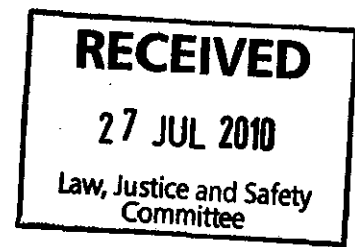




Submission 041



Law, Justice and Safety Committee

**A new Local Government Act:
Review of the Local Government Electoral System**

Submission

**David Kerslake
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July 2010

INTRODUCTION

The Law, Justice and Safety Committee of the Queensland Parliament is conducting a review of the local government electoral system (excluding the Brisbane City Council). The terms of reference include providing recommendations as to the content of the proposed new Local Government Electoral Act. Set out below are my responses to a number of the questions posed by the committee in its *Issues Paper*.

At the very beginning I wish to place on record my strong reservations about any proposal to reintroduce 'plural voting' in Queensland local government elections. The paper poses the question: should the right to vote in Queensland local government elections be extended to non-resident property owners or business owners within an area? Further, if people in this category own a number of properties or businesses, should they be entitled to a separate vote in respect of each one? These questions go to the very heart of Queensland's democratic system. Article 25 of the International Covenant on Civil and Political Rights espouses the fundamental principle 'one man one vote': every citizen should have the right 'to vote and to be elected ... by universal and equal suffrage'. The introduction of any form of property franchise would in my view contravene this principle by denying Queenslanders an equal say in the government of their local affairs. From a purely practical viewpoint, maintenance of a separate ratepayers' roll would also be an expensive and difficult exercise.



QUEENSLAND

ELECTORAL DIVISIONS AND VOTING SYSTEMS

Under current legislation councils can choose to be either undivided, or divided into separate electoral divisions. The Electoral Commission of Queensland (ECQ) is not an advocate for one system in preference to the other – both have their merits. It is appropriate, however, to draw attention to relevant practical issues that the committee may wish to take into account.

Should a very small council opt to be divided, the process of delineating clear internal boundaries (say, 4 divisions with a total of only 200 or so electors between them) can be quite problematic. At the opposite end of the spectrum, where a council with a large population remains undivided the filling of casual vacancies for councillors can be a very expensive process where every elector is called upon to vote in a by-election.

The ECQ is also not an advocate for any particular form of voting. There are many different systems that have earned legitimacy around the world. That said, it is worth noting that at the 2008 elections the ECQ came in for a level of criticism for the time taken to finalise the count in certain large undivided councils, when the time taken was in fact entirely predictable given the number of electors voting under a First-past-the-post system. For example if a council has 100,000 electors voting for 12 councillor positions, this means that 100,000 ballot papers have to be counted in effect 12 times each. The time taken to conduct such counts could be reduced by employing the latest scanning technology and vote counting software, but this would require legislative change.

It may also be pertinent to provide a comparison of informality rates under the existing optional preferential and first-past-the-post systems. At the 2008 elections the average informality rate across all council elections was 2.77%. In contrast, informality rates just for large undivided councils (30,000 electors and above) were as follows:

| Council | Informal | No. of candidates | No. to be elected |
|--------------|----------|-------------------|-------------------|
| Townsville | 9.46% | 49 | 12 |
| Fraser Coast | 9.33% | 29 | 10 |
| Mackay | 8.21% | 37 | 10 |
| Gympie | 7.97% | 42 | 8 |
| Gladstone | 6.84% | 15 | 8 |
| Toowoomba | 6.77% | 36 | 10 |

The *Issues Paper* canvasses the possibility of introducing some form of proportional representation. Arguments in favour of and against proportional representation, and a comparison with other voting systems, are outlined in the Australian Government's recent Electoral Reform Green Paper *Strengthening Australia's Democracy*¹ and need not be repeated here. It should be noted, however, that should the Parliament legislate to introduce new voting systems and at the same time make the ECQ responsible for the conduct of future local government elections, a substantial lead time would be required to redevelop existing IT platforms to cater for the count. Allowance would also need to be made for educating electors about new voting systems.

ADMINISTRATION OF ELECTIONS

In accordance with the *Electoral Act 1992*, the ECQ is charged with responsibility for the conduct of Queensland parliamentary elections. It is also empowered to enter into contractual arrangements for

¹ September 2009, pp. 55-60

the conduct of Brisbane City Council elections, including by-elections. With the passage of the *Local Government Reform Implementation Act 2007* the ECQ was given 'one off' responsibility for the conduct of the quadrennial local government elections held in 2008. Responsibility for the conduct of future local government elections is yet to be determined by the Queensland Parliament. The ECQ has no official view.

This submission notes, however, that the ECQ has the administrative experience and expertise to conduct future quadrennial local government elections should it be called upon to do so. Following the 2008 elections an independent evaluation was conducted by Mr Andy Becker, a former Australian Electoral Commissioner who also has previous experience in the conduct of state and local government elections in South Australia. Mr Becker commended the ECQ on the efficiency and integrity with which the elections were conducted, despite the limited timeframe (7 months) available for planning. He concluded that 'there is nothing to suggest that the ECQ is not the most favourable body to conduct the quadrennial Local Government Elections' in future, to 'ensure that the elections are administered with absolute impartiality and integrity'.

