

**Submission
No 75**

2012 LOCAL GOVERNMENT ELECTIONS

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SUBMISSION TO: The Joint Standing Committee on Electoral Matters

RE: Report on the September 2012 Local Government election

29 April 2013

(a) the costs of the elections;

See C.1 below.

(b) the experience of councils that conducted their own elections;

No comment.

(c) possible legislative changes to improve the efficiency of and participation in Local Government elections;

C.1 Use of full count options

The Electoral Commissioner continues to undertake, at some expense, the data entry of all preferences but is constrained from using that data by legislative provisions about sampling criteria established in the 19th Century. It is not clear if any of this effort has identified where the sampling method has seen a candidate denied their rightful position on a Council.

If there is evidence that such a discrepancy exists, or that the current system has the potential to see this outcome, consideration of the current legislative provisions for the distribution of preferences should be revised.

C.2 Group voting provisions

The requirement of each candidate to form a group equal to the number of councillors for a ward - so as to get an individual group voting box and be in the lucky draw for the

donkey vote position rather than be immediately discarded to the last position on the ballot - and the associated Electoral Funding Disclosure requirements etc are an administrative impediment clearly not understood and effectively made even more punitive by the Electoral Commissioner¹, especially when wearing the Electoral Funding Authority 'hat.'

C.3 Revision of compulsory voting provisions and voter franchise

With the exception of the non-residential roll prepared by the local council's General Manager, the electoral roll is based on the current Federal / State agreed rolls. Little consideration is given to maintaining an electoral registration or contemporary address by either the Electoral Commissioner or voters for local elections. The compulsory nature of elections at 'higher' levels is demanded at the local level by statute, and may not necessarily reflect popular voter desire.

The relatively 'higher' rate of participation in NSW, which retains a compulsory vote at the local government level, is mitigated by a large non-voter turnout and similarly large informal vote. No detail is obtained to determine how many 'uninformed' votes are cast, however, anecdotal evidence at polling booths would indicate that for many, the election day posters on fences and candidate 'How to Vote' forms represent a 'first (and only) contact' point.

A statistically irrelevant number of voters (and officials) are aware of candidate information sheets and the capacity to review them on polling day. Suffice to say, many of these candidate sheets are no more than a name and address of dubious value and are a result of group voting provisions, rather than a genuine desire to run for office (see C.2 above).

¹ Election Funding, Expenditure and Disclosures Further Amendment Bill 2012

Consideration of the removal of compulsory voting provision would necessitate a rethinking of those requirements that would both offer and then facilitate voluntary participation in elections. (see C.6 below).

The peculiarity that is non-residential voters, would need to be accommodated as currently done, however, without the limited window of opportunity (ie the roll should be perpetually open) and would benefit from a condition that such voters could not be, or are refrained from nominating a candidate in a poll unless enrolled for at least three months prior to the poll. This would help to prevent last minute candidates based on spurious claims.

C.4 Declaration of a candidate's non-resident and or party political status

For the sake of clarity and to avoid further review in tribunals and courts², potential candidates should correctly declare their actual residential address. It would also be of public benefit if potential candidates, irrespective of using the option of having the word 'Independent' on the ballot paper, were compelled to advise voters of any current or previous affiliation with a registered political party within the 12 months previous to the election. This may mitigate, if not alleviate, the traditional establishment of stooge (party backed) candidates for the purpose of directly electing such candidates or benefiting from their directing preferences.³

Validation of such provisions would require a greater genuine concern and capacity for detail by electoral officials.

C.5 Donations and Electioneering costs

² Lowe v Feeney [2009] NSWADT 124, Briscoe-Hough v. Filipopoulos [2004] NSWADT 217

³ A review of candidate applications for the Hurstville City Council elections will see a number of 'non-party' (independent) candidates nominated by or having their applications witnessed by sitting party endorsed Councillors and/or party members.

The balance between freedom of speech and the capacity of donations to determine the scale of campaigns that influence electors prior to and then, potentially, elected councillors *post facto*, has seen many statutory provisions imposed on local government elections, heavily influenced by State and Federal Party imperatives rather than political freedom of expression or genuine need.

A revisiting of the provisions needs to be undertaken to reassert the 'local/personal' (rather than party) back into the equation and 'reasonable' in regard to campaign expenses. (See C.6 next).

C.6 Elector Registration, Official Candidate Advice and Postal voting

Any initiative to remove the compulsory aspect of local government elections would retain a degree of reliance on established electoral rolls maintained by State and Federal authorities. Any validly enrolled elector on these rolls at an address within a local government area would be taken as a first step to voting entitlement.

