



LEGISLATIVE ASSEMBLY OF QUEENSLAND

LAW, JUSTICE AND SAFETY COMMITTEE

***A new Local Government Electoral Act:
Review of the local government electoral system
(excluding BCC)***

NOVEMBER 2010

REPORT NO. 78

LAW, JUSTICE AND SAFETY COMMITTEE

53RD PARLIAMENT

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¹ The Committee thanks Ms Simone Gregory for her research assistance with this report.

CHAIR'S FOREWORD

Local Government is often described as the level of government that is closest to the people. With this closeness comes an expectation from communities that their elected representatives will be responsive to their needs, will strive in their best interests, and will be accountable to them.

The most consistent message the Committee heard across Queensland is that people want representation. They want to know who their local representatives are and to be able to contact their councillors when they need them. They want their local councillors to understand the needs of their particular area, to provide effective representation of the community's needs and to be held accountable in fulfilling their duties as an elected representative. The Committee heard that where large councils are undivided, the 'local' element of local government can become lost. The Committee recognises these concerns and has addressed the issue of divisional arrangements in chapter 4 of this report.

Although community focus was on the issue of divided and undivided councils, media attention was given to the different voting systems applying at different levels of government. This stemmed from comments made by the Australian Electoral Commission in the wake of the recent Federal Election that inconsistency of voting systems between the different levels of government has contributed to an increase in informal voting. The Committee's consideration of voting systems is in chapter 13 of this report.

The Committee also heard numerous calls for consistency and harmonisation of electoral arrangements across all levels of government. A number of the Committee's recommendations support a move towards harmonisation of electoral arrangements.

In closing, I thank all those who assisted the Committee in its inquiry and I also thank the many people within local government for their hard work and commitment to their local areas.



A handwritten signature in black ink that reads "Barbara Stone".

Ms Barbara Stone MP

Chair

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RECOMMENDATIONS

DIVISIONS

Recommendation 1: Page 18

That the Local Government Electoral Act provides that a local government area with a population of 30,000 or more must introduce a divisional structure within its council.

Recommendation 2: Page 18

That the Local Government Electoral Act contain a provision to allow councils in local government areas with a population of 30,000 or more to appeal to remove council divisions where they can demonstrate that, following public consultation, the introduction of divisions is not in the best interests of that particular community.

Recommendation 3: Page 18

That the Local Government Electoral Act provides that a local government area with a population under 30,000 shall have, at a minimum, six councillors plus a mayor.

CONDUCT OF ELECTIONS

Recommendation 4: Page 22

That the Local Government Electoral Act provides that the Electoral Commission of Queensland is responsible for the conduct and administration of local government elections in Queensland.

Recommendation 5: Page 22

That the Local Government Electoral Act provides that the Electoral Commission of Queensland should, whenever practicable, consult with individual councils and the local community by calling for submissions on matters pertaining to the conduct of a local election such as, but not limited to, whether a local election should be by attendance or by full postal ballot and recommended polling booth locations.

Recommendation 6: Page 22

That the Local Government Electoral Act provides that, should the Electoral Commission of Queensland call for submissions from individual councils and the local community on matters pertaining to the conduct of a local election, the Commission may call for submissions to be made within a prescribed 'community consultation period' and must consider submissions lodged with the Commission within that prescribed period.

Recommendation 7: Page 22

That the Local Government Electoral Act gives the Electoral Commission of Queensland the discretion to reject submissions made outside of a prescribed community consultation period.

Recommendation 8: Page 22

That the Electoral Commission of Queensland be appropriately resourced to enable it to effectively manage responsibility for the conduct of local government elections and to enable it to undertake local area consultation as required.

Recommendation 9: Page 23

That the Local Government Electoral Act provides that the Electoral Commission of Queensland may, at the discretion of the Electoral Commissioner, investigate, and trial the potential application of new technologies to ascertain whether they can be safely and securely implemented and utilised, to better facilitate the efficient and effective conduct of elections by the Electoral Commission of Queensland. Any active trials are to be conducted in consultation with the local councils affected.

Recommendation 10: Page 23

That Returning/Presiding Officers receive comprehensive training as to their roles and responsibilities under the Act.

TIMING OF ELECTIONS

Recommendation 11: Page 27

That the Local Government Electoral Act provides for local government elections to occur every four years, on the last Saturday in March, unless a regulation directs otherwise.

Recommendation 12: Page 27

That the Local Government Electoral Act provides that the electoral roll for a local government election closes on 31 January in the year of that election.

Recommendation 13: Page 27

That the Local Government Electoral Act provides that, where an election is impacted by severe weather or by a declared disaster, arrangements are made to facilitate voting in affected areas or by affected voters as expeditiously as the circumstances will permit.

Recommendation 14: Page 27

That the Local Government Electoral Act provides that, where some delayed voting occurs within a local government area or division as the result of weather events or disaster, the result of partial counts of already cast ballots within an electoral area or division may not be disclosed, published or otherwise released, before all persons in the affected area have been afforded a reasonable opportunity to vote.

Recommendation 15: Page 27

That the Local Government Electoral Act retain the existing section 270, Schedule 2, of the Local Government Act 2009, but stipulate that the time fixed for a by-election be within 12 weeks from a vacancy arising.

CANDIDATES

Recommendation 16: Page 33

That the Local Government Electoral Act require that intending candidates for election must first be nominated by the registered officer of a political party that has endorsed the candidate, or by at least two electors for the local government area for which the election is to be held.

Recommendation 17: Page 33

That the Local Government Electoral Act require that on nomination of a candidate, a deposit of \$250 (or such other amount equal to the nomination fee for candidates for the Legislative Assembly) be lodged with the Returning Officer and held in the local government trust fund; and that the Act provides that this deposit is refundable to candidates who are elected or who receive more than 4% (or such other proportion equal to that for candidates for the Legislative Assembly) of the total votes for that area or division.

Recommendation 18: Page 33

That the Local Government Electoral Act require that a person standing as a candidate for a local government election reside in that local government area.

Recommendation 19: Page 33

That the Local Government Electoral Act prohibit a person being, at the same time, a candidate for election as mayor of a local government and a candidate for election as a councillor of that local government; or being a candidate for election as a councillor of a local government for more than one division of the local government's area.

Recommendation 20: Page 33

That the Local Government Electoral Act provide for the conduct of a poll for the election of mayor of a local government.

Recommendation 21: Page 33

That the Local Government Electoral Act remove the existing subsection 155(3)(b) of the Local Government Act 2009, so as to allow a councillor to retain office upon nomination for election as a Member of the Legislative Assembly.

CAMPAIGN FUNDING AND DISCLOSURE

Recommendation 22: Page 41

That the Local Government Electoral Act require that the disclosure requirements for local government candidates mirror the current requirements for candidates for the Legislative Assembly.

Recommendation 23: Page 41

That there should be a suitable cap on campaign expenditure. Given the variable size of the electoral districts involved, the cap could be in terms of per capita expenditure in divisions or council area, whichever is applicable.

ELECTORAL SIGNAGE

Recommendation 24: Page 49

That the Local Government Electoral Act contain provisions that mirror sections 36, 392A and 392B of the Local Government Act 2009 with respect to how to vote cards and other how to vote material.

Recommendation 25: Page 49

*That the Local Government Electoral Act contain provisions in respect of electoral signage and advertising that mirror section 36 of the Local Government Act 2009 and that reflect the Supreme Court's ruling in *Geoffrey Greene v Gold Coast City Council* [2008] QSC 25 that a local government cannot place a blanket ban on political communication.*

Recommendation 26: Page 49

That the Local Government Electoral Act prohibits the use of television and radio candidate advertising and promotion from the Wednesday prior to a Saturday local government election or by-election.

COMPULSORY VOTING

Recommendation 27: Page 52

That the Local Government Electoral Act mirror the current section 282 of the Local Government Act 2009 to retain compulsory voting and impose a penalty on eligible persons who fail to vote at local government elections, equal to that applying from time-to-time for failure to vote at a State election.

PRE-POLL, ABSENT AND POSTAL VOTING

Recommendation 28: Page 57

That the Local Government Electoral Act should, for attendance elections, allow enrolled voters to be able to pre-poll within a local government area, without requiring the voter to provide reasons why they are pre-poll voting.

Recommendation 29: Page 57

That the Local Government Electoral Act should, for attendance elections, allow enrolled voters to automatically obtain a postal vote upon application, without having to provide reasons why a postal vote is sought, and that such application may be made electronically without the need for a signature.

Recommendation 30: Page 57

That the Local Government Electoral Act allow absent voting within a local government area, without requiring the voter to provide reasons why they are absent voting.

PROPERTY FRANCHISE

Recommendation 31: Page 63

The Local Government Electoral Act provides for voter eligibility as is currently prescribed by s.276 of the Local Government Act 2009.

VOTING SYSTEMS

Recommendation 32: Page 81

That to reduce confusion among voters in elections across different levels of government, efforts be made to increase consistency of voting systems across those levels of government.

Recommendation 33: Page 81

That a comprehensive educational campaign accompany any changes to the voting systems at local government elections.

1. THE COMMITTEE AND THIS INQUIRY

The Law, Justice and Safety Committee (LJSC) is a statutory committee established by the *Parliament of Queensland Act 2001*.² The Committee has a number of responsibilities, including administrative review reform, constitutional reform, electoral reform and legal reform. It also examines issues regarding law, justice or safety that are referred to it by the Legislative Assembly.

On 25 March 2010 the Committee received the following referral from the Legislative Assembly:³

1. *That in light of the government drafting a new local government electoral act, the Law, Justice and Safety Committee undertake a review of the local government electoral system for all local governments except for Brisbane City Council.*
2. *In undertaking this inquiry, the committee should consider and report on the application of different electoral systems to local government elections in Queensland, including but not limited to postal voting, divided/undivided councils and Proportional Representation;*
 - *consider local government systems in other jurisdictions in Australia;*
 - *conduct public hearings and consultation with stakeholders; and*
 - *provide recommendations as to the content of the proposed new local government electoral act.*
3. *The committee will report to the Legislative Assembly by the end of November 2010.*

The Committee released an issues paper in June 2010, which was distributed to over 700 persons, organisations, and other stakeholders.⁴

Submissions to the inquiry closed on 13 August 2010 following an extension from the original closing date of 30 July 2010. The inquiry generated a lot of interest and the Committee continued to receive and accept submissions into September 2010, receiving over 140 submissions from a range of stakeholders. [A list of submitters is attached in **Appendix A.**]

Due to the timeframe for this inquiry the Committee has focussed its consideration on the following issues:

- Divisions;
- Conduct of Elections;
- Timing of Elections;
- Candidates;
- Campaign funding and disclosure;
- Electoral Signage;
- Compulsory Voting;
- Pre-Poll, Absent and Postal Voting;
- Property Franchise; and
- Voting Systems.

² *Parliament of Queensland Act 2001*, s.80

³ Queensland Legislative Assembly, *Transcript of Proceedings* (Hansard), 25 March 2010, p.1143

⁴ Law, Justice and Safety Committee, *A new Local Government Electoral Act: Review of the local government electoral system (excluding BCC)*, June 2010 available at: www.parliament.qld.gov.au/ljsc

2. CONSULTATION

The Committee undertook a range of consultation activities to hear the views of stakeholders and to inform itself on the issues. The Committee held six public hearings in:

- Toowoomba on Friday 20th August 2010;
- Mt Isa on Tuesday 24th August 2010;
- Townsville on Wednesday 25th August 2010;
- Cairns on Thursday 26th August 2010;
- Rockhampton on Friday 27th August 2010; and
- Brisbane on Friday 3rd September 2010.

The transcripts of these hearings are available on the Committee's website: www.parliament.qld.gov.au/ljisc. [A list of public hearing witnesses is attached in **Appendix B.**]

The Committee received over 140 submissions from councils and councillors, individuals and other stakeholders.

The Committee notes that a majority of submissions came from the Townsville area and related to the issue of divisions within council areas.

2.1 Briefings

In addition to the public hearings, the Committee also met with the Queensland Electoral Commissioner, Mr David Kerslake.

In late July 2010, the Committee held a study tour to Melbourne and met with the following:

- the Victorian Electoral Commissioner, Mr Steve Tully; Ms Liz Williams (Deputy Commissioner VEC) and Mr Paul Thornton-Smith (Senior Research Officer VEC);
- the Electoral Matters Committee of the Victorian Parliament;
- the Municipal Association of Victoria; and
- the Victorian Local Governance Association.

3. BACKGROUND

Local government in Queensland is governed by the *Local Government Act 2009* (LGA) which came into effect on 1 July 2010.⁵

3.1 Electoral and Administrative Review Commission Report

On 29 March 1990 the Queensland Legislative Assembly authorised the Electoral and Administrative Review Commission (EARC) to undertake an inquiry into the local authority electoral system in Queensland, with particular regard as to whether it provided fair and equitable representation for all electors, and whether boundaries were appropriate for the efficient and economically viable discharge of responsibilities.⁶

EARC published its issues paper in April 1990. The issues paper outlined the general features of the local authority system at that time. The Commission received 409 submissions, with all but 14 of the local authorities responding.

In October 1990, EARC published the *Report on the Local Authority Electoral System of Queensland*.⁷ This led to changes to local government in Queensland including the introduction of optional preferential voting in divided councils.

At that time there were 134 local authorities, 14 Aboriginal Councils and 17 Torres Strait Islander Councils in Queensland. The second part of the Legislative Assembly reference to EARC provided that EARC was to review the external boundaries of the then local authorities in Queensland.

3.2 Parliamentary Committee for Electoral and Administrative Review

On 21 March 1990 the Queensland Legislative Assembly established the Parliamentary Committee for Electoral and Administrative Review (PCEAR). The functions of the Committee included monitoring and reviewing the discharge of EARC's functions and examining and reporting to the Queensland Legislative Assembly on any matters appearing in or arising from EARC reports.⁸

In June 1991 the PCEAR reported to the Queensland Legislative Assembly on EARC's *Report on the Local Authority Electoral System of Queensland*.⁹ The PCEAR unanimously endorsed a number of EARC's recommendations including first-past-the-post voting for mixed or multi-member divisions; consistency between the rules for state and local government elections regarding compulsory voting and optional preferential voting in single member divisions; three year terms and simultaneous elections in March or April; and that council clerks continued to conduct elections. PCEAR also agreed in principle to the proposal of an independent boundary commission.

The majority of the PCEAR endorsed EARC's recommendations relating to using the Hare-Clark Proportional Representation system in undivided local authorities and filling casual council vacancies within the council term. The PCEAR amended EARC's recommendations in regard to the method of changing voting systems and the filling of casual vacancies during the final year of a council term.

⁵ The exception to this is Brisbane City Council, which is provided for under the *City of Brisbane Act 2010*

⁶ Queensland Legislative Assembly, *Transcript of Proceedings* (Hansard), 29 March 1990, p.997

⁷ Electoral and Administrative Review Commission, *Report on the Local Authority Electoral System of Queensland*, September 1990, Serial No. 90/R2

⁸ *Electoral and Administrative Review Act 1989-1990*, pt.V, s.58(1)

⁹ Parliamentary Committee for Electoral and Administrative Review, *Report of the Parliamentary Committee for Electoral and Administrative Review on remaining matters arising out of a report of the Electoral and Administrative Review Commission on the Local Authority Electoral System of Queensland*, June 1991

3.3 The Local Government Electoral Act and recent reforms

3.3.1 The Local Government Reform Commission

In April 2007, the government established the Local Government Reform Commission to conduct a reform across Queensland of the local government sector.

The Commission was provided with the following terms of reference:

The reform commission must consider the grouping of like communities of interest to maintain the social fabric and character of communities and areas of the State, and in particular, must consider -

- (a) *review areas established under SSS [Size, Shape and Sustainability initiative] review processes; and*
- (b) *boundaries of areas covered by the regions for which regional planning advisory committees have been established under the Integrated Planning Act 1997.¹⁰*

The then Minister for Local Government, Planning and Sport, Hon. Andrew Fraser MP, extended the terms of reference, pursuant to s159T(1)(b) of the *Local Government and Other Legislation Amendment Act 2007*, to provide that the Commission also have regard to a number of reports and policies.¹¹

The report of the Commission states:

The reform was instigated after the Queensland Government made an assessment of the Size, Shape and Sustainability (SSS) initiative. The Queensland Government evaluation determined councils had not made significant progress under the initiative, which was founded on the premise that councils would voluntarily review their arrangements and work together to achieve common goals.

In addition, concerns were expressed about the long-term financial capacity of some councils under the current local government system following the release of the Queensland Treasury Corporation's interim Financial Sustainability Review of Local Governments and the Queensland Auditor-General's annual report into the finances of councils for 2005-06.

