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Law, Justice and Safety  
Committee

Submission 063

**LAW, JUSTICE AND SAFETY COMMITTEE**

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**SUBMISSION**

**TO THE QUEENSLAND ELECTORAL AND ADMINISTRATIVE REVIEW  
COMMITTEE OF THE LEGISLATIVE ASSEMBLY OF QUEENSLAND**

**PARLIAMENTARY INQUIRY INTO THE CURRENT LOCAL GOVERNMENT  
ELECTORAL SYSTEM UNDER THE *LOCAL GOVERNMENT ACT 1993***

**30 JULY 2010**

**From:- Peter Stewart**

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**Capacity in which Submission is made:      Individual**

**My Background:**

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I have been employed in Local Government in Queensland for twenty (20) years, thirteen (13) of these as the Chief Executive Officer (CEO) of three (3) rural Councils which includes my current position as CEO of Goondiwindi Regional Council.

As declared above, I am making this submission as a private individual.

My experience in Local Government Elections has been as a Returning Officer (RO) for three (3) fresh elections and five (5) by-elections as well as Assistant RO and Issuing Officer roles. I was (thankfully) not the RO for the 2008 elections, with the Electoral Commission Queensland (ECQ) responsible.

I was the RO for a by-election held in July/August 2009, so I am still in touch with the current legislation and challenges of the position of Returning Officer.

**Submission Matters:**

- 4)      ***Should the mix of divided and undivided councils remain? If so should the decision to divide a local government area remain with the individual councils?***

I personally do not support divisions. This is simply based on my observations in my role as a Local Government CEO. Divisions intentionally or unintentionally make it difficult for Councillors to abide by the fundamental principle of acting in the best interests of the whole local government area.

I acknowledge there are pros and cons for divisions and perhaps a very few exceptional situations (which should be decided by the Commission not individual Councils). However the issue of freely representing the whole area and answering at the ballot box to the whole electorate outweighs any and all of the pros.

- 3)      ***Are the error margins of 10% in local government areas with more than 10,000 electors and 20% in all other areas sufficient?***

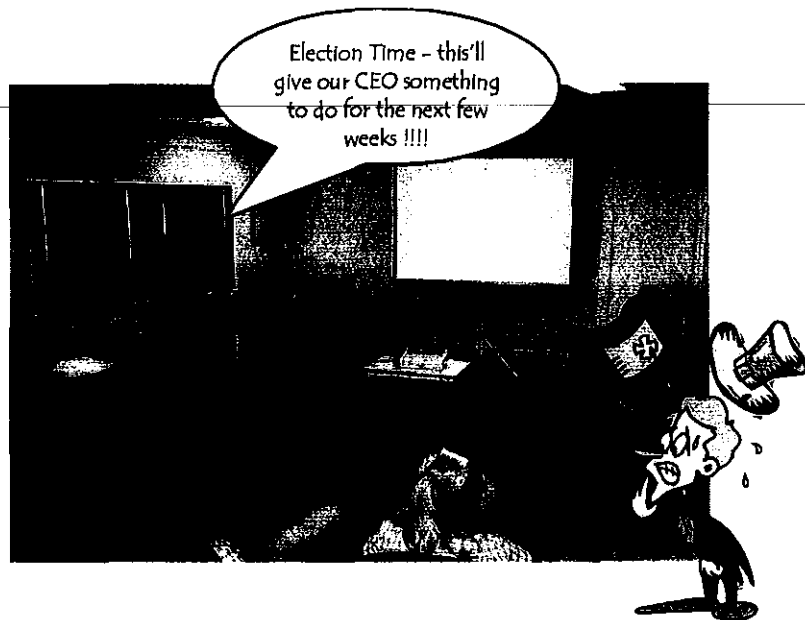
If there are divisions the error margins are too great at 20% where less than 10,000 electors. An example I have experienced is of four divisions each with two representatives in the pre-amalgamation Waggamba Shire Council. With a total of 2,000 electors each division's quota starting number is 500. The actual elector numbers for one of the divisions was just over 400 and another division just over 600 electors. Therefore one division of two Councillors had only 67% of the other two Councillors electors. The 20% tolerance should not be able to blow out to almost potentially 40% as in this example, but to a total of 20% between any divisions.

**Conduct of Elections**

**Administration of Elections**

- 6)      ***Should the Electoral Commission of Queensland be responsible for the administration of the quadrennial local government elections or should this responsibility remain with Council CEOs?***

Why would you ever be a CEO and a RO?? Life's too short to try this trick.  
I will give you my story on why two hats don't fit entitled "CEO or RO – Which Hat Will I Wear?"



I am the Returning Officer and CEO

Nominations have closed, postal ballot papers are all mailed out and they are just starting to trickle back in to the ballot box.

We have electoral divisions within the Shire.

Division x requires 2 Councillors from 4 candidates.

