



Our ref: MBN11/286

**Office of the Deputy
Premier, Attorney-General,
Minister for Local
Government and Special
Minister of State**

Mr Neil Laurie
The Clerk of the Parliament
Parliament House
George Street
Brisbane QLD 4000

Dear Mr Laurie

On 29 November 2010, the Law, Justice and Safety Committee tabled Report No. 78 *A new Local Government Electoral Act: Review of the local government electoral system (excluding BCC)*, which made 33 recommendations for the Government's consideration.

As required by section 107 of the *Parliament of Queensland Act 2001*, I am now tabling the Government's response to the Committee's report. The attached table sets out the Committee's recommendations and the Government's response to why each recommendation will, or will not be, adopted.

Those recommendations to be adopted by the Government will be included in the new Local Government Electoral Bill, anticipated for introduction into the Parliament in May 2011.

I trust this information is of assistance. If you require any further information, please contact Mr Ross Alcorn, Director, Local Government Legislative Reform, Office of Local Government, Department of Local Government and Planning, on 3237 1887.

Yours sincerely

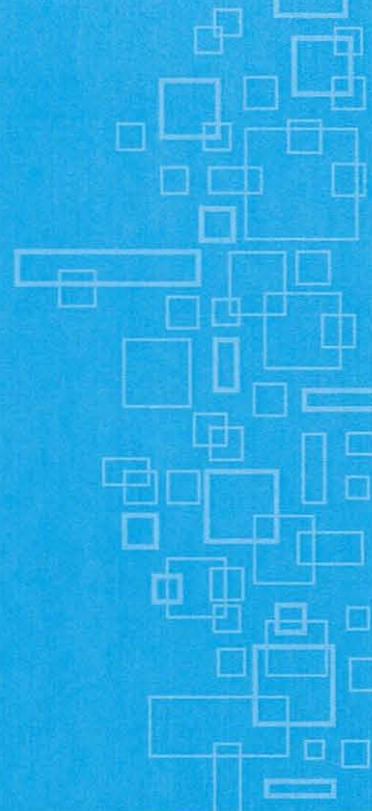
PAUL LUCAS MP
Deputy Premier
Attorney-General, Minister for Local Government
and Special Minister of State

Enc (1)

Level 12 Executive Building
100 George Street Brisbane
GPO Box 15009 City East Qld 4002
Telephone +61 7 3224 4600
Facsimile +61 7 3224 4781
deputypremier@ministerial.qld.gov.au



Department of Local Government and Planning



Queensland Government Response

to the Parliamentary Law, Justice and Safety
Committee's - Report No.78

*A new Local Government Electoral Act: Review
of local government electoral system (excluding
BCC)*

November 2010



Recommendation 1 - That the Local Government Electoral Act provides that a local government area with a population of 30,000 or more must introduce a divisional structure within its council.

Response:

This recommendation is not supported. It is proposed that the current application for change provisions contained in *the Local Government Act 2009* (LGA 2009) will continue to apply. The principles based legislation in the LGA 2009 provides for the diverse range of Local Governments to make choices about processes to suit their size, location, demography, financial and governance circumstances. To impose this change on Councils, due only to their size, would be a return to the prescriptive nature of the *Local Government Act 1993* (LGA 1993) rather than the 'one size does not fit all' principles of the LGA 2009. This proposal would result in nine currently undivided Councils becoming divided unilaterally. The Townsville Local Government area is the only one of these Local Government areas in which the majority of community submissions to the LJSC inquiry were in favour of a change to divided status (i.e. 19 to 6 and 11 with no comment).

Recommendation 2 - That the Local Government Electoral Act contains a provision to allow councils in Local Government areas with a population of 30,000 or more to appeal to remove council divisions where they can demonstrate that, following public consultation, the introduction of divisions is not in the best interests of that particular community.

