

Recall provisions for elected officials in local government:

Holding them to account!

Recall is a process by which citizens may remove elected officials from their positions before the end of the term¹. Recall is an instrument of direct democracy for holding elected politicians or officials to account.

Full participatory recall means that the voters who elect someone to public office have the right to initiate and vote for their removal between scheduled elections and for any reason.

If it sounds undeniably democratic, that's because it is!

Recall should not be confused with the legislative process of removing officials called impeachment, or their automatic or administrative removal for breach of the terms of the position, including incapacity, dereliction or breach of duty, criminal offences, death etc.² Processes for removal following such breaches are expected and commonplace.

As explained by Edward Fallon³, “The key to understanding the proper scope of the recall power is the basic conception of “the sovereignty of the people” conceptions of limited government in America rest on the idea that the people are the ultimate sovereign and that government only possesses the powers that are delegated to it by the people... Central to this idea of delegated authority is the principle that elected representatives must act in accord with the wishes of the public and that the failure to do so is in and of itself sufficient grounds for their representative to be recalled before the end of their term in office.”

He quotes a letter from George Washington, in 1787, a sentiment that is equally appropriate to our parliamentary democracy:

The power under the [federal] constitution will always be in the People. It is entrusted for certain defined purposes, and for a certain limited period, to representatives of their own choosing; and whenever it is executed contrary to their Interest, or not agreeable to their wishes, their Servants can, and undoubtedly will be, recalled.

Many countries have recall provisions, variously at the national or local levels. In the United States 39 states allow for recall of locally elected officials. Under the US constitution there is no provision for recall of any federally elected official.

¹ https://ballotpedia.org/Laws_governing_recall

² The **Recall of MPs act 2015** is an act of the parliament of the United Kingdom which allows a recall petition to be held if a member of parliament did certain wrongdoings, including being sentenced to a jail term of up to one year. The petitions cannot be triggered by popular initiative but rather are automatic. If 10 percent of the electorate sign the petition a byelection is called. (https://en.wikipedia.org/wiki/Recall_election)

³ <https://law.marquette.edu/facultyblog/2011/08/the-constitutional-right-of-recall/>

For national level representatives, particularly in countries that have no Constitution requiring it, recall provisions are harder to get adopted. As we saw for the outcome of the referendum on reducing the number of MPs in 1999, (supported by 81.5% of voters, with a turnout of 82.8%) MPs are unlikely to support anything which threatens their own term of election or possibility of re-election.

In New Zealand the earliest reference to recall provisions is the proposed platform for the NZ Labour Party in 1916⁴. While there have been subsequent discussions about such provisions no moves have been made to introduce them for MPs - the implementation would be more problematic anyway under a parliamentary system with list MPs who are not directly elected by voters.

Local government and territorial authorities here are constructions of statute, subject to change at any time (as we have seen with the constant revisions to the Local Government Act and the Electoral Act). There is thus no obvious reason why MPs should object to elected mayors and local authority officials being subject to such a regime of accountability.

The fixed term of appointment of an elected official (3 years in NZ to match the parliamentary term) is chosen to balance several factors – the cost of more frequent elections, which falls with tenure, the benefit from having officials improve their performance with experience, the risks that those elected will perform either well or poorly in the eyes of the voters, and the deadweight costs that rise with tenure. Incumbents build coalitions and relationships - to improve their prospects of re-election or advancement to higher office or other positions. Greater ease in handling the pork barrel – a rising function of tenure - leads to increasing social costs⁵. Incumbents increasingly may favour special interests in ways which interfere with their duty to act in the interests of the public and those who voted for them.

For changes within that term, advocates argue, correctly, that it is a fundamental right in a democracy to elect representatives and that includes the right to remove them from office and replace them at any time.

Opponents of recall elections generally argue that they are costly, interfere with officials duty to serve, and risk replacing bad or poor actors with even worse performers. They consider that the tradeoff of cost vs democratic right is achieved by having fixed terms of appointment (and in some cases tenure restrictions – limits on the number of terms for which a person may hold the office).

