

Tabled by Ms Dutton,
22 May 2018
H. Minna



**REPORT OF THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS -
PREFERENCE COUNTING IN LOCAL GOVERNMENT ELECTIONS IN NSW
(REPORT 3/56 - NOVEMBER 2017)
GOVERNMENT RESPONSE**

A resolution was passed in the Legislative Council on 9 August 2017 that the Joint Standing Committee on Electoral Matters (the **JSCEM**) inquire into and report on preference counting in local government elections in NSW. The JSCEM published its report on 22 November 2017.

The Government accepts, or accepts in principle, all of the recommendations made by the JSCEM. The Government's position on each of the JSCEM's recommendations is set out below.

Recommendation 1

That the Government removes the random sampling of ballots when transferring preferences when a candidate receives more than a required quota to be elected.

The Government accepts the JSCEM's recommendation.

The Government recognises the importance of ensuring the public has confidence in the outcomes of council elections. It is essential that candidates and other stakeholders have confidence that the system provides a fair, accurate and consistent result without giving an advantage to any particular candidate or party. The Government acknowledges concerns raised during the JSCEM's inquiry that this is potentially undermined by a process of distributing preferences by random selection.

The increased use of technology in conducting counts and the distribution of preferences means using random sampling to simplify a manual count is no longer justifiable.

The Government notes that the removal of random sampling will assist with implementing countbacks to fill casual vacancies in the 18 months following an ordinary council election under section 291A of the *Local Government Act 1993* (the **Act**).

Recommendation 2

That the Government introduce the weighted inclusive Gregory method to conduct future local government elections.

The Government accepts the JSCEM's recommendation.

The Government notes that the fractional transfer system which received the most support from stakeholders who participated in the JSCEM's inquiry is the weighted inclusive Gregory method. The JSCEM noted that the weighted inclusive Gregory method offers the following benefits:

- it considers all votes held by a candidate when distributing their surplus, regardless of which stage of the count they are elected, and
- it differentiates between votes which are transferred more than once.

The Government also notes that the weighted inclusive Gregory method is currently used for elections for the Western Australian Legislative Council and for local government elections in Western Australia.

The Government acknowledges that the use of the weighted inclusive Gregory method will make manual counting difficult but considers that this is offset by the benefits it offers in providing the most accurate and fairest distribution of preferences. The Government also notes that currently available technology is capable of conducting the complex calculations required under the weighted inclusive Gregory method.

The NSW Electoral Commission (the **NSWEC**) has stated that it will facilitate the introduction of the weighted inclusive Gregory method for local government elections.

Recommendation 3

That the NSW Electoral Commission works with relevant stakeholders to develop a policy that makes it easier for scrutineers to examine paper ballots, electronic records and data entry records.

The Government accepts the JSCEM's recommendation.

The Government notes that this recommendation is directed at facilitating scrutiny of local government elections, increasing transparency and improving confidence in the local government election process.

The NSWEC has advised that it supports this recommendation and will consult with stakeholders to develop a policy for scrutineers.

Recommendation 4

That the Office of Local Government ensures that councils which administer their own elections be required to adhere to any scrutineering policy developed by the NSW Electoral Commission.

The Government accepts the JSCEM's recommendation.

The Government considers that the same standards should apply to all council elections, regardless of whether the election is administered by the council or conducted by the NSWEC.

The Office of Local Government (**OLG**) will adapt its guidance material for councils that administer their own elections to ensure that any scrutineering policy developed by the NSWEC is also applied at council-run elections.

Recommendation 5

That an audit process be introduced to ensure that data entry of ballots is accurate in every local government election count that uses electronic counting. The Committee also recommends that scrutineers be allowed to observe this audit process and the results.

The Government accepts the JSCEM's recommendation.

The Government notes that this recommendation is aimed at improving the transparency of the use of electronic counting at council elections by ensuring that votes are accurately recorded in the electronic counting system.

The NSWEC supports the JSCEM's recommendation and notes that it is a development of its current practice of ensuring that processes are observable at each step of the count.

To ensure consistency across all council elections, OLG will adapt its guidance material for councils that administer their own elections to ensure that any practice developed by the NSWEC is also applied at council-run elections.

Recommendation 6

That the Government outlines minimum levels of data, including full preference data, which is to be released following a local government election regardless of whether the election is run by the NSW Electoral Commission, a private provider, or a council themselves.

The Government accepts the JSCEM's recommendation in principle.

The Government agrees that releasing data on the count and the preference breakdown increases the transparency of elections and improves public confidence in the system. The Government also agrees that the same data should be made available for all council elections regardless of whether it is administered by the NSWEC or council-run.

OLG will work with the NSWEC and councils that administer their own elections to ensure that the same data is made available for council-run elections as the NSWEC makes available for the council elections it administers.

Recommendation 7

That the source code of counting software used in local government elections, whether those elections are conducted by the NSW Electoral Commission or a private provider, be subject to an external audit at least once every five years, subject to reasonable restrictions which protect the Intellectual Property of the organisations involved.

The Government accepts this recommendation in principle.

The Government notes that the JSCEM's recommendation is consistent with the NSWEC's current practice. OLG will adapt its guidance material for councils that administer their own elections to ensure that the source code of any counting software used in council-run elections is audited at least once every five years.

Recommendation 8

That the Government remove the provision whereby a candidate can pay for a recount in an election in which they were involved.

The Government accepts the JSCEM's recommendation.

The removal of random sampling of ballots (recommendation 1 made by the JSCEM) will remove the incentive for candidates in close elections to "roll the dice" and pay for a recount in the hope that this will deliver a different outcome. However, the Government also acknowledges concerns that candidate-funded recounts may create doubt in the election result and may undermine the Electoral Commissioner's authority to determine whether a recount should be conducted.

The removal of candidate funded recounts will align practice at local government elections with State elections.

Recommendation 9

That the NSW Electoral Commissioner maintain the authority to conduct a recount at the request of any candidates in the election or on their own initiative.

The Government accepts the JSCEM's recommendation.

While the Government has accepted the JSCEM's recommendation to remove candidate-funded recounts, candidates will continue to be able to request the NSWEC to conduct a recount. This may be granted where there is a serious irregularity in the counting process.

The Government considers that in the case of council-run elections, the power to conduct recounts should vest exclusively in the returning officer rather than the election manager. In the case of council-run elections, the "election manager" is the

council's general manager. It would not be appropriate for a council's general manager to have the power to order a recount for their council's election.

Under section 296A of the *Local Government Act 1993*, an employee of the council (including the general manager) cannot be appointed as a returning officer (or substitute returning officer) for a council-run election.

Recommendation 10

That the cap of four digits for a decimal fraction when calculating transfer values involved in preference counting in local government elections be removed.

The Government accepts the JSCEM's recommendation.

With the increased use of computers for conducting election counts, there appears to be little justification in maintaining a cap of four digits for a decimal fraction when calculating transfer values. Further, as the JSCEM recognised in its report, additional decimal places allow for potentially greater accuracy of transfer values. This may assist with improving the accuracy of the preference voting system, and allows the calculation process for local government elections to be aligned with that used for Legislative Council elections.