Response:

This recommendation is not supported. It is proposed that the current provisions contained in the LGA 2009 will continue to apply. The LGA 2009 sets out the process for a Local Government to apply for a change. This includes moving to divisions or moving away from divisions, if, after community consultation, the Local Government believes it is in the community's best interest. Recommendation 2 merely changes the process to an 'opt out' process, necessary because of the imposition of divisional arrangements on Local Governments under recommendation 1.

Recommendation 3 - That the Local Government Electoral Act provides that a Local Government area with a population under 30,000 shall have, at a minimum, six councillors plus a mayor.

Response:

This recommendation is not supported. It is proposed that the current provisions contained in the LGA 2009 will continue to apply. The LGA 2009 provides a process for Local Governments to apply for change, including a change in the number of Councillors. Implementing recommendation 3 across all Local Government areas with a population under 30,000 would result in 68 new Councillors across Local Government areas without request, demonstrated need and without regard to cost. This recommendation would also result in a reverse of many of the reforms made in



2008 by the independent Local Government Reform Commission, to reduce what was considered to be an excessive number of Councillors.

Recommendation 4 - That the Local Government Electoral Act provides that the Electoral Commission of Queensland (ECQ) is responsible for the conduct and administration of Local Government elections in Queensland.

Response:

This recommendation is supported. The new stand-alone *Local Government Electoral Bill 2011* (LGEB 2011) will provide for ECQ to conduct all Local Government elections including quadrennial elections, by-elections, fresh elections and community forum elections. This approach is supported by the ECQ and is consistent with Government's decision that the ECQ be encouraged to fulfil its potential in the conduct of Local Government elections.

Recommendation 5 - That the Local Government Electoral Act provides that the Electoral Commission of Queensland should, whenever practicable, consult with individual councils and the local community by calling for submissions on matters pertaining to the conduct of a local election such as, but not limited to, whether a local election should be by attendance or by full postal ballot and recommended polling booth locations.

Response:

This recommendation is not supported. It would add an unnecessary layer of administrative red tape and cost to the operations of the ECQ. Provisions set out in the LGA 2009 currently provide for the Governor in Council to direct that a poll be conducted by full postal ballot if the Local Government area includes a large rural sector, large remote areas or extensive island areas. In order to provide a more streamlined process, it is proposed to amend section 318 of the LGA 2009 to require the Minister, rather than the Governor in Council, to approve the conduct of a poll by full postal ballot if the Local Government area includes a large rural sector, large remote areas or extensive island areas. Section 8 of the *Electoral Act 1992* (EA 1992) provides flexibility for the ECQ to conduct and promote research into electoral matters and other matters that relate to its functions, including community consultation.

Recommendation 6 - That the Local Government Electoral Act provides that, should the Electoral Commission of Queensland call for submissions from individual councils and the local community on matters pertaining to the conduct of a local election, the Commission may call for submissions to be made within a prescribed 'community consultation period' and must consider submissions lodged with the Commission within that prescribed period.

Response:

This recommendation is not supported. Section 8 of the EA 1992 provides flexibility for the ECQ to conduct and promote research into electoral matters and other



matters that relate to its functions, including community consultation. Therefore it is unnecessary to include in the LGEB 2011 the level of prescription of a due date. This would unnecessarily constrain and tie up the resources of the ECQ when performing its functions (e.g. in conducting an urgent by-election or fresh election).

Recommendation 7 - That the Local Government Electoral Act gives the Electoral Commission of Queensland the discretion to reject submissions made outside of a prescribed community consultation period.

Response:

This recommendation, administrative in nature, is not supported as it is dependent on Government's support of recommendation #6 which is not supported.

Recommendation 8 - That the Electoral Commission of Queensland be appropriately resourced to enable it to effectively manage responsibility for the conduct of Local Government elections and to enable it to undertake local area consultation as required.

Response:

This recommendation is supported. A letter has been sent to the Electoral Commissioner from the Premier providing formal notification that the ECQ will conduct all Local Government elections including quadrennial elections, by-elections, fresh elections and community forum elections. This provides the ECQ with the authority to make a budget bid, noting that the cost of Local Government elections will be invoiced to and recouped from Councils by the ECQ.

