

27 February 2020

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

Entrust welcomes the opportunity to submit to your Inquiry in relation to the 2019 Local Elections and Liquor Licensing Trust Elections, and Recent Energy Trust Elections.

Entrust is an Auckland private trust established in 1993 which acts in the interests of its beneficiaries, over 336,000 households and businesses in Auckland, Manukau, northern Papakura and eastern Franklin. Our key asset is our 75.1% shareholding in Vector.

As a private trust, Entrust is governed first and foremost by the terms of our Trust Deed and then the common law.

Our Trust Deed provides a process for holding elections and allows the Returning Officer to draw on other appropriate sources in relation to election procedure, but only in a way which is consistent with the specific provisions in the Trust Deed and the special circumstances of being a trust. This is reflected in the contract signed by the trustees and the Returning Officer in relation to each election. Entrust has always and will continue to engage suitably qualified, experienced and independent Returning Officers to conduct the election.

The substantive provisions of the Trust Deed, which include the election process, can only be amended by order of the High Court. Deeming that the Entrust election process should be changed or governed by legislation would likely result in a series of unintended consequences detrimental to the operation of the Trust. For example, trustees are obliged under the Trust Deed and the common law to be personally active in the affairs of the Trust at all times, even during the period leading up to the election: there is no delegation of core duties permitted. The core duty for Entrust trustees is to receive income from the Entrust investments and pay it to beneficiaries pursuant to the terms of the Trust Deed, including in an election year. This core duty conflicts with some of the provisions of the Local Electoral Act 2001 which is one of the reasons why that legislation cannot apply to Entrust elections. Any new or amended legislation would create the same potential for conflict.

Furthermore, the electoral roll for Entrust elections is collated from a large number of retailers under specific provisions of a contract with Vector. Including the Entrust elections within the framework for local elections will come into conflict with this process and increase the costs of administering the trust and so reduce the dividends received by beneficiaries.

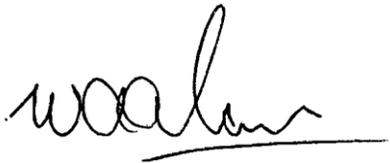
It is important to note that the structure and the purposes of Entrust, as a private trust, are not comparable to those of a local authority. The fact that both have elections is just a coincidence. There is no connection at any other level which would justify applying a statute designed particularly for local authorities.

To show the depth of separation between Entrust and local authorities, the Trust Deed expressly provides that members of local authorities or employees in senior management in local authorities are not allowed to stand as candidates for election as trustees of the Trust. Obviously if Entrust were brought under the Act by being deemed to be a local authority this would create considerable conflict with the provisions of the Trust Deed.

Previously, further obligations on trustees have been introduced through the Electricity Act 1992 (imposing annual meeting and associated accounting obligations) but these obligations were designed to sit alongside the provisions of the Trust Deed. The legislative changes to the electoral process that appear to be being contemplated would, instead, conflict with the terms of the Trust Deed as the Trust Deed already provides expressly for the process that is required to be followed.

The Entrust trustees are subject, in every discharge of their duties, to the supervision of the High Court and this applies equally to the conduct of elections. The High Court is the appropriate body to supervise the operation of elections and any attempt to change that is likely to result in challenge.

Yours faithfully

A handwritten signature in black ink, appearing to read 'w Cairns', with a horizontal line underneath.

William Cairns
Chairman, Entrust