

**Submission
No 24**

INQUIRY INTO 2008 LOCAL GOVERNMENT ELECTIONS

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Joint Standing Committee on Electoral Matters
Parliament House
Sydney.

Local Government ELECTION[s] 2008

Particular reference: Albury City [Undivided] Council Election

PLEASE NOTE: This is a resubmission. Transcription and calculation errors corrected. Table of data added. Apologies for inconvenience.

Doubtless the 2008 election was conducted in a fair and scrupulous manner. The Polling Booth appeared to be well laid out and adequately staffed. Queuing [bank-style] is now established and with 'flow through' voter movement, delay is minimised. It can be allowed that some administrative errors are inevitable. Nonetheless the observed process was flawed and criticism is justified. The election was disappointing in a number of ways.

Local Politician Politics

A major flaw was the creation and use of candidate groups [minimum 5] and thus the gaining of the option of an 'above the line' [ATL] voting square on the ballot paper. If that option were to be removed, the situation would be quite different. Albury, for example, may conceivably have had a ballot paper containing about 25 contenders for the 9 positions, instead of 53 'candidates'. The ATL provision was not invoked by compulsion. It could have been avoided [and was avoided in some other Councils]. It was a political choice by our Council politicians. Not one of the members decided to stand as an individual. The result was a large ballot paper with names in 11 columns.

It seems clear that the ATL provision will be used if it is available. The 6 Albury Councillors from 2004 who set up groups for 2008 were all successful in their designs. How likely is it that the present 9 Councillors could agree to forgo the option in 2012? Removal of ATL [group] voting would inevitably lead to a simpler ballot paper and a less onerous task for the elector. From the viewpoint of the voter, especially the unprepared voter, reversion to a simple list of candidates would soothe their discomfort.

The political [lawmaker] model for the Council poll would be derived from that of the Senate and, particularly, the NSW Legislative Council. There are no seats for losers and the 'major' parties know what gets them the highest number of seats. Politics is about gaining the political advantage.

Given the role of our Councillors in the creation of our ballot paper it is hard to take their expressed concerns really seriously. All of our Councillors owe their positions to being in a group. [It is not possible to say what would have happened if the ballot papers did not contain groups but I think the indications are strong that at least one of the current assembly would not be there.] Methinks the Council doth protest too

much!

The ballot [and thus the paper] is a political matter - for local and state politicians.

Frivolous Candidature

Sometimes it is suggested the candidate deposit should be larger. That would be a disadvantage to the less wealthy, and thus less democratic. For the same reason I do not suggest that the requirement [for deposit return] of 4% minimum first preferences apply to group members.

In the 2008 Albury election, only one candidate will have lost the deposit, despite having gained 271 first preference votes and remaining in the count until eliminated with 406 votes at Count 43 [there were 48 counts in all]. What happened seems intrinsically unfair but the solution escapes me - apart from banning the grouping of candidates with an option to vote for the group. I have advocated the less complex ballot earlier in this submission!

Some Voters Count!

The mathematics is clear [see Table 1, page 8]. I have published comprehensive numerical data [simple descriptive statistics; not inferential analysis] on the Albury 2008 election. It can easily be shown that 81.6% of Albury electors did vote. That number included 7.9% who voted informally. [An unspecified number of those were intentionally informal.]

A further 14.1% of the total voters had their votes become exhausted and thus fail to influence the success of a candidate. It would be reckless to say this increased ratio was simply due to ATL voting [which nonetheless would account for part of the total exhausted]. The ballot paper, with its 10 groups of 5+ and one BTL individual, discouraged effective voting and discouraged even real voter participation. The election was 'owned' by 79.2% of entitled voters. Note the increase in exhausted voters and non-voters. The result is the considerably reduced proportion of people whose votes made a difference in the election. The data shows voter resistance to the unwieldy and unreasonable task imposed on them by the candidates under the legislation.