Recommendation 9 - That the Local Government Electoral Act provides that the Electoral Commission of Queensland may, at the discretion of the Electoral Commissioner, investigate, and trial the potential application of new technologies to ascertain whether they can be safely and securely implemented and utilised, to better facilitate the efficient and effective conduct of elections by the Electoral Commission of Queensland. Any active trials are to be conducted in consultation with the local councils affected.

Response:

This recommendation is supported. Current provisions in the LGA 2009 do not provide for the use of electronic technology. It is proposed that the legislation will allow for candidate nominations and deposits to be lodged electronically. The Department of Infrastructure and Planning (the Department) has met with the ECQ to discuss the use of electronic technology. Legislation has recently passed in New South Wales (NSW) to allow the use of technology for voting for the vision impaired and for those in remote areas. The ECQ will be monitoring the success of the NSW elections in March 2011 and has proactively allocated existing funds to contribute to system development, should the NSW system be a success. Pending the success of this system, similar changes to Queensland Local Government Electoral



Legislation could be considered.

Recommendation 10 - That Returning/Presiding Officers receive comprehensive training as to their roles and responsibilities under the Act.

Response:

This recommendation is supported. The ECQ will be responsible for the conduct of all Local Government elections and as such, returning officers will be appointed by the ECQ. The ECQ will be responsible for ensuring that all appointees have the required skills to meet their responsibilities under the legislation.

Recommendation 11 - That the Local Government Electoral Act provides for Local Government elections to occur every four years, on the last Saturday in March, unless a regulation directs otherwise.

Response:

This recommendation is supported. The current timing of elections, as set out in the LGA 2009 will continue, where Local Government quadrennial elections are conducted every four years on the last Saturday in March.

Recommendation 12 - That the Local Government Electoral Act provides that the electoral roll for a Local Government election closes on 31 January in the year of that election.

Response:

This recommendation is supported. It is proposed that the current provisions, as set out in the LGA 2009 continue to apply (i.e. a voters roll must be compiled for a quadrennial election by 31 January in the year of the election). No problems have been identified with this existing arrangement to date.

Recommendation 13 - That the Local Government Electoral Act provides that, where an election is impacted by severe weather or by a declared disaster, arrangements are made to facilitate voting in affected areas or by affected voters as expeditiously as the circumstances will permit.

Response:

This recommendation is supported. It is proposed that the current provisions of the LGA 2009 will continue to apply, which provide for the adjournment of a poll where the conduct of a poll is, or is likely to be, obstructed or interrupted from any cause. The LGEB 2011 will also replicate section 8(4) of the EA 1992 which enables the Commission to do all things necessary or convenient to perform its functions. This will have the affect of enabling the ECQ to facilitate voting in affected areas or by affected voters as expeditiously as the circumstances will permit, where an election



is impacted by severe weather or by a declared disaster.

Recommendation 14 - That the Local Government Electoral Act provides that, where some delayed voting occurs within a Local Government area or division as the result of weather events or disaster, the result of partial counts of already cast ballots within an electoral area or division may not be disclosed, published or otherwise released, before all persons in the affected area have been afforded a reasonable opportunity to vote.

Response:

This recommendation is supported. Section 342(1) and (2) of the LGA 2009 provides for the returning officer to fix a day (not later than 34 days after the day on which the poll is adjourned) for conducting the adjourned poll. Division 14 of the LGA 2009 sets out the process for the counting of votes with the requirement that the returning officer give notice of the final result once all ballot papers have been examined and all votes cast in the poll formally counted. It is proposed that the current provisions set out in the LGA 2009 will continue to apply. The LGEB 2011 will also continue the existing ECQ power to do all things necessary or convenient to perform its functions. These provisions will achieve the intent of the recommendation of not allowing the disclosure of partial counts before all persons in the affected area have been given a reasonable opportunity to vote.

Recommendation 15 - That the Local Government Electoral Act retain the existing section 270, Schedule 2, of the Local Government Act 2009, but stipulate that the time fixed for a by-election be within 12 weeks from a vacancy arising.