An independent, seven-member Commission was established to guide the local government reform process.¹²

In its July 2007 report the Commission made the following key recommendations:

- Consolidation of Queensland councils through amalgamation from 157 to 73 (including Brisbane City).
- South East Queensland councils be consolidated from 17 to 10 councils (including Brisbane City).
- No boundary change to 37 council areas (including Brisbane City).
- No amalgamation of large western councils due to the inability of structural reform to lead to any significant service delivery or capacity benefits.
- Formation of the Torres Strait Island Regional Council and the Northern Peninsula Area Regional Council involving Aboriginal and Torres Strait Island councils.
- No amalgamation of Aboriginal and mainstream councils at this time, due to the unique features of Aboriginal councils that require further investigation.

¹⁰ *Local Government and Other Legislation Amendment Act 2007*, s.159U

¹¹ Local Government Reform Commission, *Report of the Local Government Reform Commission - Volume 1*, Queensland Government, July 2007, pp.35-36

¹² *Ibid*, p.32

- Giving councils the ability to petition the State Government to alter the name of a new local government area proposed by the Commission.
- Changing the electoral arrangements of councils (with the exception of Torres Strait Island Regional Council and Northern Peninsula Area Regional Council) to conduct their election on 15 March 2008 on an undivided basis.
- Changing the electoral composition of councils to reduce the number of councillors in Queensland from 1,250 to 526, a reduction of 724, to emphasise the need for stronger strategic leadership to local government in Queensland.
- Financial sustainability reviews be undertaken on a regular basis for Queensland councils.
- Provision of State Government assistance to manage transition and early implementation of the reforms and build the capacity of councils that have existing capacity or sustainability issues.¹³

3.3.2 Local Government Act 2009

As noted above, the LGA came into force on 1 July 2010 repealing the *Local Government Act 1993*. The electoral provisions of that 1993 Act are included in schedule 2 of the new LGA. These provisions will be used, along with the Committee's report, to inform the drafting of a new local government electoral regime in Queensland.

The Committee notes that local government in Queensland is still adapting to the changes outlined above and those introduced in the LGA. The changes recommended in this report will provide the final changes to provide Queenslanders with continuing, strong and stable local governments focussed on the best interests of their Communities.

¹³ Ibid, p.13

4. DIVISIONS

4.1 Current provisions

Section 8(3) of the *Local Government Act 2009* (LGA) provides that a local government area may be divided into areas called divisions. The number of divisions and the divisional boundaries within a local government area can be prescribed by regulation.¹⁴

The process outlined in Part 3 of the LGA for a council to introduce divisions into a local government area, or to remove divisions to create an undivided local government area, involves an application to the Change Commission.¹⁵ The local government, the Minister, or the Electoral Commissioner can make this application.¹⁶ In practice, a council is more likely than the Minister or the Electoral Commissioner to apply to the Change Commission to make a change to its divisional arrangements.

The Change Commission assesses whether the application to introduce or remove divisions is in the public interest. This is assessed in light of whether the change is consistent with the LGA; the views of the Minister about the proposed change; and any other matters stipulated by regulation.

The Change Commission can conduct its assessment in any way it sees fit but, as a minimum, must request submissions from any local government which is likely to be affected by the proposed change and hold a public hearing to acquire the views of the public on the proposed change.¹⁷

In assessing whether a proposed divisional change is in the public interest, the Queensland Electoral Commissioner, Mr David Kerslake, advised the Committee that his approach is to ensure that the local government has undertaken effective consultation with the local community. He does not believe that he should be an arbiter and does not see his role as assessing the merits of the decision to divide or undivide a local government area, but rather as ensuring that the correct process has been followed. In other jurisdictions in Australia, Electoral Commissioners take a much more involved role in the decision to divide, or to not divide a local government area, discussed below in 4.2.

Once the Change Commission grants an application for a local government to introduce divisions, the Electoral Commissioner commences dividing the local government area into single member divisions. Section 15(1) of the LGA provides for divisions of a local government area to have a reasonable proportion of electors. This is determined by dividing the number of electors by the number of councillors (excluding the mayor) of that local government. Section 15(2) of the LGA allows for a margin of 10% where the local government area has more than 10,000 electors and for a margin of 20% in other cases.

These margins resulted from a recommendation of EARC in its 1990 report.¹⁸ Prior to EARC's recommendation there were no margins for divided councils. At the time of the EARC report, permissible tolerances for quotas were fixed at plus or minus 10% for the Federal House of Representatives, Tasmanian House of Assembly, Victorian Legislative Assembly, New South Wales Legislative Assembly and the South Australian House of Assembly. EARC recognised that this could lead to repeated redrawing of divisional

¹⁴ *Local Government Act 2009*, s.8(4)(b) & (c)

¹⁵ *Local Government Act 2009*, s.22 establishes the Change Commission. Section 22(2) provides that the Change Commission is comprised of the Electoral Commissioner, or any combination of the Electoral Commissioner, the Deputy Electoral Commissioner and a casual Commissioner (as nominated by the Electoral Commissioner)

¹⁶ *Local Government Act 2009*, s.18(3)

¹⁷ *Ibid*, s.19(3) & (4)

¹⁸ Electoral and Administrative Review Commission, *Report on the Local Authority Electoral System in Queensland*, September 1990

boundaries within smaller local governments as the quota would be much smaller than a larger area with a larger population.¹⁹

4.2 Other Australian jurisdictions

New South Wales

Local governments in New South Wales have the option to be a divided or undivided council.²⁰ Sections 16(a) and 210(5) of the *Local Government Act 1993* (NSW) provide that a council cannot divide its area into wards, or abolish wards in its area, without prior approval from a constitutional referendum (where all electors in the council area vote on the question). The results of constitutional referendums are binding on councils.

The Act permits a tolerance of 10% between wards in a council area. Councils must keep ward boundaries under review and when a ward has electors in excess or below the 10% tolerance, the Council must alter the ward boundaries to rectify this as soon as practicable after the end of the first year of the following term.²¹

As in Queensland, voters residing in a ward (division) of a council area in New South Wales vote for candidates for that ward at a polling booth in that ward (division). Where a council area is undivided, all electors in the council area vote for all vacant councillor positions. Each ward must have an equal number of councillors.²²

By-elections held for a vacancy in a council which has recently changed its divisional status (by either introducing or abolishing wards following a referendum, but prior to the next general election) are to be held as if the divisional changes have not occurred.²³ For example, if a council introduces divisions between general elections, a by-election held before the next general election is held as if the council is undivided.

Victoria

Local government (municipal councils) in Victoria may be divided into single or multi member wards or may be undivided. Section 219A of the *Local Government Act 1989* (Vic) provides for independent reviews of electoral representation in Victorian municipal councils. The Electoral Commissioner conducts these reviews roughly every eight years.²⁴ The purpose of these reviews is for the Electoral Commission, as an independent body, to assess the electoral representation of electors in municipal councils and to recommend, if necessary, changes to the number of councillors and the divisional arrangements. The reviewer must provide a final report on the review to the relevant Minister at least six months before the next local government general election.²⁵

Besides the standard eight yearly review, the Electoral Commissioner will review divisional boundaries when the permitted tolerance of 10% between wards is exceeded.

In a meeting with Committee members the Victorian Electoral Commissioner, Mr Steve Tully, advised that as part of the divisional reviews, the Victorian Electoral Commission (VEC) invites public submissions and usually holds public hearings. The VEC has found that some councils do not put submissions into the community consultation on divisions when there is a ward review conducted by the VEC. The VEC listens to the community and strives to ensure that division boundaries do not run through a 'community of interest' as that community will

¹⁹ Ibid, para.6.37 & 6.38

²⁰ *Local Government Act 1993* (NSW), s.210

²¹ Ibid, s.211(2). Nothing in the Act restricts a council from altering the ward boundaries prior to the end of the first year of the following term.

²² Ibid, s.280(2)

²³ Ibid, s.210(6)

²⁴ *Local Government Act 1989* (Vic), s.219C(1)(b)

²⁵ Ibid, s.219F(10)

lose its voice. The VEC also supported the 10% tolerance between wards as it upholds the one vote one value principle.²⁶

Mr Tully further advised that around 50% of his staff and resources are dedicated to local government. This figure includes the conduct by the VEC of local government elections in Victoria.

South Australia

Of the 68 councils in South Australia, 35 are divided into wards. South Australian councils have single and multi member wards.

The *Local Government Act 1999* (SA) provides that a council must undertake a comprehensive review at least every eight years of all aspects of the composition of the council; and of the issue of division, or potential division of the area into wards. The first review must be undertaken by a council, and must be completed within a specific time set by the Electoral Commissioner.

Separate reviews must also be undertaken prior to any proposed alteration of the divisions of a council. The Act sets out a detailed procedure including the preparation, release, advertisement and public consultation of a 'representation options paper' outlining the advantages and disadvantages of the proposed alteration and the various options available to the council. Once consultation has been finalised, the council must produce a draft report of its response to the proposals and its recommendations. There is then a consultation on the draft report before the council provides its final recommendations to the Electoral Commissioner, along with any public submissions received on the draft report. If the Electoral Commissioner considers that the council has met the requirements set out in section 12 of the Act, then s/he is to provide an appropriate certificate; if not s/he will refer the matter back to council with reasons.²⁷

Several matters must be taken into consideration when deciding ward boundaries including communities of interest, population of the area and wards, the topography of the area, whether the councillors for the proposed wards are contactable by the electors, and future demographic changes. The Act provides for a 10% tolerance between wards in a local government area.²⁸ Upon written notice from the Electoral Commissioner that a council ward has exceeded its quota by 20%, the council must conduct a review of the ward boundaries within a time specified by the Electoral Commissioner.²⁹

Western Australia

The Governor, on the recommendation of the Minister, may divide local government areas (districts) in Western Australia into wards or amend ward boundaries.³⁰ The Minister can only make a recommendation if the Local Government Advisory Board (the Advisory Board) has advised that the proposed change should go ahead. Schedule 2 of the *Local Government Act 1995* (WA) outlines the process for introducing or abolishing wards.

A local government may submit a proposal to the Advisory Board for the introduction or abolition of divisions. At least 250 electors, or 10% of the electors of the affected area, may submit a proposal to the local government for the introduction or abolishment of wards, or for changes to ward boundaries. If the local government considers that the issue in the submission is minor, or is a matter for which public submissions are not required, the council may recommend to the Advisory Board that the submission should be rejected. If the submission relates to a decision of the local government within the preceding two years, the

²⁶ Meeting with the Victorian Electoral Commission, 27 July 2010

²⁷ *Local Government Act 1999* (SA), s.12

²⁸ *Ibid*, s.33(2)

²⁹ *Ibid*, s.24

³⁰ *Local Government Act 1995* (WA), s.2.2

council may reject the submission. Otherwise, the council must undertake a review of whether the order proposed in the submission should be made.³¹

The local government, in conducting a review, must advertise that fact and allow at least six weeks for public submissions.³² The local government must take into account community of interest, physical and topographic features, demographic trends, economic factors, and the ratio of councillors to electors in the various wards.³³ Upon completion of its review, the local government must provide a written report to the Advisory Board on its findings and proposals.

The Advisory Board will consider whether the local government conducted the review properly and in accordance with schedule 2.2 of the Act. If so, the Advisory Board will recommend in writing that the Minister take the proposed action. If the review was not conducted properly then the Advisory Board can either refer the matter back to the council to take account of any matters they failed to, or it may recommend in writing to the Minister the making of any order that it thinks fit that would correctly take into account those matters.³⁴

The Minister can accept or reject a recommendation of the Advisory Board. If the Minister accepts a recommendation s/he can make a recommendation to the Governor to make the appropriate order.³⁵

Undivided local governments *may* review whether to introduce divisions and potential ward boundaries and the number of councillors per ward at least every eight years. Divided local governments *must* review their ward boundaries and the number of representatives per ward at least every eight years.³⁶ A council must review its divisional status upon written request from the Advisory Board.

Tasmania

Municipal areas in Tasmania may be divided into two or more electoral districts.³⁷ Local governments must undergo a review by the Local Government Board (LGB) at least every eight years.³⁸ Specific reviews may be held into matters including electoral districts and boundaries.³⁹ The LGB must ensure that there is opportunity for public consultation and consultation with any municipal council affected.⁴⁰ Once it has completed the review, the LGB must provide a report to the Minister. The LGB can only make recommendations in the report to the Minister that it feels are in the best interests of the municipal area concerned and that lead to fair representation of the community in that municipal area.

Upon receipt of the report from the LGB, the Minister is to forward a copy of the report to any councils affected by the LGB's recommendations and invite submissions from those councils. The Minister may accept or reject the LGB's proposals. Those recommendations that are accepted by the Minister are provided to the Governor to make the appropriate orders to create, abolish or amend electoral districts within local government areas.

Northern Territory

Following a major local government reform process, in July 2008 the Northern Territory local governments changed from 61 municipal and community councils to 11 shires and 5

³¹ Ibid,s.4.4, sch.2.2

³² Ibid, s.7, sch.2.2

³³ Ibid, s.8, sch.2.2

³⁴ Ibid, s.10, sch.2.2

³⁵ Ibid, s.12, sch.2.2

³⁶ Ibid, s.6(1), sch.2.2

³⁷ *Local Government Act 1993* (Tas), s.17

³⁸ Ibid, s.214

³⁹ Ibid, s.214A

⁴⁰ Ibid, s.214C

municipalities⁴¹ which cover approximately 95% of the land in the Northern Territory.⁴² Shires and municipalities are differentiated by their population and the degree of urbanisation.⁴³

Under the *Local Government Act* (NT), the local government areas are divided taking into account the geography and natural configuration, the nature and density of population and the viability and appropriateness of each area as a separate unit of local government administration.⁴⁴

Each shire is made up of areas called wards. Each ward is represented by its own councillor/s. The number of councillors for each ward was decided on advice from each area's Shire Transition Committee (STC) which was made up of representatives from the old councils and the shire area. In most cases, the STC decided the number of councillors per ward would be dependant on the population in a ward, e.g. the higher the population in each ward, the higher the number of councillors it has. The remaining STC's decided to have the same number of councillors for each ward, irrespective of the population.⁴⁵

The Administrator has the power to: determine the local government area classification as a shire or municipality; create or abolish local government areas and wards; assign or change the name of a local government area, council or ward; make changes to the boundaries to the local government area or ward; or change the number of councillors elected to a particular area or ward. The Minister also has these powers with the exception of the power to create or abolish a local government area.⁴⁶

4.3 What the Committee heard

Divided or undivided?

During its consultation, the Committee heard a range of views on the processes for division of a local government area. Much of the discussion on this topic generated from submissions regarding the Townsville City Council and, in particular, the current council divisional arrangements following the amalgamation of the Townsville and Thuringowa councils.

One key argument heard in favour of divisions within a council area is that they allow a specific councillor to be a point of contact for the constituents of his/her division. The idea being that, whilst this person will still act in the best interests of the local government area as a whole, they provide a voice specifically for the people of their division in council meetings and decisions. One submission noted that:

*Divisions allow councils to retain communities of interest within cities and shires. Many larger councils have diverse geographic and demographic circumstances and the needs of rural areas, commercial areas, seaside areas etc are many and varied. Divisions support recognition of these particular interests and allow councillors to specialise in the issues that are particular to their division within the overall Local Government Act requirement for sound decision making in the best interests of the whole local government area.*⁴⁷

By giving each division representation it ensures that the whole of the local government area has even representation, rather than, as can occur in undivided local government areas, several councillors living in the same populated areas and representing the needs of those areas to the detriment of more rural or sparsely populated areas which have fewer voters.

⁴¹ Dept. of Local Government and Housing, NT Government, *2008 Shire Council Elections* (PowerPoint Presentation), <http://www.nt.gov.au/localgovernment/elections>, p.5

⁴² <http://www.lgant.asn.au/about-lgant/the-role-of-local-govt>

⁴³ *Local Government Act* (NT), pt.2.1, s.8

⁴⁴ *Ibid*, pt.2.1, s.7

⁴⁵ Dept. of Local Government and Housing, NT Government, *2008 Shire Council Elections* (PowerPoint Presentation), <http://www.nt.gov.au/localgovernment/elections>, p.8

⁴⁶ *Local Government Act* (NT), pt.2.2, s.9(1-2)

⁴⁷ Redland City Council, Submission 55, p.3

One councillor expressed his view on the merits of dividing councils thus:

The point I make is this: if Logan had 12 people elected across the city, I believe it would be impossible for anyone who was specialising in roads, for example, to be across that issue for the whole city as well as that councillor was for his division. I strongly prefer that we retain the ability for 12 individual elected members to specialise in their geographic division and understand the geography, understand the environment, understand community facilities, understand the spread of life in their specific part of the city and not have to become specialists in traffic or community services, for example, right across the whole city. I really do not want us to see the skills of good, active elected members being lost because they have to get across the whole city.⁴⁸

A further argument relates to by-elections. A by-election in a divided council is held only in the division in which the vacancy exists. This means that only the voters residing in that division vote, whereas for an undivided council, every voter must vote in the election for that vacancy as each councillor represents the whole local government area. In a large local government running a by- election across the whole area can be very costly.