'Blind' Voting

One can only speculate the impact of 3 feet of ballot paper with 53 names thrust upon an unprepared voter. Anecdotal evidence is that people got a rude shock - after all, they were only attending to vote for local council, not for the Senate. It is simply idle nonsense to say that a voter could then ask to see the 53 Candidate Information Statements [CIS], read them, and then vote in an informed way. Of course they COULD! I would be surprised indeed if many people did.

Were the CIS actually available at each and every polling place?

I am aware of the voter 'education' program run by the NSW Electoral Commission

[EC]. I had no complaint about the advertisements or about the material delivered by the EC. I assert that it was ineffective but have no better method to offer in relation to proportional representation by the optional preferential voting system, with candidate grouping for ATL voting.

The media contributed to confusion. Various statements were made about the method of voting. It is a pity all journalists and commentators are not required to adhere to the mandatory instructions and to indicate clearly when they are advancing an opinion of their own.

Candidate Information

The Candidate Information Statements [CIS] had a prominent role in the official procedures. They were available on the Internet and at the office and in the polling places [so said the EC]. It is wrong [unfair and undemocratic] to require people to use the internet and it was unreasonable to expect them to seek out and read 53 pages on the day.

The published CIS in Albury were varied in content and were only accessible by downloading the PDF. Some were completely useless, containing only a [compulsory] solemn declaration of the name and address of the candidate. In point of fact 12 of the CIS may as well have been blank; the remaining 41 ranged in value from a serious 'CV' to a skimpy statement. [I have a detailed analysis of the CIS bundle, if required.]

Furthermore, the more readily available data [the 'candidate data' connected to the ballot paper model] published by the Electoral Commission allowed the candidate to suppress useful information such as their locality. In these cases it was an essential to download the PDF, or to access in the other ways, none of which are realistic for the less mobile or disadvantaged members of the community.

Oh yes, **candidates** did their best to get their own information out to residents. Some spent considerable sums. That in turn gave a distinct advantage to those with greater resources.

Election Officials

I am unable to comment on the totality of the workforce. Naturally enough, my contact was limited. It is clear there were problems with the training materials provided by the Electoral Commission. It was disappointing that the old form of the mandatory question, 'Have you voted before..', was retained by the EC. The Local Government Regulation [2005] should have been followed. It is not a fatal flaw but the inevitable effect of the old form of the question is to create uncertainty and confusion just when voters are vulnerable and can see before their very eyes that they are to be faced by an intimidating test ['ballot paper']. The confusion, which arises when a voter answers 'yes', and then 'no', also creates unnecessary challenge for the issuing officer. Evidently attention to detail was lacking at the Electoral Commission.

It seems that problems existed at some polling places with smaller numbers of

voters. They were very late indeed with their results. I have heard that at least one issuing officer was not initialling the ballot papers. Perhaps time was taken up with [unnecessarily and improperly] initialling after the ballot box was opened. It is also possible the count and determination of informality was a difficulty. [I will return to the informality issue.] Another potential cause of lateness is the misguided old practice of 'garbage hunting'. [In another context I have known officials who invested considerable time and resources in searching through rubbish to find 'lost' ballot papers.]

I noted that the Electoral Commission was seeking 'feedback' via the Internet. I was aware of this because I am alert to materials in polling places. I saw an item when I went to vote, and I asked for a copy. The leaflets were not being given out. That may have been due to faulty instructions or lacklustre attention to instructions. Whatever the reason, the Electoral Commission 'survey' was flawed by a sample skewed.

After 6 pm

The scrutiny process ought to be above question. [NOTE: I do not suggest that officials have conspired to 'rig' results. I would not believe that.]

However, there seemed to be confusion as to the entitlement for scrutineers to be present and observe. Were there any scrutineers? Certainly there were none at Thurgoona. The scrutineer role is a vital component to ensuring the electoral process is above reproach and can withstand any examination.

The scrutineer matter may well be related to the Electoral Commission's instructions issued to the Returning Officer and to the Polling Place Manager, neither of which I have seen in 2008. Were the instructions correct and clear? There is room for doubt.

