

**Submission
No 43**

2012 LOCAL GOVERNMENT ELECTIONS

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Date Received: 8/02/2013

Recommendations for the NSW Local Government Act to improve the local government electoral process

I'm Clinton Mead, a recently elected councillor to Campbelltown City Council. I made this submission as an individual, and it is not endorsed by council, however the concerns I raise I believe particularly affect the people of Campbelltown.

Campbelltown has a relatively unique system of local government. It is the only council area in the state which is both undivided and elects 15 councillors. This produces a system with representatives from all sections of the community, not those just related to geography. Active community members across the whole city have a reasonable chance to be elected, in a system with wards they would lose much of their support as many people would not be able to vote for them. These active community members often act as the balance of power between the two major parties, as a result, no one party as dominated Campbelltown Council since this system was put in place.

Major parties continue to dominate Campbelltown Council, their seats together always holding the majority. However I believe the system that Campbelltown Council has where independents can gain votes on council proportionate to the support they have in the community has been a contributing factor to Campbelltown avoiding the corruption scandals that other ward divided councils have experienced who didn't have as many broad based community councillors.

In addition, all councillors on Campbelltown understand they need the support of the whole city, and at the next election, will be competing for voters across the entire city. They have no incentive to "pork barrel" their own ward, their ward is the whole city, so their interests are the whole city, and they hence represent the whole city.

I'd like to note that I'm not trying to use this to suggest we should apply proportional representation at the state or Commonwealth level. I believe our system of single member lower house which forms government balanced against a proportional upper house of review is the best system in the world. However, at the local government level, the dynamics are quite different, and instead of electorates which are drawn to encompass communities as best as possible, wards by their very nature divide communities. Whilst the government/opposition role serves as well at the state and Commonwealth level, it is not well suited to local councils which function better with deliberation.

In saying the above, this submission is not to call for all councils to be forced to undivided councils. However, I thought it would be appropriate to point out the benefits of undivided councils at the local level, as the current NSW Local Government Act presents a number of difficulties to councils like Campbelltown who choose to use the undivided system.

In this submission I will detail four recommendations that I believe will reduce the cost and improve the both perception and the reality of the local government election process, particularly in undivided councils such as Campbelltown. These improvements are (roughly in order of importance):

- (1) Filling casual vacancies in multi-member wards by countback
- (2) Eliminating the minimum preference requirement for below the line preferences
- (3) Give all groups an above the line voting square
- (4) Not requiring elections to fail on the death of a candidate

Recommendation 1:

Filling casual vacancies in multi-member wards by countback

Reason A: More Democratic

The core idea with proportional representation is that the elected people as best as possible represent the mix of views in the community. This is so council reflects the entire community, and that motions passed on council are likely to be supported by representatives from at least half of the voters in the community.

Let's examine the 2012 result for the Campbelltown Council elections:

Group	Percentage of primary votes	Percentage of councillors
Australian Labor Party	30.7%	33.3% (5)
Liberal Party of Australia	27.6%	26.7% (4)
Totally Locally Committed Party	9.9%	13.3% (2)
Community First Team	7.2%	6.7% (1)
Bob Thompson's Independent Team	5.6%	6.7% (1)
Community Service Environment	5.4%	6.7% (1)
Liberal Democratic Party	4.8%	6.7% (1)

Let's say if the position occupied by the councillor from Community First Team was to become vacant.

Under current NSW law, a by-election will need to be called. This would likely be won by the Labor or Liberal party. As a result, the voters for the Community First Team will no longer have a representative on council, despite the fact they represent 7.2% of Campbelltown voters.

Another example, lets say one of the Liberal positions becomes vacant. A by-election is held, and lets say the Labor candidate wins by a narrow margin. This will result in Labor holding twice as many seats (6) as the Liberals (3), despite their support in the community being roughly equal.

In both these situations, some voters effectively get their vote counted twice, once in the general election and once in the by-election, whereas those who voted for the vacating candidate no longer have their vote represented on council at all, even if they were a significant block of voters deserving of a seat.

To address this issue, for both state and Commonwealth houses of parliament that use proportional representation, we have a long standing tradition of filling casual vacancies with a candidate from the same party, the idea that the proportionality of the result in the last election should be upheld.