Where areas are undivided the cost of running by-elections is similar to the conduct of normal elections. The cost of running an election is an expensive exercise.⁴⁹

A divided council means that candidates only have to canvass a particular division to reach all potential voters. In an undivided council, candidates need to get their message across the whole local government area which is resource intensive and time consuming. Some say that large, undivided councils promote party politics or team tickets/group candidates that can provide necessary funding and resources to effectively campaign across the whole of a large undivided local government area. For this reason undivided councils can disadvantage independent candidates who do not have the significant financial backing needed to market themselves to the whole community of a large local government area. One former independent candidate outlined for the Committee the difficulties she encountered when campaigning across an undivided area:

I ran in the last election. It was great fun but it was very hard work across a whole city instead of a division where the people in my area would know me better than the people out in outlying areas. I tried really hard to meet people in other areas. I had to be a little bit more on my toes to get some media attention. As all the other people have said, it is quite a challenge to get out there, especially to the more rural areas. You are sort of running from one letterbox to another and you cannot really get into properties that easily because of dogs and other things such as huge driveways. It cost me \$10,000.⁵⁰

Proponents of undivided councils argue that they serve the best interests of the whole local government community:

The principle embodied in the Local Government Act of councillors being required to decide business before them in the best interests of ALL residents of the local government area is considered to be best served where elected members are not presented with possibly conflicting loyalties between the interests of the whole area and the interests of a division of the area. It is considered to be a better model for voters to select candidates based on their capabilities as community leaders and decision makers rather than on their geographic associations.⁵¹

⁴⁸ Cr John Grant, *Transcript of Proceedings, LJSC Brisbane public hearing*, 3 September 2010, p.13

⁴⁹ Moreton Bay Regional Council, Submission 50, p.1

⁵⁰ Ms Adrienne Isnard, *Transcript of Proceedings, LJSC Townsville public hearing*, 25 August 2010, p.11

⁵¹ Gladstone Regional Council, Submission 57, p.2

Lockhart is an undivided Council at present therefore Councillors are able to focus on what is best for the entire Community. Each Councillor however has got a portfolio and this encourages the Councillors to be seen from the "Overall picture" of the Community.⁵²

Another perceived benefit of undivided councils is that, as all voters in an undivided local government area elect all councillors to the whole council, the whole community has a greater say in who runs their local government.⁵³

In a divided council, electors are limited to voting for candidates for their division and for the mayor. Some argued that an undivided council prevented parochialism, where councillors in a divided council are only interested in *their patch of land* and do not consider the needs and best interests of the whole local government area.

Divisions can foster parochialism. Councillors need to take a broader view of their constituency. Unless there are compelling reasons for the institution of divisions (such as population size), councils should be undivided.⁵⁴

Who decides?

Submissions to the inquiry were split on whether the council should retain the power to decide to introduce or remove divisions within its local government area. Many councils submitted that this decision should remain with individual councils. These submissions generally stated that the councils are better able to judge what divisional arrangements will serve the best interests of their area and electors.

The mix of divided and undivided councils should remain. The decision to be divided or undivided should rest with individual councils on the basis that electoral arrangements should best serve the local community. As is so often stated, local councils best understand their communities. The mix of divided and undivided provides flexibility which is particularly relevant as sizes and the geographic makeup of local government areas are so diverse. It overcomes the problems typically associated with a "one size fits all" concept.⁵⁵

Other submitters stated that the councils would use this power to their advantage e.g. that deciding to be an undivided council benefitted an incumbent council at the next election as they were able to spend their term getting their names out across the local government area, ensuring that the voters know who they are at the next election.

No the community wants divided councils for better representation. No the Queensland government should make that decision not at the local level where they may be making the decision for self electoral reasons not for better representations for the local community.⁵⁶

One submission expressed the view that an independent body should decide:

The decision as to whether Councils should be divided or undivided should not be determined either by Councils themselves or the Government of the day. It should rest with the independent Local Government Change Commission (see Local Government Act 2009). Councils and the Government could make submissions to the Commission, but the Commission should have the final decision.⁵⁷

A few submissions stated that divisions should be mandatory for all councils, whilst others submitted that undivided councils should be mandatory. However, a clear message running

⁵² Lockhart River Aboriginal Shire Council, Submission 37, p.1

⁵³ See for example: Mr Garth Harrigan, Submission 9, p.1

⁵⁴ Mr Don Willis, Submission 25, p.1

⁵⁵ Gold Coast City Council, Submission 47, p.1

⁵⁶ Mr Peter Murphy, Submission 33, p.1

⁵⁷ Mr Don Willis, Submission 25, p.1

through the submissions was that different local governments and their communities need different divisional options, or 'one size does not fit all'. Some local governments will operate better if they are divided, whilst others will benefit from being undivided. It was suggested in several submissions that councils with a large population should be required to introduce divisions. Of these submissions it was generally accepted that larger councils better represent their community within a divisional structure which provides a point of contact for their constituents.

There can be no "one size fits all" solution for the issue of divided or undivided Councils. It seems that it is logical for a small Council to be undivided because of the scale of population. Large Councils, on the other hand, could not effectively represent local interests if undivided. There is a point where an undivided Council with a large population will lose the "local" from local government. Who does a member of the public call if they want representation on an issue in their street or neighbourhood? Who will be interested in that? What would be created, in effect, will be a civic version of the Senate – people who are generally unknown to the local people, who get elected on a party ticket, and who are likely to have very little interest in the local issues of a part of the city that they know very little about.

...

Over a certain population size it should be mandatory to divide councils into divisions. Over 50 or 60 thousand.⁵⁸

Our submission to your enquiry recommends that the current system of single member divisions should continue in the larger local governments around Queensland. It is a system which ensures local accountability to local voters and residents and guarantees genuine localised representation of local communities. Any reversion to an undivided council or multi-member divisions would result in a return to a situation where election candidates and councillors would invariably be forced to vie for support across the entire city at the expense of a representative community.⁵⁹

The Committee also heard from some small rural councils that having a small number of councillors (four or five), some of whom hold office on a part-time basis, can result in difficulties including problems achieving a quorum for council meetings.⁶⁰ As noted in the Flinders Shire Council submission:

The current small number creates fewer ideas, less debate and less representation for the community; Decisions can be more easily swayed/manipulated where a quorum of three (3) are able to make decisions on behalf of the community; The corporate knowledge held by councillors as a group has reduced....⁶¹

4.4 Conclusion

The best interests of a community should be the focus of any decision to introduce or abolish divisions of a local government.

The majority of the submissions received by the Committee related to the Townsville City Council, a large undivided council in North Queensland with a population of around 180,000. The concerns raised in the vast majority of the submissions from this area related to the current undivided status of the council. Many submitters stated that they do not have a connection to their local councillors, while some said that they did not even know who their

⁵⁸ Cr Greg Betts, Submission 59, p.1

⁵⁹ Springfield Land Corporation, Submission 60, pp.1-2

⁶⁰ Flinders Shire Council, Submission 89, p.4; Balonne Shire Council, Submission 97, p.8; Blackall-Tambo Regional Council, Submission 147, p.1

⁶¹ Flinders Shire Council, Submission 89, p.4

councillors were. A member of the public expressed to a Committee member their concern that the 'local' element in larger councils can become eroded, with councils becoming akin to large corporations.

Whilst the Committee is tasked with examining the local government electoral system for the whole of Queensland, rather than any one location, it does appreciate that many of the concerns raised by the evidence from Townsville residents could just as easily occur in any large undivided council in Queensland.

One consistent message that has come through to the Committee during this inquiry, from across Queensland, is that people want representation. They want to know who their local representatives are and to be able to contact their councillors when they need them. They want their local councillors to understand the needs of their particular area, to provide effective representation of the community's needs and to be accountable to their residents. There were also concerns expressed that those councillors who do not provide effective representation should not be able to hide amongst, or to be carried by, their elected colleagues. Perceptions of, or the reality of, poor representation, can occur more easily in undivided councils by their very nature because amongst the 'pool' of councillors, lines of direct accountability can become blurred or lost.

It is for this reason that the Committee recommends that large councils should be divided unless they can show that, following thorough public consultation on the matter, their local community wants its area to be undivided.

The Electoral Commissioner in his submission refers to councils with a population of 30,000 or above as *large councils*.⁶² The Committee considers that these large councils with a population of 30,000 or more should be the trigger to introduce divisions into a local government area. It also believes that those smaller councils (with a population under 30,000) should continue to decide whether to introduce or to remove divisions in line with the current system under the LGA.

The Committee recognises that, to ensure mandated divisions are in the public interest and serve the needs of a particular community, councils should also be afforded an appeal mechanism in the Act. In order to activate this appeal mechanism, the local government should show that it has undertaken public consultation which has concluded that the introduction of divisions is not in the best interests of that particular community.

Recommendation 1:

That the Local Government Electoral Act provides that a local government area with a population of 30,000 or more must introduce a divisional structure within its council.

Recommendation 2:

That the Local Government Electoral Act contain a provision to allow councils in local government areas with a population of 30,000 or more to appeal to remove council divisions where they can demonstrate that, following public consultation, the introduction of divisions is not in the best interests of that particular community.

Recommendation 3:

That the Local Government Electoral Act provides that a local government area with a population under 30,000 shall have, at a minimum, six councillors plus a mayor.

⁶² Electoral Commission of Queensland, Submission 41, p.2

5. CONDUCT OF ELECTIONS

5.1 Current provisions

The LGA provides that the Chief Executive Officer (CEO) of a local government is automatically the Returning Officer for elections unless s/he appoints another person.⁶³ Prior to the 2008 local government elections, each council conducted the election for their local government area, with the CEO of the council acting as the Returning Officer. The Electoral Commission of Queensland (ECQ) was responsible for the conduct of the 2008 local government elections, with the Electoral Commissioner as Chief Returning Officer. The Electoral Commissioner then appointed a Returning Officer for each local government area to conduct the election on his behalf and under his direction.

5.2 Other Australian jurisdictions

Legislative responsibility for the conduct of local government elections in all states, with the exception of Victoria, rests with the relevant electoral commission.

In Victoria, councils put out a tender for the conduct of the elections. The Committee was advised that for recent elections the Victorian Electoral Commission (VEC) is always successful in securing those tenders.⁶⁴ Previously (1995-2002) the VEC competed with the Australian Electoral Commission (AEC) for council election tenders but the AEC has not tendered for Victorian local government elections since March 2002. The VEC made the only tender for the 2005 local government elections and is believed to be the only agency that submitted a tender for the most recent local elections in 2008.⁶⁵

5.3 What the Committee heard

The majority of submissions received noted the benefits of having an independent body conduct elections.

I have now experienced elections conducted by both the ECQ and local government CEO's and at this stage, despite the cost, I believe that elections should be conducted by the ECQ to ensure integrity and impartiality.⁶⁶

Some submitters, including council CEOs who have previously acted as Returning Officer, commented on the difficult situation a CEO can face when acting as the Returning Officer. One CEO noted:

CEO's do not make good Returning Officers. The above scenario shows we don't. CEO's are too close to the current Councillors and although the RO has independence, some of those candidates will become our masters once the poll is declared. We shouldn't be put into this potential conflict. Please allow the Electoral Commission to be responsible for future local government elections. Some may point out that the CEO does not have to be the RO and under Section 273 can appoint another individual as RO if he/she considers on reasonable grounds that it is appropriate to appoint another individual. My experience is that a least in the mindset of small Councils there is a culture of expectation that the CEO will be the RO. It is usually more expensive to outsource the RO position and this puts pressure on the CEO.⁶⁷

Some councils stated that the administration of local government elections should remain with the council CEO. They noted that CEOs have vast local knowledge which allows them to

⁶³ *Local Government Act 2009, s.272-273*

⁶⁴ Meetings with the Victorian Electoral Commission, the Municipal Association of Victoria and the Victorian Local Governance Association, 27-28 July 2010

⁶⁵ Victorian Electoral Commission, *Victorian Local Government Elections November 2008*, p.1.

⁶⁶ Cr Marilyn McMurtrie, Submission 32, p.1

⁶⁷ Mr Peter Stewart, Submission 63, p.8

recruit trained persons from the local area to ensure that an election runs smoothly. They also have local knowledge about the placement of the polling booths, the number of booths required and the accessibility of buildings that house the polling booths.

Several submissions and witnesses complained of operational deficiencies they had encountered in the ECQ's conduct of the 2008 local government election:

Council is strongly of the view that the administration of local government elections should remain the responsibility of local government CEO's. Whilst Council acknowledges that the Electoral Commission (ECQ) were only asked to run the last local government elections with fairly short notice and it could no doubt expect improved performance in the future, there were a number of matters that Council felt were not well managed in the 2008 election including;

*Lack of local knowledge of ECQ staff leading to confusion for residents when ECQ staff were unable to provide basic information about divisions, adjoining divisions, locations of other polling booths etc...*⁶⁸

As that submission concedes, the ECQ only received about seven months notice to conduct the 2008 local government elections. During the seven months the ECQ had to update its software to enable it to conduct a first-past-the-post election. Such a restricted timeframe for such a large undertaking could explain many of the logistical complaints raised by councils.

It should also be noted that the problems encountered by some councils were not universal:

*The experience in Gympie Regional Council (GRC) use of ECQ was nothing but positive. Council has heard a variety of complaints from other areas and this perhaps indicates the ability of ECQ personnel. GRC would be more than happy to utilize ECQ for future elections given the experience of 2008.*⁶⁹

Indeed, Mr Andy Becker (Australian Electoral Commissioner 2000-2005) in his review of the 2008 local government elections reported that:

*From my perspective as a former Electoral Commissioner, that the ECQ was able to conduct successfully such a large logistical exercise in seven months from a standing start is testimony to their professionalism, integrity and dedication.*⁷⁰

5.4 The cost of local government elections

One issue that was repeatedly raised during this inquiry was the cost of the 2008 local government elections conducted by the ECQ. The total cost of the 2008 local government elections, except for Brisbane City Council, was \$11.97 million. The Electoral Commissioner advised the Committee that the ECQ did not pass on to councils the (approx) \$1 million cost of updating the software to enable the ECQ to conduct the 2008 elections. He noted that the ECQ does not profit from its conduct of elections, it only passes on this cost. The Commissioner estimates that the cost for the 2012 elections, if conducted by the ECQ, would be \$13.5m–\$14m. This takes into account increases in the CPI and wage costs. If there were full postal ballots (for all areas) this figure would reduce by around \$2m.⁷¹

The Electoral Commissioner advised the Committee that the cost per elector of the 2008 local government elections was \$5.90. This figure caters for all electors on the roll, although there is usually a lower turn out at local government elections than for State elections – if all voters had turned out in 2008, the cost per elector would be commensurately lowered.⁷²

⁶⁸ Redland City Council, Submission 55, p.4

⁶⁹ Gympie Regional Council, Submission 72, p.2

⁷⁰ Becker, A., *Queensland Local Government Elections 2008*, Electoral Commission of Queensland, October 2008, p.11

⁷¹ Meeting with the Queensland Electoral Commissioner, 31 August 2010

⁷² Meeting with the Queensland Electoral Commissioner, 31 August 2010

To recoup costs, the ECQ advised Treasury of the total costs of the election, along with information on which councils held full postal or attendance elections. Treasury then calculated the cost of the ECQ's conduct of the election for each council and councils were invoiced accordingly.

Many of the councils that spoke to the committee or made a submission on this matter noted that the invoiced cost was much higher than the cost of previous elections and in some cases was double or more. Redland City Council's submission stated:

*Significant increase in costs from 2004 to 2008 (approximately \$275,000 in 2004 and approximately \$700,000 in 2008). This is an unreasonable burden for ratepayers to carry, particularly when the 2004 election ran so much more smoothly...*⁷³

The Committee notes that in some instances the councils that experienced higher cost for the 2008 election may have been newly amalgamated and thus increased in size. In such cases the cost of running an election for the larger area would have, of necessity, increased. The Committee did however hear from several councils that the increased costs were not proportional to the increased size of their amalgamated councils:

*Cost - the cost incurred by the Rockhampton Regional Council by virtue of the ECQ conducting the 2008 quadrennial election far exceeded the cumulative cost incurred by the four (4) pre-amalgamated Councils in conducting elections*⁷⁴

Mr Becker's election review report recommended that the ECQ continue to conduct the quadrennial elections for local governments in Queensland to ensure that the elections are administered with absolute impartiality and integrity. On the issue of costs he stated:

*There is also a perception held by some of the devotees of the view that each council should manage its own elections, that the cost of doing so is somewhat less than that charged by an external operator. In my experience however, determining the real cost of running an election within council has rarely, if ever, been attempted. As council assets are used, both human and material, the ability to segregate election costs from running costs is extremely difficult. It is my firm view that the cost of conducting an election by a professional team dedicated to the task, should be significantly lower than it would be were election management but one occasional function of local administration.*⁷⁵

Mr Becker noted that the *Local Government Act 1993* was particularly prescriptive regarding the administration of elections. He recommended that should the ECQ conduct all local government elections, it should be afforded more flexibility to conduct elections but the Act should remain prescriptive for the conduct of by-elections by a local authority.⁷⁶

In the *ECQ Annual Report 2009-10*, the Electoral Commissioner states that the parameters of Queensland's electoral legislation limits the ability of the ECQ to respond with flexibility to issues:

*The prescriptive nature of Queensland's electoral legislation can also present strategic and operational challenges, in some cases limiting the Commission's capacity to respond flexibly to challenging circumstances or to opportunities afforded by technological change.*⁷⁷

⁷³ Redland City Council, Submission 55, p.4

⁷⁴ Rockhampton Regional Council, Submission 42, p.4

⁷⁵ Becker, A., *Queensland Local Government Elections 2008*, Electoral Commission of Queensland, October 2008, p.12

⁷⁶ Ibid, p.19

⁷⁷ Electoral Commission of Queensland, *Annual Report 2009 – 2010*, September 2010, p.6 at <http://www.ecq.qld.gov.au/resources.aspx?id=273>

5.5 Conclusion

The Committee believes that the Electoral Commission of Queensland should be responsible for the conduct of local government elections. The basis for this view is the need for elections to be conducted at arms length; for the administration of the elections to not only be impartial and objective, but seen to be impartial and objective. The ECQ has wide-ranging professional experience in conducting elections and the acknowledged impartiality that allows an ECQ determined election result to be accepted by a community as a valid and true result.