Scrutiny and Formality

Something went wrong in relation to formality verdicts in Albury. By comparing the Saturday tally with the final count of Albury polling place first preferences, it is evident were 263 errors made on Saturday, including 8 ballot papers 'lost' from the count but later 'found' and added. The formality errors quite extraordinarily included 81 ATL ballot papers. The overall result of 'check counting' was to increase the number of formal ballot papers by 125. Were these corrections made in the Albury office? Were scrutineers able to observe the process of ballot paper scrutiny in general, both for the tally and later check counting?

There arises the question of the quality of the formality determinations. A normal procedure would be for the Returning Officer to personally check each of the ballot papers in question and give the verdict, and this would happen in the view of scrutineers. Scrutineers would be available to challenge interpretations and anything that appeared irregular. What happened? Were scrutineers present?

Costs and Alternatives

IF the media is to be believed, the major concern of Councillors is the heavy cost involved in the services provided by the Electoral Commission. The figures do look

disturbing.

Since subdivision rolls were abolished, A-Z rolls implemented and without wards or any form of precinct voting there is little [if anything] to recommend the use of polling booths above a postal system.

I have voter experience of the general 'voting by post' system under which no polling places are operated and ballot papers are mailed out to all at their address enrolled. If that leads to a much lower overall cost per voter, it is clearly to be preferred. Perhaps the fully postal system may also reduce the number of non-voters - I have no data on that. Victoria has extensive experience in this procedure; similar results would surely be expected in NSW.

One factor in determining a preferred method of taking the poll would be the prevention of plural voting or of personation. I have no data. However, I know that information to produce the 'marked roll' is collected by scanning the rolls. It is another side of determining apparent non-voters. In my experience there were always some instances of apparent plural voting. I doubt that the result of any election in this country has been under question because of plural voting, nor because of personation. The NSW Electoral Commission [SEO] some years ago was investigating precinct voting and electronic voting. I do not have current information on these options. Certainly it is feasible in the era of wireless broadband to conduct elections in Albury by the use of paperless technology. It would not be so easy in other places.

The Roll

The quality of the work on the electoral roll by the Australian Electoral Commission [AEC] is fundamental to all elections. This is true whatever method of voting is used. I have noticed significant decline in the quality of some AEC work over the last 15 years or so. Some officer errors are to be expected but nothing wholesale. It seems to me that the AEC takes a self-exculpatory stance and explains away, deflects or brushes off critical comment.

According to the media an identified large group of people in Albury were not correctly included by the AEC in the certified roll. They were lamentably 'not on the roll'. I also have no doubt that other people presented to vote and were allowed 'Section' votes. It would be a rare event if many of those Section votes were actually admitted to the scrutiny [data requested but not obtained]. The Electoral Commission [EC] is restrictive with information and the EC is not easily accessible. [Some (or many) Section votes arise from people failing to notify change or address. Their deletion from the roll can only be remedied in relation to the next election.]

I also deplore any suggestion that the voter is required to check or ensure that their enrolment has been correctly entered. Every Australian citizen age 18 and over has the privilege and right to be on the electoral roll and to cast an effective vote. There is also the matter of our duty ['compulsory enrolment and voting']. According to the Commonwealth Electoral Act [Section 101], we have to ensure we have claimed to be enrolled and that we have notified any change in enrolment details. We may be given opportunity to check our enrolment and we are able to do so, but our obligation

is clear and specific, as is the obligation of the Divisional Returning Officer.

I had personal experience of administrative failure in an elections office when I was residing in Kiewa, Victoria, with no mail delivery and supposedly receiving ballot papers by post. The [AEC] Returning Officer had arbitrarily decided my delivery address by looking at a map and addressed the mail to a non-existent address, instead of c/- PO. When I telephoned I was told that time was too short but I could travel over to Chiltern and collect replacement ballot papers. It was disappointing and unnecessary but it happened.

