

**Submission
No 51**

INQUIRY INTO 2008 LOCAL GOVERNMENT ELECTIONS

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The Greens submission on the 2008 Local Government Election



Joint Standing Committee on Electoral Matters
Parliament House
Macquarie St
Sydney NSW 2000

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Ms Cherie Burton MP, Chairperson.

The Greens welcome the opportunity to make this submission to the committee on the conduct of the 2008 local government elections in NSW.

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Voting system

Undemocratic two-councillor per ward system

The Electoral Act specifies that voting for popularly elected Mayors and in council wards with one or two councillors is to be by “optional preferential voting”. All other wards or at-large councils use a proportional voting system. The use of optional-preferential voting for two-councillor wards is highly undemocratic as the same ballot papers are used to elect both councillors. This is in direct contravention of the principle of “one vote one value”.

For example, a candidate group with 50.1% of the vote will typically elect both councillors, while a competing group with 49.9% will elect none. This often has the effect of entrenching power for a controlling group and leads to poor decision making and community disillusionment with local government. Wollongong Council is a notorious example of this anti-democratic voting system.

The NSW Government has recognised the deficiencies of this system for two-councillor wards and introduced legislation to replace it with the proportional system but the bill lapsed prior to the 2007 NSW election.

In general, a more proportional representation system is better suited to local government and single or two councillor wards have election quota thresholds too large to allow diversity of representation.

Recommendation: The NSW Government should legislate to replace “optional preferential” voting with proportional voting for two councillor wards.

Recommendation: The NSW Government should legislate to require a minimum of three councillors per ward for councils with wards.

Popularly elected mayors

The system of separate elections for councils with a popularly elected mayor distorts the proportionality of representation as the Mayor's position is in addition to the councillors elected by proportional voting. A political party or independent group can end up with majority control of a council with voter support substantially less than 50%.

The obvious example of this is the City of Sydney, particularly at the first election with its current boundaries. The Clover Moore group secured around 40% of the popular vote and elected 4 councillors among the total 9, but then went on to win the Mayoral election. The effect was for that group to have (by exercise of the Mayor's additional casting vote) effective control of decision making.

The idea of popularly elected mayors has good support among the community generally, but the cost to fairness and the risk of entrenchment of power is unacceptable. The Greens have advocated for the mayoral election to be conducted from among only those candidates elected during the election of ordinary councillors, with the automatic exclusion of mayoral candidates who have not been successfully elected as councillors.

Recommendation: The election of popularly elected mayors be changed so that the mayoral ballot elects the mayor from among those councillors elected in the normal manner.

Above the line voting for councils with wards

The candidate grouping and group voting square mechanism used in NSW for council elections is misleading, cumbersome and unnecessary for elections where only a small number of councillors are to be elected.

This system is the evolutionary result of the system introduced to reduce informal voting in the Australian Senate, which provided a ticket voting box for each group on the ballot paper which registered one (or more) preference ticket. This system later spread to NSW elections, again to address the high incidence of informal voting in NSW Legislative Council elections. NSW council elections inherited the system despite a high informal voting rate not being a significant factor.

Following the 1999 NSW election and the infamous “table cloth” LC ballot paper and the misleading use of party group names and preference harvesting strategies, changes advocated by the Greens were introduced to abolish registered tickets. The new system allowed voters to mark preferences above the line if they wished, which also had the effect of requiring parties to nominate sufficient candidates to ensure that a single “1” was a formal vote. This is the system that applied to most council ballots in the 2004 and 2008 elections.

There is substantial evidence that voters do not understand the changes or the differences between the NSW system and the ticket voting system that still applies for the Senate. The option of voting either above or below the line on a small ballot paper is confusing to many voters. This shows up as papers marked both above and below the line, and particularly in a very low rate of above the line preference allocation.

In the absence of a significant problem with informal voting prior to the introduction of ticket voting there is no advantage in persisting with group voting squares and above the line voting for council elections for councils with wards. The advantages in returning to only below the line voting are many – a simpler ballot paper, no need for large candidate group nominations, more focus on candidates as individuals and less on party allegiances and an overall increase in voter empowerment.

The change would have little impact on the use of ballot paper data entry and computerised counting which relies for its supposed efficiency on the low rate of use of above the line preferencing – however this submission argues later that the computerised vote counting system is unnecessary and too expensive for most local government elections.

The Greens believe there is a strong case for below-the-line only voting in councils with wards. It may well be the case that group voting squares and above the line voting could be abandoned for all council elections including those without wards, and this could be further considered in the light of experience following its abandonment in ward elections.

Recommendation: Group Voting Squares and above the line voting be abolished for council elections with wards where more than one candidate is to be elected.