However, in local elections, formal political parties endorsing groups often do not exist. Sometimes even candidates have not run as a group, but as an individual. But the principle remains the same, the voters who selected the vacating candidate should be the ones that select the candidate who fills the casual vacancy. Fortunately there is a procedure that allows the voters for a representative to select their replacement, it's called countback, and already used in other states, which I will discuss at the end of this section.

Reason B: Cost

Whilst I believe the above argument regarding a democratic outcome is a strong one, even disregarding the above, cost alone should also be a strong argument for using countback. The cost of holding a by-election in Campbelltown I've been informed will be well over half a million dollars. Whilst a by-election is not required if the vacancy occurs less than 18 months before the next general election, in other cases it is legislatively required.

A number of councillors on Campbelltown Council are in their 60s, and some in their 70s. Whilst all are looking quite fit and healthy and give me a good run for my money in the chamber, death rates start at around 1 in 50 per year for those in their early 60s and rise to 1 in 10 per year for those in their late 70s. Even halving this rates accounting for the fitness of quickness of wit of Campbelltown Council, there is a small but significant chance that unfortunately one of our councillors may sadly pass away over the next few years. In addition, some of the more experienced councillors might reply that maybe the lifestyle habits of some of the younger councillors is more of a concern.

On a more serious note, with the "cost" of saving a life (through road safety/healthcare improvements) often quoted at the \$2.5 million dollar mark, it seems silly to spend over \$0.5 million dollars on a by-election, and potentially risk another life by spending public money on dragging people to a by-election to fill one councillor out of fifteen, when that position could have more cheaply been filled by countback.

It's hard to argue that not holding a by-election is un-democratic, we routinely fill vacancies in the NSW Legislative Council and Australian Senate without by-elections. If anything, countback is more democratic than the NSW Legislative Council and Australian Senate process of nomination, because at least the voters decide who fills the vacancy.

Implementation:

Every jurisdiction except NSW that elects councils by proportional representation in Australia, namely Victoria, Tasmania, and the ACT (whose legislature also functions as a council like body) fill casual vacancies by countback. Tasmania additionally fills casual vacancies in its legislative assembly by countback. I have links to the relevant legislation below that detail the process:

Victoria: http://www.austlii.edu.au/au/legis/vic/consol_act/lga1989182/sch3a.html

Tasmania: http://www.austlii.edu.au/au/legis/tas/consol_act/lga1993182/sch8.html

ACT: http://www.austlii.edu.au/au/legis/act/consol_act/ea1992103/sch4.html

I won't go into the details of the process, and all of the above jurisdictions implement the procedures slightly differently, but the effect is the same, the voters who voted for the vacating candidates votes are examined for preferences to fill the casual vacancy. If the councillor was elected as part of a group, it's likely that the position will be filled by the next unelected candidate from the group, unless a significant number of voters voted below the line differently to the ticket. In the case of ungrouped candidates, the candidate who fills the position is the one that receives the most preferences from that councillor's voters, and hence is most likely to be likeminded to the vacating councillor.

There may be concerns about this procedure being "undemocratic" or such. I ask the members of the committee who have concerns to see how it has been operating for years in Victoria, Tasmania and the ACT without incident. I'd ask them to also keep in mind that we don't have by-elections for the Legislative Council in NSW itself.

The countback procedure itself would be very cheap, as the votes for the last council election have been saved in electronic format, and indeed posted on the NSWEC website here (for Campbelltown for example):

<http://www.pastvtr.elections.nsw.gov.au/LGE2012/Results/LGE2012/PRCC/Campbelltown/11%20-%20Details%20Preference%20for%20Count.zip>

It would be a simple matter of running a computer program over these results. Existing software NSW already holds for doing its election may suffice, but if need be similar software that Victoria/Tasmania or the ACT uses would work fine. The countback procedure is relatively simple to write a computer program for. If the committee is concerned about the cost of software I'm happy to personally write the software for the NSW government for free.

Regarding how to legislate for this proposal, there are a few options:

- (1) Requiring all councils to now use the countback procedure to fill casual vacancies for multi-member wards (as in Victoria and Tasmania)
- (2) Allowing councils to optionally adopt procedure to fill casual vacancies.

I don't personally see a major issue with (1), as this works in Victoria and Tasmania, however, I understand if the committee finds this unpalatable, and (2) might be a more moderate approach. Issues may arise about when councils can adopt the procedure (or unadopt the procedure), one could perhaps say that whether the procedure applies depends on the policy when the position becomes vacant, or alternatively, a certain time before the position becomes vacant (say 3 months). This could prevent councils from manipulating the process for political purposes.