Mr Becker made a further point, that the conduct of council by-elections as well would impose an onerous burden on the ECQ, given the frequency with which vacancies can occur. Responsibility for by-elections could also impinge upon the ECQ's limited resources around the time of a State general election.

Mr Becker also pointed to the difficulties that could arise should a state general election and local government quadrennial elections be held around the same time. Elections for all Queensland local governments are currently held on the last Saturday in March every four years. The Queensland Parliament operates on a three-year election cycle, but with no fixed date. There is obvious potential for election periods to overlap, with a very real possibility of this occurring in early 2012. Apart from resource and logistical challenges, any overlap has potential implications for levels of elector participation.²

HOW-TO-VOTE CARDS

One of the questions posed in the *Issues Paper* is whether the ECQ should distribute how-to-vote cards to all polling booths and in postal vote packs.

The Electoral Act was amended in 2002 to make the ECQ responsible for approving how-to-vote cards used in state elections and for making them available as far as is practicable in polling booths. There is, however, no requirement for the ECQ to distribute party political material in its mail-outs and the ECQ is opposed to doing so. As an independent and impartial body it should not be seen to be doing the work of candidates and political parties.

There are also practical difficulties with this proposal. One is the issue of cost. The other is the fact that candidates and parties are obviously not in a position to order the printing of how-to-vote cards until after nominations have closed. By the time the cards become available the ECQ may already have received and processed a substantial number of postal vote applications. Delaying despatch of ballot papers until how-to-vote cards are available would increase the risk that electors would not receive their material in time to vote.

² It is worth noting that while most other State electoral commissions have responsibility for both parliamentary and local government elections, in most cases they have fixed dates for both.

COMPULSORY VOTING

The ECQ does not have a formal position on compulsory voting. It is appropriate, however, to provide relevant factual information that might assist the committee in its deliberations.

Arguments mounted in favour of compulsory voting are that it helps to maintain a high level of electoral participation; governments elected by compulsory vote more accurately reflect the will of the people; and the notion that voting is a civic duty. Opponents of compulsory voting argue, on the other hand, that it is an infringement of civil liberties and forces participation upon people who may be ill informed or have little interest in politics.³

The following table sets out participation rates in recent Australian local government elections, indicating in each case whether or not voting was compulsory.

LOCAL GOVERNMENT ELECTIONS AUSTRALIAN STATES AND TERRITORIES

| STATE/ TERRITORY | YEAR ELECTION CONDUCTED | TURNOUT % | COMPULSORY OR VOLUNTARY VOTING | POSTAL or ATTENDANCE BALLOT |
|-----------------------|-------------------------------|--------------|------------------------------------------------------------------------------------|--------------------------------------|
| Queensland | 2008 | 81.6% | Compulsory | Mixed 85.29% (P) 80.31% (A) |
| New South Wales | 2008 | 83.4% | Compulsory (Enrolled residents) Non-Compulsory (Property Franchise) | Attendance |
| Victoria | 2008 | 73.59% | Compulsory (Enrolled residents) Non-Compulsory (Property Franchise) | Mixed 75.96% (P) 70.03% (A) |
| Tasmania | 2009 | 55.54% | Non-Compulsory | Postal |
| South Australia | 2006 | 31.6% | Non-Compulsory | Postal |
| Western Australia | 2009 | 27.75% | Non-Compulsory | Mixed 33.35% (P) 22.10% (A) |
| Northern Territory | 2008 | 49.7% | Compulsory | Attendance |

³ See T. Evans, Australian Electoral Commission, 'Compulsory Voting in Australia' 2006 p.7
www.aec.gov.au/pdf/voting/compulsory_voting.pdf

POSTAL VOTING

In 2008 elections were conducted for 45 Queensland councils as attendance ballots and 28 as full postal ballots. The last column in the above table shows that the average participation rate was higher in those councils where the ballot was conducted purely by post.

Both the Electoral Act and the Local Government Act currently provide that electors can lodge an application for a postal vote as late as 6.00 pm on the Thursday before polling day. However, electors who apply for a postal vote are required to fill out their ballot paper, sign their declaration and post by 6.00 pm on polling day (the same time that polling booths close). Given these legislative deadlines, it is highly unlikely that electors who leave it until the last minute to apply will receive their ballot material through the mail in time to cast a valid vote.

In his evaluation of the conduct of the 2008 quadrennial elections Mr Becker recommended that to alleviate this problem the time limit for lodging a postal vote application should be brought forward by one day. The ECQ supports this proposal and has made a similar recommendation in regard to parliamentary elections.

In line with recent amendments to the Commonwealth Electoral Act, electors should also be able to apply for a postal vote electronically without the need for their application to be signed.

PRE-POLL VOTING

In recent years there has been a substantial increase in the number of electors who vote early at pre-poll centres. Current legislative provisions governing both state and local government elections require that electors wishing to cast a pre-poll vote must make some form of declaration. This is time consuming for electors, while votes cast in this way also take longer to count.