Response:

This recommendation is supported. It is proposed to amend the current provisions to reflect the more workable 12 week time frame. It is currently 10 weeks.

Recommendation 16 – That the Local Government Electoral Act require that intending candidates for election must first be nominated by the registered officer of a political party that has endorsed the candidate, or by at least two electors for the Local Government area for which the election is to be held.

Response:

This recommendation is not supported. The current legislation requires candidates to be nominated by at least 6 electors of the Local Government area. To align this requirement with the EA 1992 and to reduce the number of vexatious nominations received, it is proposed that the current provisions set out in the LGA 2009 will continue to apply.



Recommendation 17 – That the Local Government Electoral Act require that on nomination of a candidate, a deposit of \$250 (or such other amount equal to the nomination fee for candidates for the Legislative Assembly) be lodged with the Returning Officer and held in the Local Government trust fund; and that the Act provides that this deposit is refundable to candidates who are elected or who receive more than 4% (or such other proportion equal to that for candidates for the Legislative Assembly) of the total votes for that area or division.

Response:

This recommendation is supported (i.e. to increase the nomination deposit from \$150 to \$250) to align the LGEB 2011 with the EA 1992 and to reduce the number of vexatious nominations received.

Recommendation 18 - That the Local Government Electoral Act require that a person standing as a candidate for a local government election reside in that Local Government area.

Response:

This recommendation is supported. This is currently provided for in the LGA 2009. It is proposed that this requirement is continued in the LGEB 2011.

Recommendation 19 - That the Local Government Electoral Act prohibit a person being, at the same time, a candidate for election as mayor of a Local Government and a candidate for election as a councillor of that Local Government; or being a candidate for election as a councillor of a Local Government for more than one division of the local government's area.

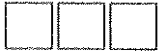
Response:

This recommendation is supported. It is proposed that the current provisions set out in the LGA 2009 will continue to apply (section 299 prohibits dual candidature).

Recommendation 20 - That the Local Government Electoral Act provide for the conduct of a poll for the election of mayor of a Local Government.

Response:

This recommendation is supported. It is proposed that the current provisions set out in the LGA 2009 will continue to apply, retaining the popular election of the Mayor as the status quo.



Recommendation 21 - That the Local Government Electoral Act remove the existing subsection 155(3)(b) of the Local Government Act 2009, so as to allow a councillor to retain office upon nomination for election as a Member of the Legislative Assembly.

Response:

This recommendation is not supported. It is proposed to maintain the current provisions in the LGA 2009, that is, a Councillor contesting a seat in a State election must resign on becoming a candidate for that election. This will continue to mitigate community perceptions that some Councillors use their offices as stepping stones to another tier of government or have a conflict of interest between their campaigning activities and role as a Councillor.

Recommendation 22 – That the Local Government Electoral Act require that the disclosure requirements for local government candidates mirror the current requirements for candidates for the Legislative Assembly.

At this stage, it is proposed that the current provisions set out in the LGA 2009 for post election disclosure continue to apply. Government will, at a later stage, consider adapting for Local Governments the reforms set out in the Department of the Premier and Cabinet's recently released paper *Reforming Queensland's electoral system*. The paper sets out Government's intentions to increase the transparency of relationships between political parties, candidates and donors, including introducing a capping regime for State elections. If such changes are adapted for Local Government elections, the changes will be made to the new Local Government Electoral Act.

Recommendation 23 – That there should be a suitable cap on campaign expenditure. Given the variable size of the electoral districts involved, the cap could be in terms of per capita expenditure in divisions or council area, whichever is applicable.

Response:

At this stage, it is proposed that the current provisions set out in the LGA 2009 (i.e. no capping) will continue to apply. Government will, at a later stage, consider adapting for Local Governments the reforms set out in the Department of the Premier and Cabinet's recently released paper *Reforming Queensland's electoral system*. The paper sets out Government's intentions to increase the transparency of relationships between political parties, candidates and donors, including introducing a capping regime for State elections. If such changes are adapted for Local Government elections, the changes will be made to the new Local Government Electoral Act.