It is not possible for the roll used at an election to be 100% accurate. Take for example the matter of persons deceased after the 'close of the roll'. Efforts may be made to maintain the security of the election by taking account of deaths. Even if such is attempted there are limits to success in that task. What can be addressed is administrative error.

The roll of electors needs to be meticulously maintained, including by attention to all boundary changes and careful entry of claim details. Perhaps consideration could again be given to removing the roll-keeping task from the AEC.

I expect that, once the electoral roll is reliable the certified roll used for the election will follow, being produced by computer from the base roll of electors.

[In the discussion of rolls I have taken no account of the special roll related to property owners. I do not know how many additional names there were in Albury.]

Rolls and Voters

Failure by human error [by the polling official] to correctly mark a name on a roll is likely to happen. I do not have the statistics. The occurrences will be included in apparent non-voters and apparent plural voters. The rate of incidence must be acceptably small. I have not heard of an election being called into question on this account.

The use of electronic roll scanning means the process of determining non-voters and plural voters is doubtless reliable. I do not have statistics but the error margin would be small, probably lower than applied in the day of transfer by hand to a master voter roll. I cannot imagine any improvement whilst printed rolls continue to be used.

Materials Supply

It is quite extraordinary to contemplate that there may have been shortages of ballot papers or any polling place materials for a Local Government election. 'Running out' of ballot papers would be quite unacceptable except in the most extraordinary, extreme and totally unpredictable circumstances.

Costs

Claims about comparative costs have been prominent in the discussion of the election process. I find this a difficult area to obtain data to analyse.

In relation to the 2004 election I have sighted an invoice from SEO [=EC] for \$33,699.27 plus GST. In addition Albury City Council detailed direct costs of \$49,234. There were further 'hidden costs' to the electoral process. A modest value of \$18,750 is assigned in relation to those contributions 'in kind'. That gives a total of approximately \$101,683 [+GST]. The claimed total voter attendance of 23,949, yields about \$4.25 [plus GST] per voter. The costs per person enrolled was \$3.56 [+GST] [However, there were surely more voters; no analysis of 'Declaration' voters is included.]

In 2008, the 'Final Expenses for Albury City Council; Local Government Election' has a total of \$196,300 [plus GST]. The costs per voter attending was \$7.50 [+GST]. The cost per elector enrolled was \$6.11 [plus GST]. The calculation takes no account of any cost implication in 'non-voters' nor of rejected 'Declaration' votes. The Electoral Commissioner [EC] apparently said [Border Mail report 26/11/08] the cost was \$1.75 per **ratepayer per year** [emphasis added]. Puzzling claim to use 'ratepayer' numbers in calculations and an unlikely result for a 'per ratepayer' calculation. Looks a bit careless to me - or did the newspaper get it wrong? If we accept that there are about 21,300 rateable properties in Albury, that works out to over \$9 [plus GST] per property for the services of the EC in 2008.

It must surely be possible to get an objective measure of costs.

A further unclear component relates to 'non-voters'. In 2008 it is claimed there were 5914 enrolled who failed to record a vote. I was unable to obtain the number of rejected votes [made by 'Section Voters'], rejected unopened. That component possibly includes some 'non-voters'.

Probably some 'failure to vote' explanations were received by EC [that is my guess]. If the unjustified total was [say] 5,000, that would imply costs in relation to any action for administrative effort and at least ordinary mail postage. The postage alone would cost \$2,750. I wonder if letters were sent [or infringement notices implemented] and with what result. What action was taken in relation to 'non-voters'? The invoices simply are silent on the matter.

The stated number of non-voters in 2004 was 4,627 [apparently a lesser proportion of total enrolments than that which applied in 2008]. I have not located any costing in relation to actions for that 2004 population.

Comparisons

It would be instructive to compare similar elections across the state. What happened elsewhere when voters were faced with a vast ballot paper with a large number of candidates and ATL group squares. The EC should surely be able to produce useful figures – if anyone thinks it really matters.

One-sided Argument!