The (return of) outsourcing to local government of an 'opt in' additional voluntary enrolment process for local council elections could see such as a permanent function of councils to establish and maintain a *voluntary register of council electors* and provide the opportunity of collating data for the Commissioners' rolls. (A greater number of people would know where their local council is when compared to the existence, yet alone the location, of their local electoral office.)

Such a register would be open to voters and could be enlivened or cancelled by them at anytime prior to a poll. As noted above, registration for the non-residential roll would also be available at any time with additional candidate related restrictions.

Given the increasing popularity of pre-poll and postal voting and the impact of such voting on candidate resources and the reduced importance of the nominated traditional

polling day, the capacity for aligning voluntary registration with more contemporary voting options (electronic) could be considered.

At the closure of the nomination process, an official voting, candidate advice and profile document, incorporating election details, how to cast a valid vote, who the candidates are and their provided profile details, website and further information contact numbers, could be sent to all registered voters (in hard copy and/or email) and advertised along with details of an official election website provided for the use of both candidates and electors for the direct exchange of policy ideas etc.

Election fliers, individual candidate or party how to votes and posters would be prohibited throughout the election process. Only the officially produced candidate advice and profile document (and approved translations) would be permitted to be distributed.

Even if compulsory voting was retained, the concept of an official voting, candidate advice and profile document and its non-partisan direct distribution to electors prior to and making available on election day in lieu of candidate posters, personnel, fliers and advertising, would eliminate any need for candidates to seek donations to cover such costs.

Not only would this provide a level playing field for candidates, but, would also reduce wasteful repetition of party political fliers, and prevent those that make scurrilous allegations a few days before an election that cannot be genuinely ascertained or properly corrected.

C.7 Electoral Funding Authority

The role of the Authority needs to be suppressed along with need or place for any political donations in local government elections.

It seems incongruous that the Electoral Commissioner is not of a mind to seek prosecution of fraudulent enrolment and candidate nominations, but with his EFA hat on is prepared to waste significant funds and court time chasing nil returns.

C.8 Consultative functions under the Local Government Act

The legislative trend to defer community opinion gathering and *de facto* civic leadership to council staff via large statutory documents read by few - based on submissions received, and understood by fewer - based on levels of accountability – needs to be reviewed. The lack of vision of candidates and elected officials cannot be made up by the generally apathetic response of the vast majority currently forced to participate in elections.

(d) non-residential voting in Local Government elections;

I refer to comments made in paragraph 5 of C.3 above, repeated here for convenience:

“The peculiarity that is non-residential voters, would need to be accommodated as currently done, however, without the limited window of opportunity (ie the roll should be perpetually open) and would benefit from a condition that such voters could not be, or are refrained from nominating a candidate in a poll unless enrolled for at least three months prior to the poll. This would help to prevent last minute candidates based on spurious claims.”

The last point is the main concern with the current provisions. Of the very small number of non residential enrollees for Hurstville City Council, the majority (all but two) were for the purpose of nominating non-residential candidates, even after the more suspect ones were ‘voluntarily’ self removed.⁴

⁴ <http://www.theleader.com.au/story/268222/poster-up-then-down/>

A serious concern is that willful deception lead to this situation. The article, reprinted in full below (with one notation), also reveals another concern (bolded)

HURSTVILLE Labor councillor Vince Badalati has an explanation for the election posters of himself and Shirley Huang.

No, Ms Huang is not running in the local government elections on September 8. But she was going to until forced out by a technicality at more or less the last minute.

*Cr Badalati said Ms Huang was number three on the Labor ticket for Hurstville ward **but because of some confusion over the electoral forms issued by the council — regarding who could nominate a candidate — she could have been challenged if she had won.***

"While the council said her nomination was valid, she most likely would have lost the challenge in which case there would have been a by-election," Cr Badalati said.

"She did not want to cause the council that expense." Mr Badalati said the posters were printed before Ms Huang pulled out but he would make sure they were removed as soon as possible.

*Sam Almaliki, (NB: an 'independent' candidate in another ward at the previous election whilst a member of the Liberal Party) *initially number two on Mr Badalati's ticket, withdrew last week for the same reason as Ms Huang.**

"I was advised that I could still contest the election, but would most likely be challenged by opponents," Mr Almaliki said.

"With the possibility of a by-election, I felt the right thing to do was to save ratepayers the cost and inconvenience of this prospect. With that consideration alone, I came to the firm view that it was best that I withdraw my nomination. It is unfortunate, but it is the right thing to do."

It would appear that both Council and Commission staff preparing the non-residential roll need and accepting nominations need to have access to documentation and a realistic chance of the Electoral Commissioner prosecuting candidates making false declarations to improve this process.