However, readers will have their own examples of occasions when they would like to have held representatives to account! The case of Rodney Hide's "careless" use of taxpayer money and Trevor Mallard's past bullying have been quoted as examples supporting recall provisions for MPs⁶. Aucklanders will remember the scandal over Len Brown's failure to

⁴ Evening Star 31 October 1916; <https://paperspast.natlib.govt.nz/newspapers/ESD19161031.2.68?>

⁵ J. D. Adams and L. W. Kenny; Optimal Tenure of Elected Public Officials; The Journal of Law & Economics Vol 29, No 2 (Oct., 1986); The University of Chicago Press.

⁶ Stuff Blogs 2009: <http://www.stuff.co.nz/business/blogs/3044625/Voters-need-the-power-to-recall-MPs>

declare substantial perks received in office and his affair with an advisory board member which led to his decision to not stand again⁷.

Now the Ratepayers Alliance is taking up the argument in response to Auckland Council's Mayor Phil Goff's misleading abuse of ratepayer's responses, in order to push through a rate increase the majority of respondents did not support.⁸

Implementation issues

There are only two practical issues associated with recall provisions that stand in the way of universal support for the provisions:

1. the threshold at which voters can initiate a recall election, and
2. the methods for choosing a successor for a position as a result of a successful recall election.

Initiation Requirements

These vary from 10% to 40% of the last votes cast for the office, or up to 20% of eligible voters for the office. There is no evidence that a low threshold, rather than a higher one, encourages capricious initiations. For a large unitary authority like AC where the Mayor is elected at large, some 375,000 votes for Mayor were cast at the last election. This was only around 35% of enrolled voters, however, a threshold of 10 % of those voting would still be a substantial hurdle to overcome to initiate a recall. Given the wide range of representation ratios in NZ - from the AC Mayor through to community board members - a spread of thresholds from 5% to 60% aligned with those ratios would be fairer⁹.

Methods for choosing a successor

The three general **methods for choosing a successor** are:

- a. **Simultaneous election** - The "potential" successor is chosen on the same ballot;

⁷ <https://www.stuff.co.nz/auckland/73800684/auckland-mayor-len-brown-will-not-stand-again>

⁸ <https://www.scoop.co.nz/stories/PO2007/S00256/rates-betrayal-shows-need-for-recall-elections.htm>

⁹ An empirical study of more than 100 countries [<https://voxeu.org/article/optimal-number-representatives-democracy>] has correlated representation ratios with population size. Using this formula a fair and reasonable level of initiation thresholds for recall provisions may be calculated:

Votes cast	Initiation Threshold	% of popn
500,000	19,037	4%
100,000	10,000	10%
50,000	7,579	15%
20,000	5,253	26%
10,000	3,981	40%
5,000	3,017	60%

- b. **Separate special election** - The successor is chosen in a special election following the recall election; and
- c. **Appointment** - The successor is appointed.

To keep the cost of recall elections down it is likely that appointment (until the next scheduled election) would be preferred here. Where the elected official has been chosen from other elected officials (as in the case of some Mayors) they would choose the replacement. Where an official is elected at large (as for the AC Mayor) it is likely appointment by the Auditor-General and the Chair of the Commerce Commission would be most appropriate (following the view of the Royal Commission regarding appointment of an Independent Services Performance Auditor, that “their independent status will give the public confidence in the appointment process”¹⁰).

With advances in the introduction of digital voting and more efficient processing of postal and ballot votes, the costs of providing for citizens initiated recalls are coming down. In any event they would be considered by most a small price to pay when put against the waste and mis-management of resources associated with keeping in office an elected official who through their actions has lost the trust and support of a majority of voters.

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¹⁰ Report of the Royal Commission on Auckland Governance: Volume 1. [para32.57]