I wrote to the Electoral Commission [EC] on 25 September 2008. [No reply.] I repeated my request for information on 3 April 2009. Finally, in ultimate desperation, I

again wrote to the Commission using Registered Mail [500043670012] on 12 May 2009. If some remnant of courtesy and public service remains at the Commission such as to produce a useful result I propose to send a brief supplementary document as an attachment to this submission. [My letter of request to the EC is attached.]

I anticipate explanatory glosses from the EC to various points I make. I should be happy to rebut any such 'explanations' if they discount or negate my submission in any respect.

Yours sincerely



Allen Hampton ~~12/05/2009~~ 13/05/09

Albury Election 08 data:

<http://spreadsheets.google.com/pub?key=p3leSyeE1fekDlci7aq1VNg&output=html>
<http://spreadsheets.google.com/pub?key=p3leSyeE1fekDlci7aq1VNg&output=html>

	2008	%	2004	%	
Enrolment	32102		28576		
Ordinary votes	22083	84.3			
Declaration votes	4105	15.7			
Total formal	24130	92.1	21707	90.6	% of voters
informal	2058	7.9	2242	9.4	
Total voters	26188	81.6	23949	83.8	% of enrolment
Non-voters	5914	18.4	4627	16.2	% of enrolment
Exhausted	3396	14.1	1186	5.5	% of formal
Rejected declaration	?		?		
Effective votes	20734	79.2	20521	85.7	
	\$		\$		
Invoice EC [+GST]	196300		33699		
Direct costs			49234		
Hidden costs [est]			18750		
Total real costs	196300		101683		
Per voter	7.50		4.25		
Per enrolled	6.11		3.56		
Non-voter costs	?		?		

Table 1. Election data for Albury, 2008 and 2004 [incomplete]

ATTACHMENT

Copy of Registered Letter of 12 May 2009

10 Denny Court

NSW Electoral Commission
Level 25, 201 Kent St
GPO Box 832
Sydney 2001

Local Government election: Albury, 2008

I refer to the election in Albury and again repeat a request for information relating to the taking of the poll and the official results of the poll. This is the third letter. Your lack of courtesy and your inaccessibility is puzzling.

My initial attempt was to call at the office in Albury at 11.58 am on Thursday, 25 September, 2008. The sole officer advised me that the materials in question were packaged or gone. It was obvious that the office was being packed up, so I wrote.

I gathered that the ATL ballot papers were retained in Albury until 25 September but that the BTL papers were sent to the LGCC [I presume sent progressively].

1. Informality and ATL/BTL assignment

a. Were all ballot papers of each vote type [ordinary, postal, etc] judged as 'informal' seen by the Returning Officer personally for his determination?

b. Were all ballot papers of each vote type categorised as having only BTL formality counted through the LGCC?

c. Cases for decision – were any ballot papers having markings both ATL and BTL retained in Albury or were all sent to the LGCC for scrutiny?

2. Scrutineers

It has come to my attention that at least one polling place had no scrutineers and at least one candidate was confused about their entitlement to appoint scrutineers. I realise that you would not be easily able to give exact scrutineer numbers, if any. [The packets of scrutineers' forms handed in will give broad indication.] What scrutineers were present during the counting

a. in the polling places

b. in the office for Sunday 'check' count

c. in the office for the acceptance and scrutiny of declaration votes.

3. Check Count of [Ordinary] First Preferences

a. Why did not the [corrected] check count first preferences appear on the website?

b. The polling place figures which have been made available are those from Saturday night. [They contain errors and omissions.] Please supply the [corrected] official return of first preferences [ordinary votes] for each polling place. [If more convenient, email will be appropriate, eg XLS or XML file. The E. address is].

4. Rejected votes.

How many 'declaration' votes [from polling places, from pre-polling and from postal returns] were rejected unopened in Albury?

5. Non-Voters

According to the published statistics there were 5914 non-voters in Albury in 2008 [18% of the claimed enrolment]. What non-voters action was taken and with what [aggregate] results?

Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink that reads "Allen Hampton". The signature is written in a cursive style and is contained within a light grey rectangular box.

Allen Hampton