The Committee considers that the ECQ should be afforded the legislative flexibility to be able to conduct elections for individual councils as it sees fit, but also that it should invite and consider representations from the council and the local community on issues such as whether elections should be attendance or postal, the most appropriate locations for polling booths and other locality and community specific issues.

The Committee also considers it imperative that Returning/Presiding Officers receive comprehensive training as to their responsibilities.

The Committee acknowledges that, should its recommendations be adopted, the ECQ will require additional resourcing to effectively manage responsibility for the conduct of local government elections, and to undertake the recommended local area consultation.

Recommendation 4:

That the Local Government Electoral Act provides that the Electoral Commission of Queensland is responsible for the conduct and administration of local government elections in Queensland.

Recommendation 5:

That the Local Government Electoral Act provides that the Electoral Commission of Queensland should, whenever practicable, consult with individual councils and the local community by calling for submissions on matters pertaining to the conduct of a local election such as, but not limited to, whether a local election should be by attendance or by full postal ballot and recommended polling booth locations.

Recommendation 6:

That the Local Government Electoral Act provides that, should the Electoral Commission of Queensland call for submissions from individual councils and the local community on matters pertaining to the conduct of a local election, the Commission may call for submissions to be made within a prescribed 'community consultation period' and must consider submissions lodged with the Commission within that prescribed period.

Recommendation 7:

That the Local Government Electoral Act gives the Electoral Commission of Queensland the discretion to reject submissions made outside of a prescribed community consultation period.

Recommendation 8:

That the Electoral Commission of Queensland be appropriately resourced to enable it to effectively manage responsibility for the conduct of local government elections and to enable it to undertake local area consultation as required.

Recommendation 9:

That the Local Government Electoral Act provides that the Electoral Commission of Queensland may, at the discretion of the Electoral Commissioner, investigate, and trial the potential application of new technologies to ascertain whether they can be safely and securely implemented and utilised, to better facilitate the efficient and effective conduct of elections by the Electoral Commission of Queensland. Any active trials are to be conducted in consultation with the local councils affected.

Recommendation 10:

That Returning/Presiding Officers receive comprehensive training as to their roles and responsibilities under the Act.

6. TIMING OF ELECTIONS

6.1 Current provisions

In Queensland, local government elections occur every four years on the last Saturday in March, unless a regulation directs otherwise.⁷⁸ The electoral roll closes on 31 January in the year of a local government election.⁷⁹ This timeframe allows for approximately eight weeks between the closing of the rolls and the election. All voters must be enrolled by the close of the roll to be eligible to vote.

6.2 Other Australian jurisdictions

Throughout the other Australian States and the Northern Territory, local government elections are held at varying times, with all except the Northern Territory holding elections in the latter months of the year.

In Victoria, local council (general) elections occur every four years on the last Saturday in November,⁸⁰ the same timing used for fixed term State elections, but two years apart from the State election. If exceptional circumstances, such as the (unanticipated) dissolution of the Victorian Legislative Assembly mean that a State election has to be called close to the date scheduled for local council elections, the Governor in Council may, on the recommendation of the Minister, postpone the council election day.⁸¹

In New South Wales, local council (general) elections are held every four years on the second Saturday of September.⁸²

In South Australia, all local government elections are conducted by postal voting⁸³ every four years, with voting closing at 5pm on the last business day before the second Saturday of November.⁸⁴

In Western Australia, ordinary elections of local government councillors are held every two years on the third Saturday in October and ordinary elections of local government 'elector mayors' or presidents are held every four years on the third Saturday in October.⁸⁵ Those polling dates can be deferred if they clash with a State or Federal election or referendum, or are otherwise determined to be inappropriate.⁸⁶

In Tasmania, the term of office of elected members is four years, with half the council being elected by full postal ballot every two years. Elections for mayors and deputy mayors are also held by full postal ballot every two years.⁸⁷ The day on which the poll closes for an election in respect of all councils is the last Tuesday in October in any uneven year, unless the Governor fixes another day or postpones an election for some or all councils.⁸⁸

In the Northern Territory, periodic general elections are to be held every four years (commencing in March 2012), on a day to be determined by the Minister, unless a general election has been held for an area within the year prior to that date.⁸⁹

⁷⁸ *Local Government Act 2009*, ch.5, pt.1, s.266 & s.269. In 2008 the election date was brought forward to 15 March.

⁷⁹ *Ibid*, ch.5, pt.3, s.277

⁸⁰ *Local Government Act 1989* (Vic), s.31(1)

⁸¹ *Ibid*, s.31(5)(6)

⁸² *Local Government Act 1993* (NSW), s.287(1)

⁸³ *Council Members' Guide 2010 edition*, Local Government Association of South Australia, p.66

⁸⁴ *Local Government (Elections) Act 1999* (SA), s.5

⁸⁵ *Local Government Act 1995* (WA), s.4.7(1)(a) & (b)

⁸⁶ *Ibid*, see s.4.1A, s.4.1B & s.4.7(2)-(4)

⁸⁷ <http://www.lgat.tas.gov.au/site/page.cfm?u=226>

⁸⁸ *Local Government Act 1993* (Tas), s.268A(1)

⁸⁹ *Local Government Act* (NT), s.85

6.3 What the Committee heard

Timing of Elections

Many submitters to the Committee's inquiry agreed that elections should continue to be held quadrennially. Some however thought four years was too long, arguing that a reversion to three year terms would bring local government into line with State and Federal government and gives voters an opportunity to remove underperforming councillors earlier.

During its consultation, the Committee also heard a range of views on the merit of continuing to have local government elections in March. Most submissions seemed to agree that a fixed election date provides much welcomed certainty, especially in light of State and Federal elections where polling dates are chosen by the government of the day, often with the minimum amount of notice. Where submitters varied in their views was in respect of which month would be most appropriate for elections.

Some submissions argued to keep the status quo, noting that people are used to and expect March elections for local government. Others, typically those submitters from rural and remote areas, noted that March is often the tail end of the wet season, with many roads in northern, western and central areas of Queensland being flooded and impassable, making attendance voting at polling booths impossible and posting of a postal vote impractical.

Other submissions that were against March elections noted that when the election has been held in March, the newly formed council is generally required to consider and adopt a budget for the next financial year (commencing 1 July), often with little or no prior understanding of council budget processes and in many cases little or no prior experience of the operational requirements of council. Many submissions noted that the 'learning curve' for new councillors, in respect of their duties and obligations, can be steep enough without the added burden of expecting them to give useful input into a budget process that they have had little time to come to grips with. These difficulties are further exacerbated for councillors who only hold part time positions as there may have been few opportunities for the council to meet post-election before the next financial year's budget has to be set.

In recognition of those difficulties, many submissions from councils and councillors suggested October would be a better month for quadrennial local government elections. Submitters thought that October would both avoid the weather difficulties associated with March elections and also give new councillors several months experience in their role, a better understanding of council processes, and an appreciation for the emerging needs of the local area before they are expected to debate and set the next annual budget.

Submitters that argued against an October election noted that while it would give a new council and new councillors much needed experience before budget time, the corollary is that they would, for much of their first year in office, be constrained to working within the budgetary framework set by the previous council. This was seen as being a negative outcome in terms of its impact on a new council's autonomy, and in its potential to hamper a new council in implementing its own vision and fulfilling election promises.

Some submissions were undecided about the optimal date for local government elections, but cautioned against busy holiday periods such as December/January, noting the likelihood that distracted voters may forget to vote and that many would likely be away from their local government area on polling day, thus leading to a lower voter turnout rate than might occur if the election was held mid-year.

Timing of by-elections

The Local Government Association of Queensland (LGAQ) submission called for greater flexibility in the timeframes for holding of a by-election to take account of cultural sensitivities which can impact upon campaigning.

In the event of a vacancy, section 270(2) of schedule 2 *Local Government Act 2009* requires that a by-election to fill that vacancy be held within ten weeks of the vacancy arising.

If the vacancy arises from the death of a councillor, and that councillor identifies as an indigenous person, cultural sensitivities concerned with the publication of names of recently deceased indigenous persons need to be considered. As noted in the LGAQ's submission, should an indigenous person die, it is customary that their name is not written, spoken or otherwise acknowledged until after their funeral/burial ceremony has been completed. Accordingly, the LGAQ considers that it is appropriate that any by-election to replace a deceased indigenous councillor be deferred until a culturally appropriate time.⁹⁰

In the submission from the Central Highlands Regional Council, they also advise that the standard 10 week by-election timeframe can be unduly restrictive when filling a vacancy following the death of an indigenous councillor. They suggest that the current timeframe for by-elections be extended from 10 to 12 weeks.⁹¹

6.4 Conclusion

As noted above, many submitters to the inquiry argued that local government (general) elections should continue to be held on a fixed date every four years. The Committee did not receive sufficient evidence to support a change to a shorter term for local government. Accordingly, the Committee recommends that local government elections continue to be held quadrennially. The Committee also agrees that holding elections on a fixed date provides consistency of expectations for voters who know when the election will be and can plan their personal arrangements for polling day accordingly.

The evidence the Committee received from witnesses at hearings and in written submissions was polarised in respect of which month would be most appropriate for the fixed quadrennial local government elections. Some argued that people expect March elections for local government and that a March election brings the opportunity to set the new council budget. Others lobbied for a change to an October election date, noting weather and budgetary issues.

The Committee appreciates the concerns raised in submissions regarding access difficulties presented by cyclone damage and related flooding during the wet season which can impede people's ability to get to polling booths. As local government elections are held one Saturday every four years, the Committee did not consider that on balance that the comparatively remote likelihood of a weather event impacting upon an election warranted moving the election day to a date in October. The Committee also considered that the new Act should contain provisions to cater for situations where severe weather events or other declared disasters impact upon the conduct of an election or the accessibility of booths, by establishing arrangements that facilitate voting by those affected as quickly as the circumstances allow. Should this occur, the Committee does caution that if there have been partial counts of already cast ballots within an electoral division, the results of those partial counts should not be released/published before all persons in the affected area have been afforded a reasonable opportunity to vote. This is to avoid the chance that publication of the results of a partial count could alter the voting intentions of persons who have not yet voted.

The Committee was also cognisant that the current local councils were elected in March 2008 for a four year term ending in March 2012, and that any decision to change to an October election date would require the next election to be either moved back to October 2011 or extended to October 2012. Numerous negative implications could arise from moving the election date in either direction and the Committee considered on balance that arguments to support moving to an October election were not sufficient to recommend moving the current election date from the last Saturday in March every four years.

⁹⁰ Local Government Association of Queensland, Submission 84, p.37

⁹¹ Central Highlands Regional Council, Submission 64, p.7

The Committee also considers that increasing the period within which a by-election must be held to 12 weeks should provide sufficient flexibility for the conduct of a by-election following the death of an indigenous councillor or where such election period may incorporate a number of public holidays such as during Easter or Christmas periods.

Recommendation 11:

That the Local Government Electoral Act provides for local government elections to occur every four years, on the last Saturday in March, unless a regulation directs otherwise.

Recommendation 12:

That the Local Government Electoral Act provides that the electoral roll for a local government election closes on 31 January in the year of that election.

Recommendation 13:

That the Local Government Electoral Act provides that, where an election is impacted by severe weather or by a declared disaster, arrangements are made to facilitate voting in affected areas or by affected voters as expeditiously as the circumstances will permit.

Recommendation 14:

That the Local Government Electoral Act provides that, where some delayed voting occurs within a local government area or division as the result of weather events or disaster, the result of partial counts of already cast ballots within an electoral area or division may not be disclosed, published or otherwise released, before all persons in the affected area have been afforded a reasonable opportunity to vote.

Recommendation 15:

That the Local Government Electoral Act retain the existing section 270, Schedule 2, of the *Local Government Act 2009*, but stipulate that the time fixed for a by-election be within 12 weeks from a vacancy arising.

7. CANDIDATES

7.1 Current provisions

Nominations and candidature requirements

In Queensland a person may stand as a candidate for a local election if they:

- are an Australian citizen;
- live in the local government area;⁹² and
- are on the electoral roll for that local government area.⁹³

There are a range of disqualifications which preclude a person from standing as a candidate in a local government election. These include bankruptcy, imprisonment, treason, sedition or sabotage, some electoral offences and certain other convictions.⁹⁴

Members of Parliament and local government employees are not disqualified from standing as a candidate,⁹⁵ though local government employees are taken to have resigned from their employment if they are elected to local government.⁹⁶

Elected councillors automatically forfeit their office as councillor if they stand as a candidate for election to the State Legislative Assembly.⁹⁷ There is no similar prohibition on them standing for election for the Federal House of Representatives or Senate.⁹⁸

A candidate must be nominated by either the registered officer of a political party, or by at least six electors of the local government area or division for which the election is to be held.⁹⁹

A deposit of \$150 (or another amount prescribed by regulation) must be lodged with the Returning Officer to be held in the local government trust fund.¹⁰⁰ This will be refunded after the election if a candidate is elected or, if not elected, receives more than 4% of the total votes for that area or division.¹⁰¹

Mayors

All electors in the local government area vote in the mayoral election. The same system of voting used to elect councillors is used to elect mayors. Deputy-mayors are chosen by the elected members of the council at the first council meeting.

The LGA prohibits dual candidature. This means that a candidate cannot stand for election as both mayor and a councillor, or for election as a councillor in more than one division of a local government area.¹⁰²

The prohibition on candidates standing for mayor and councillor in the same local government area could mean that some experienced councillors may not wish to risk losing their seat by standing for mayoral election. One potential way around this could be for mayors to be selected by fellow councillors following the election.

⁹² *Local Government Act 2009*, s.152

⁹³ *Ibid*, s.306(4)(c)(ii), sch.2

⁹⁴ *Ibid*, ss.153-156

⁹⁵ *Ibid*, s.298(2), sch.2

⁹⁶ *Ibid*, s.167

⁹⁷ *Ibid*, s.155(3)

⁹⁸ See restriction on State Members running for Federal office - *Commonwealth Electoral Act 1918*, s.164

⁹⁹ *Local Government Act 2009*, s.303(1), sch.2

¹⁰⁰ *Ibid*, s.304, sch.2

¹⁰¹ *Ibid*, s.314, sch.2

¹⁰² *Ibid*, s.299

7.2 Other Australian jurisdictions

The eligibility requirements for candidates are similar across all of the states. Candidates may be nominated by electors or the registered officer of a political party in New South Wales, Victoria, and South Australia, with the difference being that in New South Wales and South Australia only two electors are required. In Tasmania and the Northern Territory, nomination is only by electors, two and three respectively. In Western Australia candidates must nominate themselves or authorise an agent.

The size of the deposit required for nomination varies as follows:

- \$0 in Tasmania;
- \$80 in Western Australia;
- \$100 in Northern Territory;
- \$125 in New South Wales;
- \$250 in Victoria; and
- \$450 in South Australia.

The lack of a deposit in Tasmania is seen as a way to encourage nominations, particularly in areas with smaller populations that may otherwise struggle to find candidates.

In New South Wales, South Australia, Western Australia and the Northern Territory, whether a mayor is elected or appointed varies from council to council.¹⁰³ In Victoria mayors are appointed by councillors.¹⁰⁴ Conversely, in Tasmania, mayors are elected by popular vote for a two year term. A minimum of two years experience as a councillor in any council is a prerequisite for mayoral nomination. If no mayoral nominations are received, then a mayor is appointed by the councillors.¹⁰⁵

In New South Wales the term of the mayor varies from four years for an elected mayor to one year for an appointed mayor.¹⁰⁶

Dual candidature is permitted in New South Wales,¹⁰⁷ Western Australia¹⁰⁸ and the Northern Territory in areas where a mayor is elected by popular vote. Where a person has two candidacies, the results of the election for mayor must be ascertained *before* the result of the election for councillor is determined, as a candidate elected as mayor is not then permitted to fill the office of councillor.¹⁰⁹

7.3 What the Committee heard

The nomination process

The clear majority of submissions agreed that the nomination process is adequate. Mostly it was seen as providing the necessary safeguards without being overly onerous.

