at least two weeks (10 working days) before it is needed to allow the Commission adequate time to consider the material.

39. A request must include the actual material to be published and information about how it is to be published,

40. Requests should be made to:

By post: Chief Executive Officer  
Local Government Commission  
PO Box 5362  
WELLINGTON 6140

By email: [info@lgc.govt.nz](mailto:info@lgc.govt.nz)

# Advertising by other persons and organisations

## General

41. There are no restrictions on other persons or organisations publishing advertising promoting or opposing a final reorganisation proposal. If they do so, however, the advertising must contain a statement setting out the name and address of the person who initiated or instigated the publication of the advertising.
42. For the purposes of authorising an advertisement, *address* means:
- In relation to an individual:
    - The full street address of the place where the individual usually lives; or
    - The full street address of any other place where the individual can usually be contacted between the hours of 9am and 5pm on any working day
  - In relation to a body corporate or unincorporated:
    - The full street address of the body's principal place of business; or
    - The full street address of the body's head office
43. Anyone who willfully fails to comply with this requirement is liable to a fine not exceeding \$5000.<sup>5</sup>

## Members of local authorities

44. The requirements set out earlier in this document relating to local authorities do not apply to individual members of a local authority acting as private persons. There is no prohibition on advertising by a member of a local authority in a private capacity.
45. However, if a member of a local authority does advertise care must be taken to ensure that local authority resources are not used in the design, development or publication of such advertising. In this context resources would include local authority funds, premises, equipment and staff.
46. Any member of a local authority considering engaging in advertising should refer to the Office of the Auditor General's "Good Practice for Managing Public Communications by Local Authorities".<sup>6</sup>

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<sup>5</sup> See sections 233 and 242(2), Local Government act 2002.

<sup>6</sup> Controller and Auditor General, "Good Practice for Managing Public Communications by Local Authorities", April 2004. Available at [www.oag.govt.nz](http://www.oag.govt.nz)

47. The requirement to authorise advertising as set out in the next section of these guidelines will apply to advertising paid for by a member of local authority acting in a private capacity (see paragraphs 40 to 42). It is recommended that the local authority's address not be used in this authorisation.

# Provision of information by electoral officers

48. The Local Electoral Regulations 2001<sup>7</sup> provide that an electoral officer conducting a poll may, if considered appropriate, provide neutral information about the subject of a poll. Any such information provided by the electoral officer is to be delivered to electors with the voting document for the poll.
49. When deciding whether to provide neutral information, or ensuring that any information provided is neutral, the electoral officer may seek advice from any person considered appropriate.

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<sup>7</sup> Regulation 46, Local Electoral Regulations 2001

# Complaints

50. You can make complaints about the following things in the lead up to a community poll on a local government reorganisation proposal:

- You can complain that a local authority has published material promoting or opposing a proposal
- You can complain if advertising (by a local authority, individual or other organisation) does not contain a statement setting out the name and address of the person initiating the publication of the advertising
- You can complain that the content of advertising (by a local authority, individual or other organisation) is in breach of the Advertising Codes of Practice.

51. Each type of complaint must be addressed to a different body:

- Complaints about a local authority publishing material promoting or opposing a proposal must be made to the **Auditor General**. The Auditor General can be contacted at [enquiry@oag.govt.nz](mailto:enquiry@oag.govt.nz). Further information is available at <http://oag.govt.nz>
- Complaints that advertising does not contain a statement setting out the name and address of the person initiating the publication of the advertising can be made to the **Police**, or (during the poll period) to the **electoral officer** who must refer the complaint to the Police.<sup>8</sup>
- Complaints about the content of advertising and an alleged breach of the Advertising Codes of Practice should be made to the **Advertising Standards Complaints Board**. The codes and information about how to make a complaint may be found on [www.asa.co.nz](http://www.asa.co.nz). The contact email is [asa@asa.co.nz](mailto:asa@asa.co.nz)

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<sup>8</sup> See section 138, Local Electoral Act 201

**Subpart 3, Schedule 3  
Local Government Act 2002**

**Subpart 3**

**29 Interpretation**

In this subpart, unless the context otherwise requires,—

**advertising** means advertising in any medium

**publish**, in relation to advertising,—

- (a) means to bring to the notice of a person in any manner, including (but not limited to)—
    - (i) displaying in any medium:
    - (ii) distributing by any means:
    - (iii) delivering to an address:
    - (iv) leaving at a place:
    - (v) sending by post or otherwise:
    - (vi) printing in a newspaper or other periodical:
    - (vii) broadcasting by any means:
    - (viii) disseminating by means of the Internet or any other electronic medium:
    - (ix) storing electronically in a way that is accessible to the public:
    - (x) incorporating in a device for use with a computer:
    - (xi) inserting in a film or video; but
  - (b) excludes addressing 1 or more persons face to face
- specified period** means,—
- (a) if a poll is required to be held under clause 25, the period commencing on the day after the date on which public notice of the final proposal is first given and ending with the close of the day on which the poll is held:
  - (b) if a poll is not required to be held under clause 25, the period commencing on the day after the date on which public notice of the final proposal is given and ending with the close of the day specified by the Commission for the purposes of clause 24(4)(c).

**30 Advertising in relation to polls**

- (1) A local authority affected by a final proposal may not, at any time in a specified period, do anything (including publishing any advertising) that—
  - (a) involves the expenditure of the authority's money or use of the authority's resources; and
  - (b) promotes or opposes the implementation of the final proposal or a provision of the final proposal.
- (2) This clause does not apply to—
  - (a) any investigations or research undertaken by, or on behalf of, the local authority that relate to the final proposal or its effects; or
  - (b) the making of submissions or other representations to the Commission by the local authority; or

- (c) the publication of any news or comment relating to the final proposal or the poll in any medium by any person other than the local authority; or
- (d) anything done to comply with the requirements of Part 7 of the Local Government Official Information and Meetings Act 1987.

### **31 Provision of referential information**

- (1) Clause 30 does not preclude a local authority affected by a final proposal from publishing material that—
  - (a) does not expressly or impliedly promote or oppose the final proposal; but
  - (b) contains factual or referential material presented—
    - (i) in a balanced way; and
    - (ii) to assist electors considering promoting or signing a petition for the purposes of subpart 2 or voting in a poll to make a better-informed decision.
- (2) A local authority may (but does not have to) seek a ruling from the Commission that material proposed to be published by the local authority under subclause (1) complies with that subsection.
- (3) If the Commission provides a ruling that the material complies with subclause (1), then publication of the material by the local authority is to be treated as published in accordance with subclause (1).

### **32 Authorisation of advertising**

- (1) A person may not publish advertising that promotes or opposes the implementation of the final proposal or a provision of the final proposal unless the advertising contains a statement setting out the name and address of the person who initiated or instigated the publication of the advertising.
- (2) In subclause (1), **address** means,—
  - (a) in relation to an individual,—
    - (i) the full street address of the place where the individual usually lives; or
    - (ii) the full street address of any other place where the individual can usually be contacted between the hours of 9 am and 5 pm on any working day;
  - (b) in relation to a body corporate or unincorporated,—
    - (i) the full street address of the body's principal place of business; or
    - (ii) the full street address of the body's head office.