I receive a phone call from a candidate (and a current Councillor whom I therefore know well).

The question was asked "Can you just mark off one of the boxes for a particular candidate and leave the others blank? Is this a formal vote?"

# IS THIS FORMAL??



WILTSHIRE COUNCIL  
 ELECTION OF 2 COUNCILLORS - DIV. No. 5

Instructions  
 Record your vote by marking the numbers 1 and 2 in the squares opposite the names of the candidates for whom you wish to vote

WILSON, Zorro  
 JONES, Jill  
 FLYNN, Errol  
 TEDDY, Toots



I thought I knew the answer was yes, but went to the Act and tried to interpret whilst on the phone. I interpreted that the answer was yes, it was formal and I informed the candidate.

A few days later, looking through the candidates campaigning in a local newspaper and noting the advertisement "you only need to vote 1 and leave all others blank", it crossed my mind "I hope I did get it right". Someone else had quizzed me and had been surprised when I said it was formal.

Candidates have their say

These all need to be addressed with a sensible experienced approach. What you see is that you get, willingness to have a go, fairness and honesty. To ensure your

vote you need only vote 1, and leave all others blank.

## or nominating

Wardens Skire to their coffee shop

For the first time I checked the legal commentary attached to the *Local Government Act*.

My heart rate moved up another gear as I envisaged all these votes pouring in with only one mark on them.

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Where to from here???

A candidate in good faith had acted upon my advice and there was some likelihood this advice would result in many of these votes being informal.

Much more research was required – was the legal commentary conclusive? **Next move was to phone the Department.**

BIG MISTAKE

**The Department response – “It’s informal alright – We have Crown Law opinion and it’s been decided in the Supreme Court.”**

When the department was informed of the candidates advertising campaign, there was a genuine concern. “This may be misleading advice on how to vote under section 384 and the Minister whose interest is to see that proper process is followed might just nullify the election for the Division and order the reissue of ballot papers and a fresh polling day.”

Criekies! How do I tell our community this and how competent is this RO/CEO???

After some interesting debate the Department did allow the election to continue – I was on a hope and a prayer that:-

1. The campaign to “vote 1 only” would not have a major impact on the count; and
2. if it did I would disappear never to be seen in Local Government again..

I gladly accepted the Departments decision and the election continued.

The instructions on the ballot paper are simple and clear –

“Record your vote by marking the numbers 1 and 2 in the squares opposite the candidate for whom you wish to vote.

It’s easy ... but here’s the catch.

How about x,x or y,y or 1,2,3,4 instead of just 1,2. They are probably also formal but certainly are not the numbers 1 and 2.

Why? Because the law says as long as the voters’ **intention is clear.**

Confused?? NO WAY!! It’s simple – if you’re smart enough to be a CEO and an RO at the same time then you can work out anyone’s intent!! – therefore they’re always formal.

So I convinced myself just marking 1 really did mean that they wanted that candidate and really didn’t care about the other ones. **Ahh, but what about the law** and commentary of the Local Government Act.

184  
Commentary on the Local Government Act

355 First-past-the-post voting

This section applies to voting for local councillors and the mayor in areas with no electoral divisions and areas with 1 or more single-member divisions (s 253(b)).

Note that it is possible that a Council with multi-member divisions may also have 1 or more single member divisions. The entire election is nevertheless conducted on a first-past-the-post basis.

There was a controversy in some areas during the 2000 election about whether "up to" the number of candidates to be elected in subsection (3)(b)(ii) means that a vote for less than the full number of candidates required in an undivided area or multi-member division is a valid vote. In the author's view, it cannot be. The matter can be tested by hypothesising a situation where all votes are made this way for the same candidates. The election would not have a complete outcome because at least one position would not be filled.

While that is obviously a far-fetched scenario in the real world, an interpretation whereby there would not be a complete result in the election, despite every voter voting, would be preferred to an alternative one for formality which would produce a complete result on the hypothesis that every voter votes formally. There is no doubt in the author's view that a formal vote requires there to be votes for the full number of candidates to be elected (or at least that number - see s 358(3)).

We want two candidates elected but all ballot papers are only marked "1" for Errol and the other three candidates get zero. We have a problem?

**A three way tie for second...**

*Vince arrives with his marbles....*

CANDIDATE	TOTAL VOTES
Zorro Wilson	0
Jill Jones	0
Errol Flynn	600
✓ Toots Teddy	0



*.... And Errol relaxes as he waits to see who is elected as the second Councillor via the draw of the marbles*

Not for me as Returning Officer!!!

No worries, 600 to Errol, zero to Zorro, Jill and Teddy. Errol's in like Flynn. Zorro, Jill and Teddy tie for second. Mr Corbin arrives with his marbles and hey presto – Zorro's off on his horse, Jill tumbles down the hill and Teddy's in.

Both positions filled and we have a complete outcome.