Most of those who disagreed with the nomination process had concerns about the fee for nomination and the ability for registered officers of political parties to nominate candidates.

Some argued that the nomination fee for candidates should be increased from the current level of \$150 to \$250, \$500 or even \$1000. It was submitted that a deposit of \$250 would

¹⁰³ *Local Government Act 1993* (NSW), s.282; *Local Government Act 1995* (WA), s.2.11; *Local Government Act 2008* (NT), s.44

¹⁰⁴ *Local Government Act 1989* (Vic), s.71

¹⁰⁵ *Local Government Act 1993* (Tas), s.41 & s.43A

¹⁰⁶ *Local Government Act 1993* (NSW), s.230

¹⁰⁷ *Ibid*, s.283

¹⁰⁸ *Local Government Act 1995* (WA), s.4.73

¹⁰⁹ See for example: *Local Government Act 1995* (WA), s.4.73(1) & s.4.73(2); *Local Government Act 1993* (NSW), s.283(2)

align it with the fee for nomination to the Legislative Assembly. Those suggesting increases to \$500 and \$1000 argued that such an increase would discourage 'speculative' candidates and encourage a higher level of commitment among candidates.

The second key area of disagreement with the nomination process was with registered officers of a political party being able to nominate candidates. Many submitters disagreed with this, arguing that the influence of political parties should be removed from the nomination process.

Those submitters argued that nominations should only be made by electors. Views differed over the number of electors required, with suggestions ranging from three to twelve however most submitters agreed that the current level of six electors was adequate.

One submission also suggested that candidates should be required to disclose if they are running on a party or a team ticket.¹¹⁰

Diversity

Most submissions agreed that the current system supports nominations for council from a diversity of candidates in that there are no formal barriers based on age, gender, race etc.

One submission, although acknowledging that the current nomination system does not itself discourage a diverse range of people from running for council, does suggest that the opportunities for diversity have not, in reality, been fully achieved:

Although there appear to be few impediments to anyone not being bankrupt or imprisoned nominating for Council, cultural diversity, young people and women are generally underrepresented (e.g. women currently hold 11 (15.1%) of the 73 mayoral positions and 170(35.4%) of the 480 councillors positions in Queensland).¹¹¹

Indeed, whilst there are only limited legislative impediments to nominating as a candidate,¹¹² the reality is that both the time and money required to campaign and to serve on a local council can discourage those potential candidates who have limited means or who lack political party support.

Independent candidates need significant financial resources, both to fund campaign activities and to support themselves and/or their families whilst they take time away from paid employment to campaign.

In many smaller councils, councillor positions are part-time and councillors are paid for the meetings they attend. One submission suggested that councillor positions need to be full-time (presumably accompanied by a full time wage) to encourage a diverse range of candidates to run for office.¹¹³ This submission noted by way of example that, in the Hinchinbrook Shire, many (self-employed) cane growers stand for election as they can afford the time away from their farms, whereas persons who are not self-employed or who work in non-seasonal industries are not always able to take time away from their main employment to serve on their local council.

It was also acknowledged by many submitters and witnesses that the undivided councils often seen in many rural and regional areas frequently encompass too large an area for a candidate to be physically able to doorknock or otherwise personally contact all voters. The sheer size of the area to be covered and the cost to a candidate of getting their message out to people who are geographically dispersed was seen by many as being an impediment and in some cases a total barrier to truly independent candidates with limited financial resources.

¹¹⁰ Whitsunday Regional Council, Submission 56, p.2

¹¹¹ Toowoomba Regional Council, Submission 65, p.3

¹¹² The disqualifications which preclude a person from standing as a candidate in a local government election are bankruptcy, imprisonment, treason, sedition or sabotage, some electoral offences and certain other convictions. See *Local Government Act 2009*, ss.153-156

¹¹³ Mr Lawrence Molachino, Submission 22, p.1

One rural councillor advised the Committee that she sometimes does not return to her home for weeks at a time when she is travelling across her area meeting with constituents.¹¹⁴ Such a time commitment would be impossible for many potential candidates, especially those with young families in rural and remote areas that have limited child care options. Those practical impediments to nominating as a candidate and serving on council have likely contributed to the under-representation of women in local government as noted in the submission quoted above.

Residence requirements for candidates and councillors

Almost all submissions agreed that candidates should be required to live in the local government area in which they stand. Submitters differed as to whether this requirement should be taken a step further to require candidates in divided areas to live in their division. Most submitters considered that candidates should be able to effectively represent the interests of their division regardless of where they reside within a local government area.

Some submitters expressed concern that a requirement for candidates to live within their division may be impractical where divisional boundaries are subject to realignment.

On the question of whether councillors should be required to live within their local government area for their whole four year term, most agreed that they should, with some submissions going further and suggesting that councillors should be required to live within their particular division for the whole four year term.

Mayors

The majority of submissions favoured retaining the current prohibition on candidates standing for mayor and councillor in the same local government area.

The reasons given for maintaining the status quo included that a system of dual candidature would be administratively too complex and confusing to voters. It was also considered that if a failed mayoral candidate remains in council as a councillor there is potential for disharmony and conflict within the council.

Those in favour of dual candidature generally argued that valuable candidates who are unsuccessful in being elected as mayor, and who would otherwise be lost to local government, may still be retained as councillors. They also argued that dual candidature may encourage more candidates to seek election as mayor, creating greater choice for voters.

In response to the question of whether mayors should be appointed by their fellow councillors, a clear majority of submissions argued that the status quo of direct (popular) election should be retained.

They argued that direct election by the people gives a mayor a popular mandate to pursue campaign policies and ensures greater accountability to the electorate as a whole.

Strong concern was expressed by some that the appointment of a mayor by councillors may promote the creation of factions within the council.

Those who support mayoral appointment by fellow councillors argued that this will ensure that a mayor has the general backing of the council and can lead with some authority. They expressed concerns that direct election can result in conflict in councils when mayors and councillors do not share the same political persuasion and that such conflict can hamper decision making, noting that:

*The popularly elected Mayor scenario can result in the Mayor only being one vote and in practical terms can constitute ineffective leadership.*¹¹⁵

¹¹⁴ Mayor Jan Ross, Blackall-Tambo Regional Council, Submission 147, p.1

¹¹⁵ Mr Greg Betts, Submission 59, p.3

It was also argued that the ability of councillors to remove a mayor is a key advantage of mayoral appointment by councillors as it allows the mayor to be removed by the council where there is irreconcilable disunity in council and/or the best interests of the community are not being served by the mayor.¹¹⁶

Conversely, many proponents of direct election view the lack of a political removal process as its key advantage, enabling the mayor to make decisions without concern that disagreeing with certain councillors may cost him/her the mayoralty.¹¹⁷

One submission argued that in large urban local government areas, allowing appointment by councillors would remove the financial barriers to mayoral candidature created by the large cost of a mayoral campaign:

*Currently on the Gold Coast, it is suggested that the cost of an effective Mayoral campaign can stretch into the hundreds of thousands of dollars. This is completely ridiculous and favours rich people and political candidates. Standing for election as a Divisional Councillor is within the financial reach of the average person, running for the position of a popularly elected Mayor is not.*¹¹⁸

7.4 Conclusion

The Committee recommends changing the nomination process, to reduce the number of electors required for nomination from six to two electors. In recommending this change, the committee notes that a nominator and a seconder are generally sufficient for all other nomination processes.

This recommendation will bring Queensland into line with the number of electors required in New South Wales, South Australia and Tasmania.

The Committee heard strong support for the current requirement that councillors continue to live in their local government area for the whole of their four year term so that councillors may continue to represent the interests of their local area. While the Committee recognises that individuals' circumstances may change during a four year term it notes that councillors may move within their local government area and does not recommend any change to this requirement.

The Committee received a number of submissions seeking an increase in the deposit required for nomination from the current level of \$150 to \$250, \$500 and \$1000. It is the recommendation of this Committee that the nomination fee be increased to \$250 to align it with the fee required for nomination to the Legislative Assembly.

A higher deposit was suggested by some submissions on the basis that it would discourage speculative candidates. While the Committee appreciates that these candidates are of concern, it does not accept that a higher deposit would necessarily discourage their nomination.

The Committee also agreed with the view of the majority of submissions that the prohibition on dual candidature should be retained.

In respect of mayors, the Committee noted very strong public support for the continued popular election of the mayor, rather than having the mayor appointed by fellow councillors. The vast majority of submitters saw it as crucial that the person leading a community as its mayor is a person chosen by that community. The Committee endorses this view.

¹¹⁶ Mr Denis O'Connell, Submission 44, p.2 and Mr Mark Wilson, Submission 52, p.1

¹¹⁷ Rockhampton Regional Council, Submission 42, p.6

¹¹⁸ Mr Greg Betts, Submission 59, p.3

Recommendation 16:

That the Local Government Electoral Act require that intending candidates for election must first be nominated by the registered officer of a political party that has endorsed the candidate, or by at least two electors for the local government area for which the election is to be held.

Recommendation 17:

That the Local Government Electoral Act require that on nomination of a candidate, a deposit of \$250 (or such other amount equal to the nomination fee for candidates for the Legislative Assembly) be lodged with the Returning Officer and held in the local government trust fund; and that the Act provides that this deposit is refundable to candidates who are elected or who receive more than 4% (or such other proportion equal to that for candidates for the Legislative Assembly) of the total votes for that area or division.

Recommendation 18:

That the Local Government Electoral Act require that a person standing as a candidate for a local government election reside in that local government area.

Recommendation 19:

That the Local Government Electoral Act prohibit a person being, at the same time, a candidate for election as mayor of a local government and a candidate for election as a councillor of that local government; or being a candidate for election as a councillor of a local government for more than one division of the local government's area.

Recommendation 20:

That the Local Government Electoral Act provide for the conduct of a poll for the election of mayor of a local government.

Recommendation 21:

That the Local Government Electoral Act remove the existing subsection 155(3)(b) of the *Local Government Act 2009*, so as to allow a councillor to retain office upon nomination for election as a Member of the Legislative Assembly.

8. CAMPAIGN FUNDING AND DISCLOSURE

8.1 Current provisions

The disclosure requirements for candidates at a local government election can be found in Part 8 of schedule 2 of the LGA.

Candidates and groups of candidates must have a dedicated account with a financial institution during the election to receive gifts and donations, and to make payments relating to the electoral campaign.¹¹⁹ Within 15 weeks of an election, candidates, groups of candidates and donors must provide a return disclosing gifts, services, loans, and donations of \$200 or more to the CEO of the local government for which the election was held.¹²⁰ Third parties who have incurred expenditure of \$1000 or more for a political purpose for the election and received a prescribed gift must also provide a return to the CEO of the relevant local government outlining the incurred expenditure and the gift.¹²¹

A gift is the disposition of property or the provision of services for free or less than the true value. It does not include property passed under a will or volunteer labour.¹²² Expenditure includes publication, public views on an issue in an election, gifts to political parties or candidates, or providing a gift to a person in the knowledge that they will, in turn, provide or use the whole, or part of the gift, to benefit candidates or political parties for an election.¹²³

The CEO of a council must keep a register of electoral gifts which includes candidates' returns. The register is open for public inspection. Any person who suspects, believes or has reasonable grounds to believe that a return provided to the local government CEO contains errors or omissions may inform the CEO of that suspicion or belief. The CEO must then take steps to inform the person who provided the return about the suspicion or belief and allow them thirty days to advise if the return requires amendment to be a true record of fact. If the return does require amendment, that person must apply to the CEO to amend the return. If the person believes that the return is a true record of fact not requiring amendment, they must complete a statutory declaration stating so and provide this to the CEO.¹²⁴

Groups of candidates have an extra requirement to register their group status prior to any fundraising or advertising done during the campaign on behalf of the group.¹²⁵ The group must also appoint an agent to organise fundraising, donations, loans etc. in accordance with the LGA. The agent is also responsible for providing the group's disclosure of gifts, loans etc., in a return to the CEO of the relevant local government as outlined above.¹²⁶ No candidate from the group can allow the agent to provide a return which they know to be false or misleading.¹²⁷

Section 436 of the LGA provides a range of offences in respect of candidate returns although the occurrence of such offences does not invalidate an election.

8.2 Requirements for candidates for Queensland's Legislative Assembly

Submissions to the inquiry, mainly from councils and the LGAQ, stated that the funding and disclosure requirements for local government candidates should mirror the comparative provisions for State and Federal candidates.

¹¹⁹ *Local Government Act 2009*, s.423A & s.423B, sch.2

¹²⁰ *Ibid*, pt.8, sch.2

¹²¹ *Ibid*, s.430, sch.2

¹²² *Ibid*, s.414, sch.2

¹²³ *Ibid*, s.430, sch.2

¹²⁴ *Ibid*, ss.432-434, sch.2

¹²⁵ *Ibid*, s.435B & s.435C, sch.2

¹²⁶ *Ibid*, pt.8, sch.2

¹²⁷ *Ibid*, s.436(2A), sch.2

The *Electoral Act 1992* provides the funding and disclosure requirements for candidates for election to Queensland's Legislative Assembly.¹²⁸

Funding

Sections 288 and 289 of the *Electoral Act 1992* provide that a registered political party *must* appoint an eligible agent for the purposes of the schedule and that unendorsed candidates (i.e. independents and those candidates not standing for a political party) *may* appoint an agent. Where a candidate does not appoint an agent, they are taken to be their own agent for the purposes of the schedule. Agents must be a consenting adult and eligible for the appointment.¹²⁹

Registered political parties and unendorsed candidates are entitled to election funding where they receive at least 4% of the total first preference votes in that election. The amount of election funding a candidate or political party can claim is the lesser amount of either an amount per first preference vote, or a claim for actual electoral expenditure.¹³⁰ Section 294A provides that election funding is based on the number of first preference votes; it is \$1.03531 per first preference vote, or an amount adjusted each financial year on 1 July.¹³¹

The claim for election funding is made to the Electoral Commission by the agent of the candidate or party. This claim must specify all electoral expenditure for which funding is sought. The Electoral Commission must then decide whether to accept the claim in whole or in part and pay the relevant amount to the agent.¹³²

Disclosure

The agent of the candidate or political party must provide a return to the Electoral Commission within 15 weeks of the polling day for the election or by-election, disclosing the total amount/value of all gifts, the number of persons who made gifts, the name and address of the persons or organisation that made a gift, and the date the gift was provided.¹³³ Unless a number of gifts have been received by the candidate from one person totalling \$1000 or more, gifts of a value less than \$1000 or gifts made in a private capacity to the candidate for their own personal use, do not need to be disclosed. Loans to candidates of \$1000 or more must be disclosed by agents.¹³⁴

A person (other than a political party, a candidate, or associated entity) who incurs an expense in relation to gifts totalling \$1000 or more during the disclosure period for an election must also provide a return to the Electoral Commissioner. The return must state the nature of the gifts, the value of each gift, the recipient/s, and whether that gift was provided to a third party on the understanding that the gift, either directly or indirectly, would be used in part or wholly for a political purpose stipulated in the Act.¹³⁵ Sections 305A and 305B stipulate that a person must provide a return where they gave a gift or gifts totalling \$1000 or more to a candidate or to a registered political party during the disclosure period for an election with the intention to benefit a particular candidate, even where that person or organisation was outside of Queensland.

¹²⁸ See part 7 of the Act and the Schedule to the Act. Note, the Schedule to the *Electoral Act* is based on, but is not a copy of, on Part XX of the *Commonwealth Electoral Act 1918*.

¹²⁹ *Electoral Act 1992*, s.290, sch.

¹³⁰ *Ibid*, ss.293-294

¹³¹ *Ibid*, s.294A

¹³² *Ibid*, subdiv.B, sch., ss.297-298H & s.299

¹³³ *Ibid*, s.304

¹³⁴ *Ibid*, s.304A

¹³⁵ *Ibid*, s.305

Special reporting requirements

The *Electoral Act 1992* sets out special reporting requirements for large gifts of a prescribed amount. These large gifts must be disclosed to the Electoral Commission by both the donor and the recipient party within 14 days of receipt. The prescribed amount is currently \$100,000, and includes individual gifts of that amount or cumulative gifts totalling that amount. These returns are included on a register on the Electoral Commission of Queensland (ECQ) website, accessible by the public.¹³⁶

The ECQ website provides an overview of the range of disclosure requirements:

- (a) *Registered political parties, associated entities and donors of \$1000, or more, to a registered political party must submit disclosure returns to the Commission after each 6 months. Returns are available for public inspection on the Commission's website within 6 weeks of receipt.*
- (b) *Every candidate must submit a Return of Details of Gifts Received, Return of Loans Received and a Return of Electoral Expenditure after each election.*
- (c) *'Third parties' (persons or organisations other than registered political parties, associated entities or candidates) who incur electoral expenditure of \$200 or more must submit returns after each election.*
- (d) *Broadcasters, publishers and persons who donate \$1000 or more to a candidate must also submit returns after each election.*

*All election returns are available for public inspection at the Commission's office from 24 weeks after polling day.*¹³⁷

8.3 Other Australian jurisdictions

New South Wales

Part 6 of the *Electoral Funding and Disclosures Act 1981* (NSW) provides that candidates for a general election or by-election must register with the Election Funding Authority (EFA) before they are able to accept political donations.¹³⁸ If a candidate does not receive any political donations, they do not need to register with the EFA.