The only other complication is councils that did not record their votes electronically with the NSWEC, such as those who did not ask the NSWEC to run their election. If there are no longer any physical copies of the votes, countback may not be possible. The committee could make exceptions/transitional arrangements for these matters. Depending on whether the committee wants to recommend (1) or (2) over the long term, they could perhaps mandate recording/keeping of votes in multimember wards/undivided councils, or alternatively leave this to be optional based on council policy.

The above are all minor issues which I'm sure could be resolved in a sensible way by the committee, and I believe countback is a better way forward for filling casual vacancies on councils in NSW, just like is done in Victoria and Tasmania. At the very least to save my own constituents the great expense of running a by-election I would like for Campbelltown Council and other like councils to at least have the option to perform countback instead of by-elections.

Recommendation 2:

Eliminating the minimum preference requirement for below the line preferences

I can understand the point of encouraging people to list a minimum number of preferences. Voting just one below the line increases ones chances that their vote will end up exhausted and not used to full effect. But if the point of encouraging a minimum number of below the line preferences is to enfranchise people, it is completely nonsensical to then declare such votes that don't meet that requirement as informal, as this disenfranchises people. We have optional preferential voting in NSW lower house elections, and I believe this is the best system, as it gives people the option to place preferences, but doesn't unnecessarily disenfranchise people.

In the Campbelltown Council election, if one wishes to vote below the line, they must number at least 8 preferences. I'm sure this contributed to the relatively high informal vote, resulting in votes not being counted that otherwise were perfectly valid and may have affected the result. Some of these votes may have been thrown out simply due to numbering mistakes on the 6th or 7th preference.

I believe it's reasonable for the NSWEC to continue to print ballot papers that specify a minimum number of preferences should be numbered, however, when in the end one is faced with a vote which gives a clear first preference, it should be counted. To throw votes with clear intentions away is undemocratic, and a large informal vote brews public mistrust in the local government electoral process.

Recommendation 3:

Give all groups an above the line voting square

The 2012 Campbelltown Council election had over 100 candidates. The primary reason for this was the rule that requires groups to have at least half as many candidates as there are candidates elected to receive an above the line voting square.

As a result, in Campbelltown, groups needed to have eight candidates to have a group voting square.

Besides the major parties, other groups in Campbelltown, particularly those running for a council seat as non-incumbents, were not likely to get more than one seat, let alone more than two. The rest of the candidates were effectively fillers with no chance of being elected.

However, much commentary in the media was from residents thinking the ballot paper was a joke, pointing out that many candidates were running that weren't really serious.

However, most members of the public didn't realise that this wasn't the choice of candidates, but this situation was forced by NSW electoral law.

I estimate there would have been around 30 candidates in the election had this recommendation been in place, not over 100.

Aside from diminishing public trust in the electoral process, these unnecessary 70 extra undoubtedly created much more work for both the NSWEC and the Electoral Funding Authority, which I imagine would cost in the thousands at least.

Presumably this law was put in place so that an above the line one only vote is counted as formal as it has the minimum number of below the line preferences implied. If the committee takes on recommendation 2, this minimum preference restriction will no longer apply, so can then take on recommendation 3.

Recommendation 4:

Don't require elections to fail upon the death of a candidate

As discussed, at the last local council election in Campbelltown, with well over 100 candidates, there was a small but significant chance that one of those candidates would die between the close of nominations and election day. That would have resulted in the election failing and nominations having to be re-opened. This will be somewhat addressed if recommendation 3 is taken up, which will reduce the number of candidates, but in multi-member electorates, generally groups nominate more candidates than they think they can elect, so short of multiple candidates dying, reopening nominations is unlikely to produce a different result than the original election.

Note for single member wards and mayor elections still believe nominations should be reopened, particularly if the dead candidate wins the election. However, for multi-member wards and undivided councils, I think it's reasonable to treat them like the Legislative Council election, where the election still goes ahead.

Conclusion

Thank you for receiving my submission, I hope you can include some of these recommendations in your report, which should save the NSW taxpayer money and instil more trust and respect in our NSW local government elections. Feel free to contact me if you'd like any further information or clarification.