Ward changes, councillor numbers

It seems clear that many people find ward systems confusing. Arbitrary redrawing of ward boundaries compounds the problem, especially when polling places which voters regularly use in state or federal elections are not available for voting in their ward. For example, in Marrickville changes were made prior to the 2004 elections to move from three wards of four councillors to four wards of three which saw boundaries created which had more to do with politics than community of interest. There is a need to re-assure people about the

transparency of the system, as well as stopping last minute attempts to gerrymander ward boundaries by incumbent councillors.

Recommendation: Referendums must be held before any changes to ward structures and boundaries (other than those required by population changes) be allowed.

The non-residential roll

The dual vote allowed to property owners privileges the already wealthy, and sees many councillors elected who have nothing but their own narrow business interests at stake. For example, Marrickville currently has four non-resident Councillors, including the Mayor, who is a nominee of a business, and three non-residents shop owners. Business owners and other non-resident landlords already have sufficient capacity to influence local affairs without distorting the council voting system by granting them additional votes.

Recommendation: That only residents of a local government area be eligible to vote and stand as candidates in the local government area where they reside.

Public funding

State funding of local government elections

Considering public funding is provided for political activities in state and federal elections, it is logical to extend this provision to local council elections. Public funding for state and federal elections is widely accepted in Australia. Although there periodically is controversy about some specific payments there is no prominent voice for the removal of this form of funding from the current political process. There would be wide support for public funding of local council elections, bringing local council elections into line with state and federal elections. Public funding for electoral expenses would help reduce the influence exerted by big donors, and it is a necessary prerequisite for cleaning up the political funding process. Public funding also enhances democracy as it assists those who are not wealthy to engage in elections.

The extra compliance expenses of conducting council elections such as audit costs are becoming a disincentive to candidates, particularly community candidates and independents.

The Electoral Funding and Disclosure laws require candidates to lodge disclosures of their electoral expenses in sufficient detail to allow for the extension of the funding system used for NSW elections (a refund of campaign expenditure up to a limit determined by primary votes gained) to council elections, perhaps at a lower entitlement rate per vote to reflect the lower cost of campaigning at a council level. Local government election funding should be paid by the NSW government.

Recommendation: That the candidate funding system used for NSW parliamentary elections be extended to NSW local council elections, using a 4% vote threshold but potentially at a lower per-vote rate.

Cost to councils of conducting elections

The use of the NSW Electoral Commission for the conduct of council elections has generally resulted in more professionally and trustworthy local elections but at a substantial financial cost to councils. A significant part of the extra expense has been due to the mandatory use of the electronic counting system and the counting centre at Riverwood. This submission argues later for conducting the count for ward elections and the simpler at-large council elections at local returning offices, which would yield substantial savings in the conduct of the elections.

Nevertheless, the Greens support the funding of elections by the Electoral Commission and the NSW Government, not the individual councils as this is a vital part of the NSW political system and not a particularly local activity. The current arrangements lead to a lack of transparency in the amounts charged to councils without any opportunity for alternative costings to be determined.

Recommendation: That the cost of NSW Local Government elections be funded by the NSW Government as part of the NSW Electoral Commission's budget.

Funding and Expenditure Disclosure

While The Greens are generally supportive of the changes made in 2008 to the disclosure and donations legislation, there are several areas which would benefit from further modest reform. The Greens believe that further major reform of political funding is necessary to restore confidence in the political system, particularly in relation to the perception of corruption associated with political donations, but recognise that this is beyond the terms of reference for this enquiry.

Auditing

Auditing of returns is a valuable feature of the 2008 reforms but has proved to have had some practical difficulties in implementation. In particular access to and the fees charged by Registered Company Auditors and the various thresholds for requiring an audit.

The Greens believe that accredited accountants (eg those authorised under the Oaths Act) should be able to audit disclosure returns, perhaps with an upper limit on overall donations or expenditure.

The monetary thresholds of expenditure and income for a campaign to attract a requirement of auditing are too low (especially combined with the above limit on auditors). For political parties the cost of auditing hundreds of ward campaigns that are fairly small is cumulatively high with no obvious benefit to the public. More expensive individual campaigns should still require an audit.

Recommendation: The audit threshold should be raised from \$2,500 to \$5,000.

Recommendation: Accredited accountants be included as permitted auditors for returns with amounts less than \$20,000.

Disclosure

There appear to be ongoing problems with disclosure of donations by both donors and political parties and candidates. Although there was extensive briefing on the requirements of the legislation prior to the 2008 election the standard of some disclosures is very poor. In particular the Liberal Party of NSW has ignored the requirement to itemise campaign donations and expenditure for each candidate or candidate group, and defeating the purpose of the disclosure to increase transparency in political funding.