Candidates or groups of candidates must have an official agent, who can be the candidate/s themselves or another person. The official agent must complete an online course provided by the EFA. The role of the official agent is to manage the receipt of political donations and electoral expenditure from a dedicated campaign account (a campaign account is necessary if a candidate or group receives \$1000 or more in political donations). It is also the role of the official agent to lodge required disclosures.

A political donation includes gifts to or for the benefit of a candidate, group of candidates or political party. It also includes a gift made to another person or an entity where the gift, or part of it, is to allow that person or entity to make, or to reimburse that person or entity for making, a direct or indirect political donation. Annual subscriptions to a political party also come under this section as a gift to the party.¹³⁹

¹³⁶ *Electoral Act 1992*, s.305C. See also ECQ website at: <http://www.ecq.qld.gov.au/financial.aspx?folderid=309>

¹³⁷ ECQ website: <http://www.ecq.qld.gov.au/financial.aspx?id=675>

¹³⁸ In November 2010, the New South Wales Parliament amended the *Election Funding and Disclosure Act 1981* (NSW) to impose caps on political donations and electoral communications expenditure and to increase public funding for NSW State elections. These changes will commence operation on 1 January 2011.

¹³⁹ *Electoral Funding and Disclosures Act 1981* (NSW), s.85. Note that where an annual subscription is less than \$1000, it is required to be disclosed under s.92(4) of the Act.

A reportable political donation is a donation of \$1000 or more, or multiple donations from one donor to a candidate, or group of candidates totalling \$1000 or more within one year. Tickets or prizes worth \$1000 are also reportable political donations.¹⁴⁰

Parties, elected members, candidates and groups must disclose political donations and incurred electoral expenditure during six monthly periods.¹⁴¹

Candidates must lodge disclosures with the EFA for the period from:

- the 31st day after the previous election if they were a candidate in that previous election;
- the 31st day after a previous by-election if they were a candidate in that by-election; or
- if they have not been a candidate previously, 12 months prior to their nomination as a candidate.¹⁴²

The EFA publishes details of disclosures of political donations and electoral expenditure on a publicly accessible EFA website.

The EFA also publishes a funding and disclosure guide to educate candidates, groups and official agents of local government elections as to their disclosure obligations.¹⁴³

Victoria

Candidates must provide a return to the Returning Officer within 60 days of the election. The return must include all gifts, donations or services donated to the candidate for the election campaign equal to or above the disclosure threshold of \$200. The disclosure period is the later of either 30 days after that previous council election, or 30 days after the last election of the council that candidate contested. Candidates are not required to disclose gifts provided to them for their own personal use.¹⁴⁴

Although outside the Committee's terms of reference, it is worth noting that the disclosure requirements for elected councillors in Victoria are particularly stringent. A councillor must disclose any applicable gifts or interests worth \$200 or more within a five year period of a decision or exercise of power that could result in an indirect benefit to the donor.¹⁴⁵ The Electoral Matters Committee (EMC) of the Victorian Parliament advised that the extra requirements were introduced as councillors are particularly close to decisions on development applications and approvals.¹⁴⁶

The Committee notes that the disclosure requirements for councillors include interests, not just donations. One member of the EMC stated that these 'tighter' requirements had not been well publicised and that some councillors may be unaware that a more extensive definition of 'interest' could apply in some circumstances, e.g. a meal with an acquaintance four years previously may need to be disclosed as an interest; the definition of interest going well beyond pecuniary matters.

South Australia

Part 14 of the *Local Government Elections Act 1999* (SA) governs disclosure of donations for South Australian local government candidates. Candidates must provide a campaign donations return to the CEO of the relevant council within 30 days of the election. The campaign disclosure return must include details of gifts received by the candidate, and

¹⁴⁰ *Electoral Funding and Disclosures Act 1981* (NSW), s.86

¹⁴¹ *Ibid*, s.88

¹⁴² *Ibid*, s.89

¹⁴³ Election Funding Authority, *Funding and Disclosure Guide Candidates, Groups and Official Agents at Local Government Elections*, January 2010, at: http://www.efa.nsw.gov.au/local_government_candidates_and_groups

¹⁴⁴ *Local Government Act 1989* (Vic), s.62. This section excludes private gifts not used in conjunction with the election campaign.

¹⁴⁵ *Ibid*, s.78C

¹⁴⁶ Meeting with Victorian Electoral Matters Committee, Melbourne, 27 July 2010

details of the person or organisation or other entity which provided the gift. Candidates are not required to disclose gifts meant for private use by the candidate or gifts of a value less than \$500. Several gifts from one person totalling \$500 or more are considered as one gift. If a candidate has not received any gifts requiring disclosure, they must submit a campaign disclosure return stating that.¹⁴⁷ Gifts of \$500 or more must not be accepted where the name and address details of the gift provider are not known, or if the candidate believes those details to be false.¹⁴⁸

The disclosure period differs for candidates. For fresh candidates who have not stood for election previously, it begins on the day that the person nominated or announced that they would run in the election. For candidates of previous elections it runs from 21 days after the previous election or by-election. For council members (presumably standing for re-election or perhaps election for Mayor) it runs from their first day of appointment as a member of the council. The disclosure period ends 21 days after the election.¹⁴⁹ The CEO of a council must keep the returns for four years after the election. Members of the public can view copies of the returns free of charge during the normal business hours of each council.¹⁵⁰

Section 85 of the *Local Government Elections Act 1999* (SA) provides that a person who does not provide a return in accordance with the Act, or who provides information that they know to be misleading or false is liable for a fine of up to \$10,000.

Tasmania

Local government candidates in Tasmania do not have to provide returns on receipt of gifts or electoral expenditure other than an advertising expenditure return. The advertising expenditure return must detail the amount spent by the candidate on advertising and the details of the advertisements (i.e. placement and cost). Limits on candidate advertising (detailed elsewhere in this report) include \$5000 for councillor candidates and \$8000 for councillor and mayoral or deputy mayoral candidates. These limits are aimed to level the playing field and attract more candidates to nominate. Media organisations must also provide a return detailing the electoral advertisements they printed, published, or broadcast.¹⁵¹

Western Australia

Within three days of nomination, candidates and donors are to disclose information about any electoral related gift with a value of \$200 or more that was given or promised within the six month period prior to the relevant polling day. Following this they must disclose, to the CEO of the relevant council, any gifts received, within three days of receipt.

A “gift” includes money, discounts of \$200 or more, services or other things with a value of \$200 or more, a gift in kind, and where there is inadequate financial consideration, even a promise of a gift in the future. Candidates do not need to disclose gifts by way of a will, gifts given and used for the candidate’s private use, volunteer labour, or a gift from a relative.

Candidates must not accept gifts from unidentified donors. Those gifts must be disclosed to the CEO and either returned to the donor (where possible) or provided to the Council CEO for disposal.

The disclosure period finishes three days after election day for unsuccessful candidates and on the start day for financial interest returns for successful candidates. Information to be provided in the return includes the name of the candidate, the name and address of the donor, the date the gift was promised or received, the gift’s value and a description.

¹⁴⁷ *Local Government Elections Act 1999* (SA), s.81

¹⁴⁸ *Ibid*, s.82

¹⁴⁹ *Ibid*, s.81

¹⁵⁰ *Ibid*, s.87

¹⁵¹ *Local Government Act 1993* (Tas), s.279 & *Local Government (General) Regulations 2005* (Tas), r.22

The CEO must place the candidates' disclosure returns in a register, accessible by the public at the local office of the council.¹⁵²

Northern Territory

There are no provisions for candidates to disclose campaign gifts, donations or expenditure. There is also no legislative provision for candidate funding.¹⁵³

8.4 What the Committee heard

Submissions which addressed this matter were fairly evenly split on whether the current provisions are sufficient. Some felt that they were adequate and provided effective transparency and accountability. Others felt that the current requirements were inadequate; either because they are too onerous, or, conversely, because they are not rigorous enough. Gladstone Regional Council stated that whilst there was no concern generally with the current requirements, the requirement to maintain a separate account for election campaign funding and expenditure is onerous for candidates. They requested that this requirement be removed.¹⁵⁴

Value to trigger disclosure

The recommended amount of the gift or donation to be disclosed varied in submissions. Some submitters stated that *all* donations and gifts should be disclosed, regardless of the value. Some suggested all donations over \$5 should be disclosed. Others provided much higher value thresholds such as \$1000 or \$1500. Again many submitters stated that there should be consistency with State and Federal candidates. One submission stated that a pledge of a donation should also be disclosed.¹⁵⁵ On the whole, there was little discussion in submissions about why a suggested amount should trigger disclosure requirements.

Harmonisation of disclosure requirements

A number of submitters, including councils and the LGAQ, advocated for consistency in funding and disclosure requirements across levels of government.¹⁵⁶ Without providing details to clarify its position, the LGAQ submission stated that the current requirements are *comprehensive and onerous*, and that *third party disclosure and donor registers are onerous for local government and others for compliance and management*.¹⁵⁷

Differentiation between larger and smaller councils

Whilst the majority of submitters preferred 'standardisation' of the disclosure requirements (usually with State and Federal candidate requirements), Gladstone Regional Council raised the possibility of differentiating between larger and smaller councils:

*For the majority of local government elections in Queensland the issue of campaign funding is of little relevance. The presence of Political Parties and highly organised expensive campaigns is most often restricted to larger Councils and consideration needs to be given to differentiating between these circumstances and the less complex environments of smaller Councils.*¹⁵⁸

¹⁵² *Local Government (Elections) Regulations 1997* (WA), pt.5A

¹⁵³ Northern Territory Electoral Commission, *Council Elections Candidate Handbook*, Northern Territory Government, May 2010, p.5, at www.ntec.nt.gov.au

¹⁵⁴ Gladstone Regional Council, Submission 57, p.4

¹⁵⁵ Winton Shire Council, Submission 66, p.2

¹⁵⁶ See for example: Submissions 43, 47, 50, 58, 59, 83, 84, 97, 103, 122, 130 and the evidence of Mr Anthony Chisholm, ALP Queensland Branch, *Transcript of Proceedings, LJSC Brisbane public hearing*, 3 September 2010, p.2

¹⁵⁷ Local Government Association of Queensland, Submission 84, pp.17-18

¹⁵⁸ Gladstone Regional Council, Submission 57, p.5

Public funding

There were a small number of calls in the submissions for public funding of local government candidates akin to that provided to State and Federal candidates (an amount per elector, or reimbursement of electoral expenditure when a candidate receives a certain percentage of primary votes).¹⁵⁹

*If anything, local government in Queensland - which is now a full-time position for many mayors and councillors across the state - should be subject to public funding of election campaigns. This occurs at state and federal level across Australia and its extension to local government would raise the professionalism and standing of local government and would encourage increasingly better-qualified candidates to nominate.*¹⁶⁰

Method of disclosure

One submission suggested an independent election funding agency be established under the ECQ to receive and publish candidate returns.¹⁶¹ Another submission suggested an online site, either independently administered or set up by the candidate, for the publication of candidate returns.¹⁶²

Timing of disclosure

There was a range of submitters' views on the timing of disclosures. Suggestions included progressively during the campaign (either at regular intervals or at a certain point after the donation or gift was received); after the campaign; and a week prior to the election with no further fundraising allowed after that time.¹⁶³ Some submitters raised concerns that when donations and gifts are disclosed after the election voters are unaware of the donors who are funding the candidates, and that this information could influence their consideration of which candidates to vote for.¹⁶⁴ Some councils noted that progressive disclosure during the election campaign would be administratively burdensome,¹⁶⁵ possibly because such disclosures are currently provided to the CEO.

8.5 Conclusion

The Committee considers that candidates' returns detailing gifts, services, donations and loans should be made to the Electoral Commission of Queensland, rather than the CEO of the relevant local authority (as currently occurs), given the recommendation that the ECQ have overarching responsibility for the administration and conduct of local government elections.

The Committee recognises that there is a considerable difference in the size of local government areas and this can be reflected in the costs of campaigning. The Committee believes capping permissible campaign expenditure on a per capita basis will level the playing field for candidates and encourage a broader range of candidates to nominate.

¹⁵⁹ Cr Donna Gates, Submission 122, p.4

¹⁶⁰ Cr Paul Tully, Submission 77, p.3

¹⁶¹ Mr Robert Bromwich, Submission 2, pp.1 & 4

¹⁶² See for example: Mr Robert Bromwich, Submission 2; & Mr Allen Jay, Submission 121

¹⁶³ See for example: Submissions 43, 55, 66, 78, 96, 103

¹⁶⁴ Sippy Downs and District Community Association Inc, Submission 23, pp.1-2

¹⁶⁵ See for example: Mackay Regional Council, Submission 85, p.3

Recommendation 22:

That the Local Government Electoral Act require that the disclosure requirements for local government candidates mirror the current requirements for candidates for the Legislative Assembly.

Recommendation 23:

That there should be a suitable cap on campaign expenditure. Given the variable size of the electoral districts involved, the cap could be in terms of per capita expenditure in divisions or council area, whichever is applicable.

9. ELECTORAL SIGNAGE

9.1 Current provisions

Section 36 of the LGA provides that a local government must not make a law that prohibits or regulates the distribution of how to vote cards (HTVs) or prohibits the placement of electoral posters or signs, for Local, State and Federal elections. Previously, each local government controlled the amount and placement of electoral advertising in their local government area with local laws.

Provisions regarding electoral advertising are contained in sections 392 to 394, schedule 2 of the LGA. Advertisements, notices, handbills, and pamphlets must display the name and address of the person who authorised them.¹⁶⁶ HTVs must have the name and address of the person who authorised it, and the name of the political party, group or candidate.¹⁶⁷

HTVs must be lodged with the Returning Officer a week before polling. The person authorising the HTVs must also disclose any contributions made to the party, group or candidate regarding the production of the HTVs. This disclosure must include the name of the person who made the contribution, the nature and the amount of the contribution. The Returning Officer must reject a HTV that does not comply with these requirements and, on polling day, may confiscate and destroy HTVs which have not been lodged. The Returning Officer must make the HTV available at polling booths for that election on polling day, and at a nominated place for public inspection prior to polling day.

The proprietor of a newspaper must ensure that the word 'advertisement' is included in a headline to an article or paragraph which will be paid for, or where some compensation or reward will be issued.

It is an offence to mislead voters about the way of voting at the election, to knowingly publish false statements of fact about the personal character or conduct of a candidate, or to publish a representation of a ballot paper which is likely to induce an elector to vote other than in accordance with the Act.

9.2 State and Federal provisions

The advertising provisions in the LGA are consistent with those for the State elections as contained in Part 9 of the *Electoral Act 1992*.

The *Commonwealth Electoral Act 1918* (CEA) governs electoral advertisements for Federal elections.¹⁶⁸ As with advertising provisions at the State and local level in Queensland, the Federal legislation aims to ensure the source of the information is provided rather than providing guidelines around the content of any political messages contained in advertisements.

Section 328 of the CEA is similar to the provisions for Queensland elections in that it requires the name and address of the person who authorised an advertisement, handbill, pamphlet, poster or notice. This provision goes further however as it requires the name and place of the business of the printer to be included at the bottom; a video recording must include the name and address of the authorising person at the end of it, and where an advertisement in a newspaper takes up all or part of two opposing pages the, name and address of the authorising person must be included at the bottom of both pages.¹⁶⁹ Paid internet advertisements to affect voting at the election must also contain the name and address of the

¹⁶⁶ This does not include car stickers, t-shirts, lapel badges, pens, pencils or balloons.

¹⁶⁷ This section also provides requirements for font size.

¹⁶⁸ *Commonwealth Electoral Act 1918*, pt XXI

¹⁶⁹ There are exceptions to this requirement e.g. where the advertisement is contained within a broken or unbroken border, or it is necessary to read across both pages to read the advertisement.

authorising person.¹⁷⁰ Section 351 of the CEA provides that an association, league, organisation or other body of persons cannot advertise an association or support for a candidate, or provide advice on how voters should vote for a candidate in an election, unless they are authorised to do so in writing by the candidate. This does not include *bona fide* political parties where the candidate has openly declared that they are a member of that party or branch. Section 331 of the CEA also requires the proprietor of a newspaper to include the word 'advertisement' to be printed as a headline for electoral advertisements.