The Federal Parliament recently passed legislation to allow pre-poll votes in an elector's 'home' electorate to be cast and counted as ordinary votes. The ECQ has already recommended the introduction of such a provision in Queensland's Electoral Act and notes that Mr Becker also suggested the relaxation of the requirements in respect of local government elections.

ABSENT VOTING

At the 2008 local government elections (and at previous local government elections) absent voting was only available for electors in Brisbane. (The ECQ was criticised in some quarters for failing to provide absent voting for every local council, but any such arrangements would have been in breach of the relevant legislation.⁴)

The ECQ is in favour of a change to the existing provisions to allow for absent voting at any polling booth *within* a local council area. This would afford electors who are absent from the particular electoral division in which they are enrolled, but still within the greater council area, to cast a vote on election day at any polling booth within the council's boundaries.

As Mr Becker pointed out in his evaluation report, allowing an absent vote to be cast anywhere in Queensland is more problematic. The ECQ would be required to make available ballot papers for

⁴ Section 17(5) of the *City of Brisbane Act 1924* provides that BCC elections are to be conducted in accordance with the *Electoral Act 1992*, which in turn makes specific provision for absent voting. There is no corresponding provision in the *Local Government Act 1993*.

every ballot (councillor and mayor) for every council, in every polling booth. While a similar requirement is already in place for parliamentary elections it is a very expensive and complex exercise, the ECQ having no means of knowing in advance how many absent voters are likely to attend a given booth. For state elections there are only 89 electorates, requiring 89 different ballot papers. In local government elections, however, with many of the 73 councils being divided and mayoral as well as councillor contests, the ECQ would be required to distribute sufficient quantities of around 330 different ballot papers to around 1500 polling booths, an enormous and prohibitively expensive exercise.

ELIGIBILITY CRITERIA FOR PRE-POLL AND POSTAL VOTING

In common with the Electoral Act, the existing Local Government Act sets down certain qualifications for pre-poll and postal voting. To be eligible, electors must:

- be more than 8 kms from the nearest polling booth on election day; or
- be prevented from voting because of work, illness or physical incapacity, pregnancy, travel or religious belief.

Electors who satisfy one of these criteria must make a declaration to that effect. It is worth noting that the issuing officer must comply with such requests; there is no capacity for the ECQ to 'vet' them.

Over the last decade or so there has been a sustained increase in the number of electors choosing to vote other than at a polling booth on polling day. This trend has been noted in local government, state and federal elections.⁵ In its report on the 2007 federal elections, the Joint Standing Committee on Electoral Matters suggested that three options should be considered:

- accept that there are now two normal ways of voting (early and election day voting) and implement simple arrangements to accommodate both;
- resist the trend towards early voting and introduce stricter 'proof of eligibility' requirements; or
- do nothing.

The ECQ's submission is that to maximise participation and to accept the realities of modern lifestyles and work patterns, the Queensland Parliament should consider dispensing with the existing eligibility requirements (which are not possible to verify in any event).

FLEXIBILITY TO DEAL WITH EXCEPTIONAL CIRCUMSTANCES

Section 159ZL (7) of the Local Government Reform Implementation Act gave the Electoral Commissioner the authority to take 'any necessary action' to ensure the proper conduct of the 2008 quadrennial local government elections. Although the ECQ was not called upon to exercise these powers, they would have been helpful in the event of a major disruption to the election (such as the major flooding of parts of Queensland during the 2009 state election). Section 159ZL (7) should be mirrored in the proposed Local Government Electoral Act.

ELECTRONIC LODGEMENT OF CANDIDATE DEPOSITS

For the 2008 quadrennial elections and the 2009 state election the ECQ implemented a 'candidate portal' that enabled online verification of the enrolment details of both candidates and nominators. This system received positive feedback from candidates and political parties. However, although nomination forms could be filled out online, the entire nomination process was unable to be completed electronically because of the requirement for candidate deposits to be in cash or by bank cheque.

⁵ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2007 federal election and matters related thereto*, Canberra June 2009, p.182

An amendment allowing deposits to be lodged electronically would enable the entire nomination process to be completed online.

CLOSE OF ROLLS

The Local Government Act currently provides for the local government quadrennial elections to be held on the last Saturday in March in the year of the election, with the electoral roll closing on 31 January. The date of the election can be changed by regulation, but the cut off day for the close of rolls is fixed.

The current 55 day period between the close of rolls and election day is administratively convenient, allowing a much greater period for the ECQ to prepare and distribute rolls than is available in a state election. The downside, however, is that the roll is much more likely to have become inaccurate by election day, by virtue of the number of electors who will have changed address within that period.⁶ The ECQ would have no difficulty with a later date for the Close of Rolls.

CONCLUSION

I would be happy to meet with the Committee to expand on any of the above. The Committee may also be interested in a recent review of NSW Local Government Elections by the Parliament of NSW Joint Standing Committee on Electoral Matters, Report No. 3/54 dated June 2010.

Yours sincerely



David Kerslake
Electoral Commissioner

⁶ The level of inaccuracy would be even greater if the date of the election was moved to later in the year but the cut off point for enrolment remained 31 January.