The operation of local campaign accounts and the reporting of party funding as a campaign donation is not onerous and allows for much better transparency in relation to campaign finance.

Recommendation: The disclosure of local campaign donations and expenses by political parties of their candidates should be prohibited. All such disclosures should be made at the candidate or candidate group level, with only genuine state-wide party donations and expenses such as metropolitan newspaper or television advertising disclosed in the party financial declaration to the Election Funding Authority.

Legislative issues

The inadequacy of many disclosure returns has exposed weaknesses in the drafting of the Election Funding and Disclosures Act in relation to the required detail and the responsibility for making incomplete or other non-fraudulent but inadequate disclosures. In particular failures to provide the detail required by part 2 of the Act is not covered in the penalties section which refers only to failures or dishonesty in relation to lodgement as required by parts 3 and 4 of the Act.

Recommendation: That the disclosure provisions of the Election Funding and Disclosures Act be reviewed in light of the experience with the 2008 local government election disclosures.

Recommendation: That the Electoral Commission should be funded to permit more compliance work in relation to funding disclosures to be carried out.

Registration of parties

Every year parties must renew their registration which includes substantiating 750 members advising of any former members and any member's change of address and submitting a completed declaration from new members. This is a significant amount of work for each party and for the NSW Electoral Commission.

If parties that had been registered for 10 years (and therefore likely to continue) were then only required to update their registration every second year preceding the fixed date local government and state elections it would significantly reduce that workload without weakening the integrity of the electoral system. The continuation of registration occurs at the end of June each year. If registration were required in June 2010 prior to the March 2011 state election and in June 2012 prior to the local government election in September of that year this would significantly assist the Electoral Commission and political parties.

Recommendation: That parties that have been registered for 10 years only be required to fulfil continuation of registration requirements by 30 June of every second year beginning in 2010 so that continued registration was confirmed prior to each state and local government general elections.

Conduct of the Election

Improved Nomination Forms

At state and federal elections, candidates' signatures on nomination forms are not required to be witnessed by a Justice of the Peace and there have been no negative repercussions arising from this. Local government elections have the requirement that the candidates signature must be witnessed by a JP. It is an unnecessary and antiquated inconvenience, particularly if there is a lengthy ticket of candidates forming a group. It is not that easy finding a JP if time is running short, particularly in some localities. It is a bureaucratic barrier to participating in an election.

The "Request to form a Group" form LG 202 also needs improvement. The form had a section which read "Group headed by candidate" followed by a long horizontal box. Many candidates were confused about whether the candidate's name or the name of the group was to be written in the box. The issue was compounded by having a rarely used section on the form for a composite name group comprised of two or more parties. This section contained the only obvious place to write the name of the group but it was not to be completed by a group endorsed by a single party. Returning officers had difficulty with this form too.

Recommendation: That the requirement that a candidate's signature on a local government election nomination form be witnessed by a Justice of the Peace be discontinued.

Recommendation: That the "Request to form a Group" form be reviewed with a clear space provided on the form to write the name of the group. The composite name request section should be on a separate form or clearly specify that it is not to be used by candidates running on a single party ticket.

Access

It seems that many local government areas often had only one polling booth that was accessible to people with disabilities on elections day. Additionally quite a number of people noted that returning offices were also difficult to access, with one returning office being located on a first floor with no lift access. This matter caused significant inconvenience to some voters, as well as embarrassment.

Many of those with mobility access issues do not have their own transport, and thus driving to an accessible polling booth is an expensive option. While there are postal voting options, many people with access issues prefer to exercise their right to vote in the same way as most voters do.

Recommendation: That more priority be given to disability access for polling places.

Joint electorate how to votes and shared polling booths

In the 2008 local government election the NSW Electoral Commission refused to register joint electorate how to vote cards (two or more electorates/wards on the one card) to be distributed at polling booths where voting was being conducted for two or more wards.

This resulted in voters at booths shared by different wards and councils receiving how to vote cards not relevant to their ward or council, or none at all because there is not the time or opportunity for booth workers to ascertain in what council area each voter lives.

These types of cards make it easier for voters and booth workers at shared polling booths.

They are permitted at state and federal elections.

Recommendation: The Electoral Commission either allow joint-electorate how to votes or not have joint electorate polling booths in future elections.

Absent voting

Many voters remain unaware of the requirement to vote, not just within the boundaries of their local government area, but where applicable, within their ward. Many voters were unable to get back to their local areas by the close of polling, thus they were not able to cast a vote despite the best of intentions. The generally low voter turnouts in local elections are compounded by the increased difficulty in voting for those who are away from their local government area on election day.