The Australian Communications and Media Authority regulates the broadcasting of political and election matters and the content of electronic communications.

9.3 Other Australian jurisdictions

New South Wales

Local governments may have local laws detailing the placement etc. of electoral advertisements in that area. The regulated election period for advertisements begins on the day the rolls close and ends at 6pm on polling day. Within this period, any electoral material such as HTVs, posters, advertisements etc. must comply with the *Local Government Act 1993* (NSW). To comply, the material must state both the name and address of the person who authorised the advertisement and the name and address of the printers.¹⁷¹

Electoral advertisements must not contain misleading statements about voting or otherwise untrue, incorrect, misleading or deceptive information. Election material cannot be placed directly onto on a roadway, footpath, building, vehicle, vessel, hoarding or place (but may, for example, be printed onto a poster then attached to a vehicle). Posters may not be placed in or on buildings used for pre-polling.¹⁷²

Electoral material for distribution on polling day must be registered by the Returning Officer by 5pm on the Friday prior to polling day. This includes HTVs but not posters. Electoral material must not be distributed within six metres of the entry to a polling place.¹⁷³

Victoria

Local laws control the distribution and display of advertising material. All electoral advertisements must include the name and address of the person who authorised them. This extends during an election period to letters and articles published or distributed in newspapers and pamphlets (though not letters to the editor etc. which just require the name and suburb). Exceptions exist for car stickers, lapel badges, clothing, pens etc.

Candidates can provide a candidate's statement (maximum 150 words), incorporating a photograph of themselves, for inclusion in the postal ballot material. The statement must be lodged with the Returning Officer by 4pm on the day following the close of nominations. The Returning Officer will print the statement exactly as it reads from the candidate; it is the responsibility of the candidate to ensure the accuracy of the statement. The Returning Officer will reject a statement that includes a reference to another candidate, or support from a party, person or organisation without written consent from that person or group/party. Statements that contain obscene, misleading or deceptive content in the opinion of the Returning Officer must also be rejected.¹⁷⁴

It is illegal to print or distribute misleading or deceptive advertising or promotional material.¹⁷⁵

¹⁷⁰ Section 328A, inserted by the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*

¹⁷¹ New South Wales Electoral Commission, *Handbook Parties, Groups, Candidates, and Scrutineers at Local Government Elections*, 2008, pp.27-33

¹⁷² Ibid

¹⁷³ Ibid

¹⁷⁴ Ibid, pp.25-26

¹⁷⁵ Summary provided in Victorian Electoral Commission, *Candidate Handbook*, 2008, Melbourne, pp.15-17

South Australia

Local by-laws regulate the design, display and removal of electoral material in individual local government areas.

Electoral advertising is regulated under the *Local Government (Elections) Act 1999* (SA). Section 27 of that Act provides that any published electoral material must include the name and address of the person who authorised it. Where the material is printed, it must also include the name and address of the printer.

For a nomination to be accepted, a candidate must include a candidate profile (maximum 150 words) which may also, if they wish, include their photograph. The profile must include the candidate's name, contact details and signature. The profiles are intended to provide electors with information about the candidates and are included in voting material which is mailed to electors.

Western Australia

Electoral material, including advertisements, handbills, pamphlets, notices, letters and articles must include the name and address of the authorising person.¹⁷⁶ For printed material other than in a newspaper, the name and address of the printer must also be included. This does not extend to lapel badges, car stickers, clothing, pens etc.¹⁷⁷

Candidate profiles for the election include details such as their name, contact details, a photograph, information about the ward or the election, and information on the candidate (maximum 150 words, restricted to biographical information, their beliefs and policies). All electors receive the candidate profiles for their ward or local government area as part of an election package. The candidate profiles are also placed upon a notice board at the local government offices.¹⁷⁸

Tasmania

Individual councils control the size, number and placement of electoral advertisements.

All articles relating to an election which are made between the notice of the election and the end of the polling period must include the name and address of the person taking responsibility for the article.¹⁷⁹ The Tasmanian Electoral Commission advises candidates that although the Act does not specifically cover internet publication, candidates should still ensure that any internet advertisements comply with the *Local Government Act 1993* (Tas)¹⁸⁰

The display of posters and signs, and advertising space and time, are regulated by the *Local Government (General) Regulations 2005*. Posters, or groups of posters, must not exceed three square metres. Candidates must not display more than fifty posters or signs relating to a particular election. Any advertising time on radio or television relating to a candidate must include the written consent of that candidate. A person cannot purchase, or cause to be purchased, more than ten minutes of television advertising or fifty minutes of radio advertising during the relevant period. The relevant period is thirty days prior to the notice of the election and ends on polling day. Newspaper articles and advertisements must not exceed two pages of a newspaper circulating in the municipal area or five pages in any other newspaper circulating in the State of Tasmania.

Limits on advertising expenditure are \$5000 for councillor candidates and \$8000 for councillor and mayoral or deputy mayoral candidates. These spending limits aim to level the playing field and attract more candidates to nominate. Candidates must provide an electoral

¹⁷⁶ *Local Government Act 1995* (WA), s.4.87

¹⁷⁷ *Local Government (Elections) Regulations 1997* (WA), r.78

¹⁷⁸ See *Local Government Act 1995* (WA), s.4.51; & *Local Government (Elections) Regulations 1997* (WA), r.24

¹⁷⁹ *Local Government Act 1993* (Tas), s.311

¹⁸⁰ Tasmanian Electoral Commission, *Tasmanian Local Government Elections, Information for Candidates*, May 2009, p.4

advertising return to the Electoral Commissioner within 45 days of the election. Media organisations must also provide a return detailing the electoral advertisements they printed, published, or broadcast.¹⁸¹

A person must not, within the residence of an elector, attempt to induce an elector to not vote, or to vote for a particular person. This is not intended to ban doorknocking, but to protect electors from candidates or canvassers pressuring them to vote a certain way.¹⁸²

Northern Territory

Local government by-laws regulate the placement of electoral material such as posters. Section 99 of the *Local Government Act* (NT) provides that a person must not publish electoral material unless it includes the name and address of the person who authorised it, and any electoral material must not contain untrue or misleading information.

The officer in charge of a polling place must ensure that any canvassing for votes is not conducted within ten metres of the polling place on the day of the election.

There is no electronic media blackout period for Northern Territory local government elections.¹⁸³

9.4 What the Committee heard

How to vote cards (HTVs)

The Committee canvassed in the issues paper whether how to vote cards (HTVs) should be free from promotional content. Some submissions noted that the promotional content contained in the HTVs was an aid to voters who were undecided, and is part of the democratic campaign process of candidates exposing voters to their policies.

*No. Apart from the normal indication of how a voter should actually vote, candidates should be able to continue to include information about themselves and their credentials etc. Any diminution of a candidate's right to do this would be an affront to democracy.*¹⁸⁴

*In keeping with the principle of freedom of information, candidates should be allowed to produce promotional materials and how to vote cards. This is part and parcel of the campaign strategy as well as reaching the minds of the "undecided" voters. This process can contribute to the overall exercise of ventilating the minds of the electors and the community people at large.*¹⁸⁵

*No on the basis that, arguably, how to vote cards are by their very nature promotional.*¹⁸⁶

Conversely, many submissions felt that HTVs should be free from promotional content. Some went as far as to say that the only information that should be included was the name and basic information on the policies of the candidate:

*Yes - elected officials are the employees of their electorate not their financial backers. The how to vote card should be about the candidate and what they stand for not those that support them - the electorate should already be aware of a candidate's backers via the disclosure (above).*¹⁸⁷

¹⁸¹ *Local Government Act 1993* (Tas), s.279; & *Local Government (General) Regulations 2005* (Tas), r.22. The electoral advertising return must be signed by a Justice of the Peace or a Commissioner of Declarations.

¹⁸² *Ibid*, s.312(3)(d)

¹⁸³ Northern Territory Electoral Commission, *Council Elections Candidate Handbook*, May 2010, p.10

¹⁸⁴ Cr Paul Tully, Submission 77, p.3

¹⁸⁵ Lockhart River Aboriginal Shire Council, Submission 37, p.2

¹⁸⁶ Gold Coast City Council, Submission 47, p.3

¹⁸⁷ Mr Michael Moores, Submission 11, p.2

Some submitters felt that the issues surrounding the handing out of HTVs at the polling place need to be addressed:

*The only how-to-vote cards ought to be only those standardized and produced by the ECQ which allow only ONE for each candidate for that polling booth's area and positioned INSIDE the booth. The current practice of having early morning squabbles among party supporters closest to the entrance of polling booths has been the cause of dangerous personal conflicts. The cost of producing advertising material disadvantages minor parties and independents and the littering of booth precincts constitutes environmental vandalism. In addition it is disconcerting for the majority of the populace not only to have to wade through this phalanx of party supporters, but their very presence implies that would-be-voters are not intelligent enough to know who they want to vote for.*¹⁸⁸

*As an observation, the provision of standardised how to vote cards in polling booths coupled with a ban on advertising (including handing out of how to vote cards) within 100 metres of a polling booth entry point, would go a long way to reducing clutter and litter associated with the election. It would also significantly reduce the discomfort of electors from unwanted attention from persons handing out how to vote cards and other material at the entry to polling booths.*¹⁸⁹

Some submissions called for consistency with State requirements for HTVs:

*These requirements should be consistent with state MPs.*¹⁹⁰

*Standardisation with state would seem appropriate. We should have standardisation between state and local government.*¹⁹¹

*How to vote should comply to the same standard as for state government elections.*¹⁹²

Some submissions called for the standardisation of HTVs and for them to be provided to electors by the Electoral Commission of Queensland (ECQ) in either the polling booths, or in an election information pack. Others felt that the burden on electoral officials should not include HTVs and that the costs of the elections would escalate if the ECQ provided this service.

*...how-to-vote cards should be standard for all candidates. These should be provided in all polling booths and postal vote packs by the Electoral Commission of Queensland so as to ensure voters are casting valid and informed votes.*¹⁹³

*I see how to vote cards as being very much individual and after all they are paid for by the candidates. The last election here after amalgamation we had 26 candidates and if we were to put them in the postal packs it would just escalate the cost.*¹⁹⁴

*How-to-vote cards should be standardised and only be provided by the Returning Officer for display in polling booths or in the case of postal election distributed by Returning Officer in postal voting packs. This would save substantial wastage of paper on election day and during election campaign. Summary: Standardise how-to-vote cards for display by Returning Officer in polling booth or distribution by Returning Officer with postal voting pack.*¹⁹⁵

¹⁸⁸ Mr Gordon Moore, Submission 18, p.2

¹⁸⁹ Gold Coast City Council, Submission 47, p.4

¹⁹⁰ Mr Don Willis, Submission 25, p.2

¹⁹¹ Gympie Regional Council, Submission 72, p.4

¹⁹² Mr Peter Lewis, Submission 21, p.2

¹⁹³ Longreach Regional Council, Submission 38, p.5

¹⁹⁴ Cr Marilyn McMurtrie, Submission 32, p.3

¹⁹⁵ Townsville City Council, Submission 43, p.6

*The proliferation of electoral advertising is not supported but at the same time the Council believes that local governments should not be burdened with the undue regulatory responsibility of controlling its use. The suggestion that polling staff should be required to distribute How to Vote material is strongly opposed as being both a potential distraction from the administrative process of the election and in conflict with the previously stated support for a publicly independent administration of the poll. Polling staff should not be subjected to possible allegations of bias for distributing the material in a prejudicial manner - e.g. presenting one candidate's material ahead of another etc. The Council also does not support the display of How to Vote material on Polling Booths as this places responsibility on the Polling Staff to maintain the material, thus providing further distraction from the central purpose of their role. The Council supports the current arrangements in relation to How to Vote cards with the additional suggestion that the electoral rules mandate that How to Vote cards not be the same colour as the ballot paper to avoid confusion to the voters.*¹⁹⁶

Promotional material during the election and on polling day

The Committee received a mixed reaction to the question in the issues paper canvassing what promotional material, such as bunting (continuous signage) and core flutes should be allowed during the campaign period and at polling booths on election day.

There was strong support for greater regulation of the amount of material displayed and its placement at voting centres, with one submission noting:

*Location, size and number of electoral signs should be controlled. Every election electoral signs are vandalized. They are an eye sore and are often in inappropriate locations.*¹⁹⁷

There were some calls for each local government to regulate the placement of signs etc. in its area; others felt that the ECQ should regulate this matter:

Council notes that different local governments have different standards in regard to this matter. Council is happy with the situation as it currently operates under our own local law, whereby limits on promotional material are set. Council would not like to see legislation in the Local Government Electoral Act that permits an "open slather" approach to promotional signage for the following reasons:

It provides an advantage to those candidates with the most means

It promotes disputes amongst candidates and residents

*Proliferation of signage impacts on visual amenity and invariably leads to resident complaints that local governments have to deal with wastage and general environmental concerns.*¹⁹⁸

Some submitters felt that material should be allowed where it complied with the requirements in the LGA and any interference with this "right" should not be allowed:

*Provided the promotional material is legal, has been paid for by the candidate or political party, approved by relevant authorities, that each candidate is allocated the same amount of space etc, and that all material is removed after the election, promotional material should be allowed before and during the campaign.*¹⁹⁹

¹⁹⁶ Gladstone Regional Council, Submission 57, p.5

¹⁹⁷ Kenilworth Chamber of Commerce, Submission 139, p.1

¹⁹⁸ Redland City Council, Submission 55, pp.8-9

¹⁹⁹ Longreach Regional Council, Submission 38, p.5

*It would be infringing on candidates rights to dictate what promotional material should be used.*²⁰⁰

A selection of submissions simply called for consistency with State and/or Federal requirements.²⁰¹

Media blackout

A media blackout, whereby television and radio advertising cease prior to an election, occurs in Queensland for both State and Federal elections. Submissions were split on the application of a media blackout to local government elections. It was noted in several submissions that it should be consistent with the State elections. Others suggested a timeframe between 24 hours to two weeks. Some stated that a blackout is not needed as candidates' campaigning promotes not only the candidate but the election too and may encourage more electors to vote. Others noted that applying a blackout across all local government areas would be detrimental to candidates in remote areas who are unable to meet all electors by doorknocking or other face to face activities prior to an election. One submitter felt that a blackout is outdated as it does not relate to modern technology i.e. it would not restrict electronic media communications such as Facebook, Twitter, blogs and online forums.

9.5 Conclusion

Requirements for how to vote cards at local government elections are consistent with the requirements for candidates at State elections. The Committee considers that these requirements are adequate and do not need changing.

In respect of electoral signage, whilst the Committee does accept the general premise that councils should retain the right to make local laws that reflect the needs and expectations of their local community, the Committee has also considered the recent Supreme Court decision in *Geoffrey Greene v Gold Coast City Council*.²⁰² That case considered the application of local laws of the Gold Coast City Council that restricted a candidate's political signage related to his candidacy for election. The judge in that case found that the Gold Coast City Council had imposed a blanket prohibition on election signs throughout the city and provided only a limited number of stated exceptions.²⁰³ This blanket prohibition was held to be an unlawful restriction on the political communication between electors and candidates for election.

Further, the Committee notes that section 36 of the LGA brings legislative force to the finding in Greene's case by prohibiting a local government from making a local law that prohibits or regulates the distribution of HTVs or which prohibits the placement of election signs or posters.

The Committee considers that, when the new Local Government Electoral Act is being drafted, the principles laid down in Greene's case and section 36 of the LGA should be taken into account.

In respect of a potential electronic media blackout, the Committee considered that this should also apply for local government elections in the same manner as already occurs for State and Federal electioneering in Queensland, to ensure consistency across all levels of government.

²⁰⁰ Ms Sandra Chesney, Submission 46, p.3

²⁰¹ See for example: Submissions 21, 25, 43, 52, 58, 72, 82, 122, 126

²⁰² *Geoffrey Greene v Gold Coast City Council* [2008] QSC 25

²⁰³ *Ibid*, para.23

Recommendation 24:

That the Local Government Electoral Act contain provisions that mirror sections 36, 392A and 392B of the *Local Government Act 2009* with respect to how to vote cards and other how to vote material.

Recommendation 25:

That the Local Government Electoral Act contain provisions in respect of electoral signage and advertising that mirror section 36 of the *Local Government Act 2009* and that reflect the Supreme Court's ruling in *Geoffrey Greene v Gold Coast City Council* [2008] QSC 25 that a local government cannot place a blanket ban on political communication.

Recommendation 26:

That the Local Government Electoral Act prohibits the use of television and radio candidate advertising and promotion from the Wednesday prior to a Saturday local government election or by-election.

10. COMPULSORY VOTING

10.1 Current provisions

In Queensland, voting is compulsory for local government elections.²⁰⁴

Proponents of compulsory voting argue that it involves the majority of the population in the democratic process and that the end result therefore better reflects 'the will of the people'. The main argument against compulsory voting proposes that a truly democratic society would allow voters to choose whether they wish to participate in the election process.