The situation in Hurstville is not unique and sees these provisions used to 'fly in' party endorsed candidates via bogus leases, nominations of directors by convenience etc with the only 'retribution' being citizen initiated challenges in the Administrative Decisions Tribunal that may be potentially embarrassing, but hardly punitive.

(e) the impact of requirements under the *Election Funding, Expenditure and Disclosures Act 1981* on participation by candidates in Local Government elections and possible legislative changes to remove any barriers to participation;

I have already expressed my contempt for the ineptitude of the Electoral Commissioner, EFA and practices associated with it. I have written to the Premier about the contradictions in legislative provisions regarding the need to appoint agents, establish an election account etc for self funded candidates expending less than the \$1000 threshold and not receiving donations, and was referred to this Committee.

I think the Premier's own words from Parliament sum it up, as does the implicit stupidity of the amendments he was speaking to that actually do little to enhance the stated goals in the last paragraph quoted below⁵:

*"The cognate bill, the Election Funding, Expenditure and Disclosures Further Amendment Bill 2012, **has also been proposed by the Electoral Commissioner.** It makes minor amendments to the Election Funding, Expenditure and Disclosures Act 1981 **to ensure that the Electoral Funding Authority is able to enforce certain offences that are prescribed by regulation.***

The State's disclosure regime is based on the principle that all parties, groups and candidates, and elected members are required to lodge an annual declaration with the authority that declares political donations and electoral expenditure. The obligation to lodge a declaration is intended to apply also where the declaration contains no specific disclosures of donations or expenditure; in

⁵ Election Funding, Expenditure and Disclosures Further Amendment Bill 2012 - Minister's 2R Speech: **Tue 23 Oct 2012**

other words, **a nil return**. This basic obligation ensures that the public has access to reliable information about the donation activity of all participants in the electoral process and assists the authority with its audits and investigative functions.

The authorities raised concerns that the offence of failing to lodge a declaration may not be enforceable in relation to nil declarations; that is, declarations that do not contain any specific disclosure of donations or expenditure. The bill and its measure will put beyond doubt that all parties, groups and candidates, and elected members, regardless of whether they have received donations or incurred electoral expenditure, will be prosecuted by the authority if they fail to comply with their basic disclosure obligations under the Act. The bill will also make clear that a party that fails to comply with its obligations under section 41 of the Act by not appointing a party agent also commits an offence against that section. **These amendments have been introduced at the request of the electoral commissioner to assist him and the Electoral Funding Authority with the enforcement of what has become a complex and unwieldy piece of legislation.**

That is why the Government looks forward to the views of the Joint Standing Committee on Electoral Matters on how the Act might be further improved when it reports on its reviews of the State's electoral legislation, both the Parliamentary Electorates and Elections Act and the Electoral (Amendment) (Political Funding) Act.

These cognate bills, on the recommendation of the 2004 independent redistribution commissioner and the Electoral Commissioner, **strengthen the governance, responsiveness and integrity of our electoral system. All members of this House have a responsibility to maintain an electoral system that encourages and garners public support and confidence.**

The heinous crime of not lodging a nil return is placed above the fraudulent lodging of enrolment and candidate forms in breach of the Oaths Act? The compliance costs and administrative impediment of potential candidates in “**what has become a complex and unwieldy piece of legislation**” seems a strange sense of providing confidence in electoral procedures from the Electoral Commissioner who has said he takes his direction from the Parliament? Perhaps the Electoral Commissioner may be more interventionist in recommending reform of 19th Century counting practices or being empowered to prosecute false enrolment and candidate disclosures?

Why not recommend no returns, appointing agents or other paperwork for candidates that do not collect donations and remain under the established spending threshold of \$1000.00?

I attended two Electoral Commission briefings prior to the Local Government Elections. One was in metropolitan Sydney, another in western NSW. At both forums, these EFA administrative requirements were a direct impediment to local independent candidates. The city participants sat in muted / stunned silence until the end of the protracted presentation, however, their country counterparts had the sense to leave the briefing immediately in disgust.

As noted above, the running of Council elections would be better deferred to local councils with voluntary participation of interested voters. Donations should be banned and campaigning undertaken as part of the electoral process information and voting procedures. If compulsory voting were retained then the establishment of a campaign threshold based on the number of electors could be set and then declarations only be required to be lodged if the threshold is breached.

(f) any other related matter.

The growth in the party political nature of elections has now rendered local representation effectively neutered. The position of many elected Councillors as ministerial advisors, or electoral office staff or paid party officials means that another agenda other than the local voters is at the fore.

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