There weren't too many decisions to be made:

1. Decide it's formal (and don't ever get to wear any hat ever again)
2. Decide it's informal

The other decision for me was.....

3. At what point in time do I need to decide?

I still had a belief it could be formal, weighed down no doubt by the knowledge a candidate in good faith had acted upon my advice and there was some likelihood this advice could result in many of these votes becoming informal.

And I was a little frustrated with the Department, as advice from our solicitors was that to the best of their knowledge there had not been a court decision to determine the validity of a voting paper marked '1' with no other markings, where 2 or more councillors are required.

And as we all will do, I checked out the views of an experienced mate, who gave me some comfort that there was logic in my interpretations.

### **FAST FORWARD TO POLLING DAY**

This is the picture I may come up against on polling day:

600 ballot papers received for division x. As we require 2 councillors from this division this equates to 1,200 votes.

50 marked with just 1 vote

1,200 reduced to 1150 votes

	Total votes if <u>decide formal</u>		Votes with 1 marking	Votes if <u>decide</u> <u>informal</u>	
Errol	460	✓	4	456	✓
Zorro	270		5	265	✓
Jill	120		1	119	
Teddy	300	✓	40	260	

If the Returning Officer decides informal dear old Teddy misses out on the Post-Election Party after faithfully following the RO's advice.

The decision the RO/CEO had to make would decide whether Zoro or Teddy became a Councillor. This is not the ideal position for someone who is the RO one day and the CEO the next. The call can be very difficult and who knows, the candidate that missed out may become a Councillor at the next by-election and will probably have a great memory.

What did happen on Polling night – Had I decided...

At the pre-election night training session I instructed all staff to set aside any ballot papers with just one vote. I would then eventually know if the 'one vote' papers would impact on the election outcome. (I had already made a decision as to whether I would call them informal or formal) if it was going to impact on the election. After seeing that the one vote papers could not affect the results of the election I officially called them informal.

Had the ballot papers with only 1 mark on them made the difference as to which candidate got elected – Who knows which way the RO would go!!

Rest assured it didn't eventuate that the gap was that close.

## **SOLUTIONS**

CEOs do not make good Returning Officers. The above scenario shows we don't. CEOs are too close to the current Councillors and although the RO has independence, some of those candidates will become our masters once the poll is declared. We shouldn't be put into this potential conflict. Please allow the Electoral Commission to be responsible for future Local Government elections.

Some may point out that the CEO does not have to be the RO and under Section 273 can appoint another individual as RO if he/she considers on reasonable grounds that it is appropriate to appoint another individual. My experience is that at least in the mindset of small Councils there is a culture of expectation that the CEO will be the RO. It is usually more expensive to outsource the RO position and this puts pressure on the CEO.

It is difficult to (again I am speaking from a smaller Council position) equate to what is 'reasonable grounds'. The Council may see it as almost the CEO's 'duty' to take it on and you will still be expected through the election process to perform your duties as the CEO.

It is often not practical for a smaller Council to find a fill in CEO for the period of the elections. I would generally be working a fifty (50) to fifty five (55) hour week in my role as CEO. The RO responsibilities for the six (6) weeks leading up to the election requires a further twenty (20) odd hours per week. This work load becomes unreasonable, particularly as the nature of election activity is quite demanding on the Returning Officer.

CEOs can play an informal part in assisting the RO. It is the CEO of a Council that has intimate knowledge of its operations. Potential candidates when nominating for a position on Council need some feedback on just what is involved. It is a complex question and the Act and Regulations can't really tell you what hours might be involved or how the current Council and its Councillors operate on a day to day basis.

I noticed this concern at the 2008 elections and by default was approached by several potential candidates wanting more local knowledge of the role and expectations.

### **8) *Is the time for the close of rolls and the date of the elections appropriate?***

I have a strong view that the next Local Government elections should be held in March 2012 simply because that was the general understanding when the current Councillors were elected in March 2008. It is a four (4) year term until the last Saturday in March, unless a regulation directs otherwise. Apart from juggling around Easter, as far as I know this has always been the last Saturday in March. If the election was to be changed to say an October date this should be known at the time the Councillors are elected so that they and the community know that they will be serving a 3 ½ or 4 ½ year term.

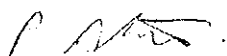
From the Councillors position, four (4) years was their commitment (they may not be able to stay on for another six (6) months if the election was extended or they may be disappointed if their term was reduced) and from the electors view, it was generally understood they were electing the Councillors for a four (4) year term.



I also support a March election date. My experience is that the lead up to an election is quite a disruptive time from an operational perspective. Council may be in care taker mode but plenty is still going on behind the scenes distracting day to day administration and operations. I feel to have this time frame through February – March is the least disruptive to a Councils' ongoing operations.

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Thank you



**Peter Stewart**

Cc: LGMA Queensland