Absentee voting has previously been restricted by the local conduct of council elections and the sheer number of different ballot papers that would need to be stocked. The availability of new information technology systems makes possible some form of absentee voting by allowing for custom ballot papers to be printed on demand at one or more designated absent voting polling places in each council area. The vote would still be a declaration vote.

Recommendation: That use of on-demand printing of ballot papers be investigated with a view to allowing absent voting in local government elections.

Inadequate notification of the election

Greens election volunteers received many complaints from voters that they were not aware of the election until the day itself. The absence of state-wide campaigning is certainly a factor in this, and the increased efforts by the Electoral Commission to alert voters to the council elections are applauded. Nevertheless, there remains an ongoing need for greater education and awareness of local government elections.

Recommendation: That a higher proportion of the NSW Government's television advertising budget be spent advertising the next local government general election in the fortnight preceding polling day.

Contact with polling officials

The absence of fixed line phones in the office of some local returning officers and use of mobile phones instead was a concern for low income earners, for whom the additional cost of calling over a difficult matter was a deterrent.

Recommendation: That where possible the phone line to contact the Returning Officer be a land line.

Training of polling booth staff

Training of polling place staff and even returning officers and their deputies was an occasional issue in the 2008 elections. Some polling place staff were found to be giving voters incorrect verbal information on allocation or non-allocation of preferences such as "just put a 1" or "you can't put more than one number above the line". These statements were contrary to the information actually printed on the ballot paper.

In several close elections the number of voters who received incorrect information from polling place staff may have exceeded the margins in the result of the ballot. Note the comments above in relation to the abandonment of group voting squares which seem to be the area of greatest confusion for both voters and polling place staff.

A number of The Greens election volunteers were concerned that polling booth staff were poorly trained, and that they were not aware of issues such as scrutineers not being able to touch ballot papers during counting, security of ballot papers, and generally poor knowledge of the voting system.

Recommendation: That more time and money should be spent training staff, particularly on the choices available to voters when allocating preferences, and the differences between the voting systems used in local, State and Federal elections.

Waiting times

There were a number of booths in quite a few LGAs where there were insufficient election staff, and therefore waiting times to vote were unreasonably long. This was exacerbated in joint booths, and where there was voting in multiple wards at the same booth. Extra time is spent by staff and voters while the correct ward for the voter is determined.

Recommendation: That staffing levels at joint ward polling booths be reviewed by the Electoral Commission and appropriately increased.

Re-use of materials

Some polling place officers actively prevented attempts by party booth workers to collect discarded How-to-Vote leaflets for re-use. There seems to be no overriding reason why the re-use of such materials should not be encouraged if not facilitated by polling place staff. Voters routinely complain about the massive waste of paper in election campaigns.

Recommendation: Special HTV-only re-use boxes be provided in the Returning Officers' polling place kit and polling place staff be encouraged to use any spare time in sorting and returning HTV material to party polling booth workers.

Counting, Scrutiny, Counting Centre

Local Counting

Conducting the count for ward elections and the simpler at-large council elections at local returning offices would save the Electoral Commission money compared to conducting the count for all councils at a centre such as Riverwood. The experience with local counting in past elections shows that the result is more quickly determined with no less confidence in its accuracy.

Local counting would also mean that scrutineering could be more easily carried out by people who live in the council area. To travel to Riverwood to scrutineer was impractical for most people who would have scrutineered if the count were conducted locally.

Scrutineering at Riverwood was also hampered by the potential need to provide many scrutineers as data entry is done by teams of 20 or more operators at a time. Although candidates could have reasonable confidence in the accuracy of data entry, there was no way to establish confidence in the original sorting of ballot papers in local returning offices other than by the means of a recount.

Recommendation Counting should be done in local returning offices.

Recounts

Greens council candidates were involved in a number of extremely close races, including some which were decided by margins of around 10 votes. When combined with the above mentioned difficulties with scrutiny of the process, confidence in the accuracy of the final result was low.

Whether a free recount is conducted is currently at the discretion of electoral officials. If a difference of less than 50 votes for example and/or a difference of a very small percentage of the vote between a successful and unsuccessful candidate were established as a trigger for a free recount, it would remove a lot of uncertainty for candidates and electoral officials. Other triggers could be substantial differences between booth election night counts and the check counts for those booths.

If the Returning Officer decides not to order a recount, the individual candidate(s) are faced with significant costs if they choose to require one.

Recommendation: A pre-determined close election result trigger for a free recount of the vote needs to be created. If there are significant count irregularities then the margin for a free recount may be larger with such a recount invoked at the discretion of the relevant electoral official, or upon payment for the cost of the recount by the person(s) requesting it.