Recommendation 24 - That the Local Government Electoral Act contain provisions that mirror sections 36, 392A and 392B of the Local Government Act 2009 with respect to how to vote cards and other how to vote material.

Response:

This recommendation is supported. It is proposed that the current provisions in sections 36, 392A and 392B of the LGA 2009 with respect to how to vote cards and other how to vote material will continue to apply.

Recommendation 25 - That the Local Government Electoral Act contain provisions in respect of electoral signage and advertising that mirror section 36 of the Local Government Act 2009 and that reflect the Supreme Court's ruling in Geoffrey Greene v Gold Coast City Council [2008] QSC 25 that a Local Government cannot place a blanket ban on political communication.

Response:

This recommendation is supported. It is proposed that the current provisions set out in section 36 of the LGA 2009 that prevent a Local Government from placing a blanket ban on political communication, continue to apply.

Recommendation 26 – That the Electoral Act prohibits the use of television and radio candidate advertising and promotion from the Wednesday prior to a Saturday local government election or by-election.

Response:

This recommendation is not supported. It is proposed to continue the current provisions set out in the LGA 2009 that do not limit the use at particular times of television and radio candidate advertising and promotion. Saturation TV and radio advertising to the level of State and Federal campaigning is uncommon for Local Government elections outside of Brisbane.

Recommendation 27 - That the Local Government Electoral Act mirror the current section 282 of the Local Government Act 2009 to retain compulsory voting and impose a penalty on eligible persons who fail to vote at local government elections, equal to that applying from time-to-time for failure to vote at a State election.

Response:

This recommendation is supported. It is proposed that the current provisions set out in section 282 of the LGA 2009 for compulsory voting and penalties are continued.



Recommendation 28 - That the Local Government Electoral Act should, for attendance elections, allow enrolled voters to be able to pre-poll within a local government area, without requiring the voter to provide reasons why they are pre-poll voting.

Response:

This recommendation is supported with the removal of the criteria for pre-poll voting. This will serve to support increased voter participation and remove unwarranted administrative process for the ECQ.

Recommendation 29 - That the Local Government Electoral Act should, for attendance elections, allow enrolled voters to automatically obtain a postal vote upon application, without having to provide reasons why a postal vote is sought, and that such application may be made electronically without the need for a signature.

Response:

This recommendation is not supported. It is proposed that the LGA 2009 requirements be maintained whereby enrolled voters need to provide reasons why a postal vote is sought and provide their signature. The Electoral Commissioner advises that this is necessary in order to determine the legitimacy of postal votes, particularly for the signature specimen.

Recommendation 30 – That the Local Government Electoral Act allow absent voting within a local government area, without requiring the voter to provide reasons why they are absent voting.

Response:

This recommendation is supported.

Recommendation 31 - The Local Government Electoral Act provides for voter eligibility as is currently prescribed by s.276 of the Local Government Act 2009.

Response:

This recommendation is supported. It is proposed that the current provisions set out in section 276 of the LGA 2009 will continue to apply (i.e. a person is entitled to vote at a Local Government election if the person is an elector under the EA 1992 for an electoral district, or a part of an electoral district, included for an election for the whole of the Local Government's area, in the area; or for an election for a division of the Local Governments area, in the division).

Recommendation 32 - That to reduce confusion among voters in elections across different levels of government, efforts be made to increase consistency of voting systems across those levels of government.

Response:

This recommendation is supported in-principle. However, the Queensland Government does not intend to change the method of voting in State elections at this time, nor does the Queensland Government have any power to change the method of voting in Federal elections. Any changes to the voting method in Local Government elections would be subject to careful consideration and consultation with the Electoral Commissioner of Queensland.

Recommendation 33 - That a comprehensive educational campaign accompanies any changes to the voting systems at local government elections.

Response:

This recommendation is supported should any such changes occur to the voting systems.