10.2 Other Australian jurisdictions

Other Australian jurisdictions vary on whether electors must vote at local government elections.²⁰⁵

Voting is voluntary in local government elections in Western Australia,²⁰⁶ South Australia²⁰⁷ and Tasmania²⁰⁸. Voting is compulsory for residents for local government elections in the Northern Territory (in fully incorporated local government areas).²⁰⁹ In New South Wales it is compulsory to vote for those on the electoral (residential) roll, but it is not compulsory for people enrolled as non-resident owners, occupiers and rate paying lessees (except those on the City of Sydney roll).²¹⁰ It is compulsory for enrolled residents to vote in Victoria,²¹¹ but not compulsory for enrolled non-residents. Victorian residents aged 70 years or more are excused from any compulsion to vote in local council elections.²¹²

One of the best ways to evaluate the impact of compulsory voting on voter participation and turnout is to examine what happens in a jurisdiction where voting in local government elections is voluntary, such as South Australia. Although statistics from the most recent South Australian local government elections (12/11/10) are not yet available, tracking of participation rates in earlier local elections highlights the comparatively low levels of voter participation that can occur in jurisdictions where voting at council elections is not compulsory.

The average participation rate at the 2006 local government elections in South Australia (with non-compulsory voting) was 31.7%,²¹³ down from the peak year of 2000 where 40% of voters participated.²¹⁴ A recent independent review of local government elections in South Australia was tasked, as one of its key terms of reference, with looking at further measures that could be taken to increase voter participation in local government elections.²¹⁵ The final report of that review, released in January 2008, noted that:

Before the introduction of postal voting in local government elections in 1997, the rate of voter participation in contested elections rarely exceeded 20%. Since 2000

²⁰⁴ *Local Government Act 2009*, s.282

²⁰⁵ In the Australian Capital Territory, the responsibilities usually handled by local government are administered by a department of the ACT government

²⁰⁶ http://www.waec.wa.gov.au/voting/voting_and_enrolment_FAQs.php?faq=compulsory_to_enrol

²⁰⁷ See *Local Government (Elections) Act 1999* (SA), pt.5, s.16(1)

²⁰⁸ *Electoral Act 2004* (Tas), s.107(1)

²⁰⁹ *Local Government Act* (NT), pt.8.4, s.90(1)

²¹⁰ http://www.elections.nsw.gov.au/local_government_elections/voting

²¹¹ *Electoral Act 2002* (Vic), pt.6, s.87(3)

²¹² <http://www.vec.vic.gov.au/vote/vote-haveto.html>

²¹³ Wagstaff, M., *Independent Review of Local Government Elections, South Australia 2007, Final Report*, January 2008, p.14

²¹⁴ *Voters Targeted in Final Elections Review Report*, joint media release by Minister Jennifer Rankine and Local Government Association of South Australia President Mayor Joy Baluch, 11 March 2008.

²¹⁵ *Independent Review of Local Government Elections, South Australia 2007, Final Report*, January 2008, p.11, pp.46-47

*(when postal voting was used state-wide for the first time) participation rates have been consistently above 30%. However, after the peak year of 2000 (when 40% of voters participated) the trend has been downward, with participation rates of 33% in 2003, and 31% in 2006. It is not yet clear whether this downward trend will continue, or whether participation might stabilise in the range of 30 to 33 percent.*²¹⁶

The review also found a demographic and geographic difference in voter turnout rates:

*A clearly recognisable correlation over many years is that voting participation tends to be lower in the larger and metropolitan councils, but higher in smaller and rural councils. In the 2006 elections, voter turnout of more than 50% was the norm for councils with fewer than 10,000 enrolled voters, whilst at the other end of the population spectrum, no council with more than 40,000 enrollees had voter turnout above 30%.*²¹⁷

The South Australian review noted that the issue of whether voting in local government elections in that State should become compulsory “overshadows all others.”²¹⁸ A majority of respondents to that review process opposed compulsory voting (55.6% of 299 quantitative responses), although the support level for compulsory voting was not insignificant (44.4%).²¹⁹ The review did not recommend that voting become compulsory, instead proposing that consideration of the question of compulsory voting be deferred until after the next (2010) local government elections and that in the meantime a comprehensive package of measures be adopted to educate and inform potential voters and promote their participation in elections.²²⁰

In Western Australia’s 2007 local government elections (where voting is not compulsory and by full postal ballot) voter participation rates varied between 24.3% for the City of Wanneroo (where more than 70,000 postal ballot packs were issued) to 73.6% in the Shire of Mount Marshall (where 290 of the 394 ballot packs issued were returned).²²¹ These figures appear to echo the voter participation patterns previously noted for South Australia, where voter participation is lower in larger and metropolitan councils, and higher in smaller and rural councils.

In Tasmania all council elections are conducted by postal vote and the participation rate has been consistently between 55-60% at every election for the last decade. The overall voter participation rate in the 2009 local government elections was 55.54%. The issue of whether Tasmania should introduce compulsory voting in local government elections is currently under consideration by the Tasmanian government.²²²

10.3 What the Committee heard

A large number of submissions²²³ favoured the retention of compulsory voting in local government elections in Queensland.

In its submission, Gladstone Regional Council commented that it supported the retention of compulsory voting:

... on the basis that it is consistent with other tiers of government and encourages a greater participation in the election by the community. Turnout figures in Queensland local government elections tend to be relatively high and this gives

²¹⁶ Ibid, p.11

²¹⁷ Ibid

²¹⁸ Ibid, p.46

²¹⁹ Ibid

²²⁰ Ibid, pp.46-47

²²¹ <http://www.waec.wa.gov.au/voting/documents/Voter%20Participation%20Report%202007.pdf>

²²² http://www.dpac.tas.gov.au/divisions/lgd/local_government_in_tasmania/elections

²²³ 97 out of 149 total submissions

*comfort to the proposition that those elected to the Council have the support and confidence of the majority of citizens.*²²⁴

Some submissions noted the resourcing difficulties in policing compliance with compulsory voting,²²⁵ and that the current penalty for failing to vote in a Queensland local government election²²⁶ [1 penalty unit, being \$100] does not cover a council's costs to pursue non-voters,²²⁷ making it likely that some councils will determine that it is not financially viable for them to pursue persons who fail to vote. The effect of this is that, despite voting in local government elections being compulsory, some people may chose not to vote, in full awareness that they are unlikely to be penalised or held accountable for that decision.

Some submissions were against compulsory voting at local government elections.²²⁸ One submission noted that:

*Voting is based on choice, choice to vote for somebody or to not support a certain candidate. Not voting can be seen as a deliberate choice...*²²⁹

10.4 Conclusion

The majority of submitters to the inquiry support the retention of compulsory voting in local government elections in Queensland. Given that comparatively lower voter turnout rates are experienced in those Australian states where voting in local government elections is not compulsory, there appears to be little practical benefit to be gained from changing the existing status quo and making voting in local government elections in Queensland optional. Accordingly it is considered that voting in local government elections in Queensland should remain compulsory and that a penalty should apply for failing to vote. That penalty should be equal to that applying to a failure to vote at a State election.

Recommendation 27:

That the Local Government Electoral Act mirror the current section 282 of the *Local Government Act 2009* to retain compulsory voting and impose a penalty on eligible persons who fail to vote at local government elections, equal to that applying from time-to-time for failure to vote at a State election.

²²⁴ Gladstone Regional Council, Submission 57, p.5

²²⁵ Mr Gordon Moore, Submission 18, p.3

²²⁶ *Local Government Act 2009*, ss.395(a)

²²⁷ Townsville City Council, Submission 43, p.7

²²⁸ Submissions 18, 22, 37, 98, 102

²²⁹ Lockhart River Aboriginal Shire Council, Submission 37, p.2

11. PRE-POLL, ABSENT AND POSTAL VOTING

11.1 Current provisions

In general, pre-poll, absent and postal votes are referred to collectively as declaration votes, as, on voting, the electors declare by signing a declaration form or envelope they are eligible to vote by pre-poll, absent or postal vote.

If a local government area includes a large rural sector, large remote areas or extensive island areas, the Governor-in-Council may direct that a poll be conducted by postal ballot for the whole local government area, one or more divisions, or a defined part of the local government area.²³⁰

A small number of local government areas conduct their elections exclusively by postal ballot.²³¹ All electors in these full postal ballot areas automatically receive their postal ballot papers by mail without needing to apply for a postal vote. The elector then has a brief period of time to complete the ballot paper before returning their vote in the post (as a postal vote).

Persons outside of a full postal ballot area who are unable to attend a polling booth on polling day must arrange for a postal vote, or vote at an appointed Electoral Commission of Queensland (ECQ) pre-poll centre in the two weeks prior to election day.²³² Silent electors (electors whose address does not appear on the electoral roll) are automatically sent their postal ballot papers by the Returning Officer or the ECQ.²³³ All other categories of special postal voters are required to apply for a postal vote.²³⁴ Application forms for a postal vote must be received by the Returning Officer not later than 6pm on the Thursday before polling day.²³⁵ Postal votes can only be considered if they were cast prior to 6pm on polling day, and received by the Returning Officer by 6pm on the tenth day after polling day.²³⁶

Pre-poll voting is casting a vote prior to the polling day. This may occur because a person is going to be overseas or interstate on polling day, or they may not be able to attend a polling booth due to a disability, or for other reasons including religious beliefs. In the report on the 2008 local government elections, Mr Becker recommended that criteria to enable an elector to vote by post or at a pre-poll voting centre be abolished, so that no grounds are required to be satisfied before a declaration vote is issued.²³⁷

The LGA does not provide for absent voting in Queensland local government elections. Full absent voting would allow electors who are in Queensland on polling day but away from their enrolled division or local government area to vote as an 'absent voter' at any Queensland polling booth.

Mr Becker noted that some media reports were critical of the lack of absent voting facilities for the 2008 Queensland local government elections. Whilst acknowledging that absent voting within a council area is logistically feasible, he also noted that difficulties may arise with absent voters voting outside their enrolled local government area/division, because a large number of ballot papers would have to be stocked at each polling booth to accommodate every potential absent voter from any district.²³⁸

²³⁰ *Local Government Act 2009*, s.318

²³¹ <http://www.ecq.qld.gov.au/elections.aspx?id=39>

²³² *Ibid*

²³³ *Ibid*

²³⁴ *Ibid*

²³⁵ *Local Government Act 2009*, sch.2, s.347(3)(a)

²³⁶ <http://www.ecq.qld.gov.au/elections.aspx?id=39>

²³⁷ Becker, A., *Queensland Local Government Elections 2008*, Electoral Commission of Queensland, October 2008, p.15

²³⁸ *Ibid*

The main arguments for allowing automatic postal voting for rural and remote areas is that in those areas, there are more instances where access to a polling booth can be compromised by weather, distance and terrain difficulties. Also, statistics show that areas using full postal voting for local government elections enjoy lower levels of informal voting.²³⁹

The lower level of informal voting is generally attributed to the extra time people have to consider their vote and to ensure they are marking their ballot paper correctly and in accordance with the provided instructions. This is in contrast to the situation of attendance voting at polling booths where long queues of voters waiting to be processed could lead to voters feeling pressured to vote quickly and leave, increasing the risk that in their haste they may mark their ballot paper incorrectly. The cheaper cost associated with full postal ballot elections is because information is usually sent to voters by post anyway by the Electoral Commission. When ballot papers are combined with that information in the one mail-out, there are significant cost savings when compared with the cost of a mail-out of information being coupled with a day of attendance voting at manned polling booths.

11.2 Other Australian jurisdictions

Tasmania was the first State to introduce postal voting for local government elections when it was trialed in the 1994 and 1996 elections. The *Local Government Act 1993* (Tas) requires council elections to be conducted by full postal ballot every two years. All 29 councils have vacancies for half the number of councillors at each biennial election.²⁴⁰ The voter participation rate has been consistent, between 55-60 per cent at every election for the last decade.²⁴¹ As all Tasmanian council elections are by full postal ballot, there is no need to have provision for pre-poll or absent voting.

In Victoria, local elections can be conducted by either postal or attendance voting, with each council choosing, before the election, the method that it will use. In most cases, councils opt to use postal voting.²⁴² For local council postal elections voters do not need to register for a postal vote as the Electoral Commission automatically posts ballot packs to each voter after nominations have closed.²⁴³ For attendance elections, voters can apply for a postal vote if needed or can pre-poll vote at an early voting centre if they are unable to attend at the polling booths on election day.

In South Australia, all council elections are conducted by post and voting is voluntary.²⁴⁴ As all South Australian council elections are by full postal ballot, there is no need to have provision for pre-poll or absent voting.

Local governments in Western Australia can themselves conduct attendance voting elections or they can request that the Western Australian Electoral Commissioner conduct their elections as either attendance voting or as full postal voting elections. In full postal voting elections, the Electoral Commission sends election packages to all eligible electors in a local government. The packs contain information about candidates, ballot papers, a reply paid envelope and an information brochure on how to vote. The completed ballot papers are then returned by post to the Returning Officer and counted at the local government offices

²³⁹ Local Government Association of Queensland Inc, *Queensland Communities Decide 2008*, p.9

²⁴⁰ <http://www.electoral.tas.gov.au/pages/LocalGovernmentMain.html>

²⁴¹ http://www.dpac.tas.gov.au/divisions/lgd/local_government_in_tasmania/elections

²⁴² <http://www.vec.vic.gov.au/vote/vote-howto-local.html>

²⁴³ <http://www.vec.vic.gov.au/vote/vote-postal.html#3>

²⁴⁴ See *Local Government (Elections) Act 1999* (SA), s.37. See also *History of Electoral Provisions for Local Government in South Australia*, Jade Bruss, State Electoral Office of South Australia, Research Series, April 2005.

on polling day.²⁴⁵ Electors who are unable to vote in person at an attendance election may qualify for an absent, early or postal vote.²⁴⁶

There was a fairly even split in the October 2009 Western Australian local government elections between local governments using postal voting and those using attendance voting.²⁴⁷ Of all of the people who voted during the October 2009 elections, 94% had voted in a postal election.²⁴⁸ Voter participation rates across postal vote districts ranged from 25.36% to 65.74% with a statewide average of 33.35%.²⁴⁹ By contrast, voter participation rates in the attendance voting districts, ranged from 12.7% to 59.4%, with a statewide average of 22.1%.²⁵⁰

In New South Wales, postal voting or pre-poll voting is available (on application) for those unable to attend a polling place in their area/ward on election day. There is no absent voting at local government elections in New South Wales.²⁵¹

In the Northern Territory, council elections are attendance voting elections, however there is provision for pre-poll, postal (upon application) and absent voting.²⁵²

11.3 What the Committee heard

Many submitters from rural areas noted the difficulties associated with accessing polling centres on polling day when roads are cut off by flood waters etc. This is especially exacerbated by the current timing of the Queensland local government elections in March, the tail end of the wet season in northern and western parts of the State. For those areas, people considered an automatic postal vote could alleviate many of the difficulties encountered in trying to access polling centres for attendance voting, although it was noted that adverse weather conditions can also hinder access to postal services.

Submissions that canvassed the question of whether voters should need to meet certain criteria to be eligible for a pre-poll or postal vote were fairly evenly divided into two schools of thought. Some argued that to encourage greater voter participation and to make participation as easy as possible, eligibility criteria for a pre-poll or postal vote (by application) should be removed, so that any enrolled voter who seeks to exercise their vote using a postal or pre-poll vote is allowed to vote in that manner, no questions asked. That line of thinking echoed the views of election commentator Mr Andy Becker whose 2008 review of local government elections recommended that criteria to enable an elector to vote by post or at a pre-poll voting centre be abolished, so that no grounds are required to be satisfied before a vote is issued.²⁵³

Other submitters took a firmer line, arguing that, only in strictly limited circumstances such as illness or infirmity should a person be allowed to exercise a postal or pre-poll vote. Those submitters tended to argue against allowing exemptions from attendance voting on grounds such as religious observance on Saturdays.²⁵⁴

The Queensland Electoral Commissioner advised the Committee that postal voting is a safe and administratively convenient alternative to attendance voting, with the added bonus of

²⁴⁵ http://www.waec.wa.gov.au/voting/local_government_elections/postal_voting.php

²⁴⁶ http://www.waec.wa.gov.au/voting/local_government_elections/voting_in_person.php

²⁴⁷ Postal voting was used by 69 of Western Australian's 141 local governments

²⁴⁸ http://www.waec.wa.gov.au/voting/local_government_elections/

²⁴⁹ http://www.waec.wa.gov.au/voting/local_government_elections/local_government_in_western_australia.php#Elections

²⁵⁰ Ibid

²⁵¹ http://www.elections.nsw.gov.au/local_government_elections/voting

²⁵² See *Local Government Electoral Regulations* (NT), s.20, s.22(a), s.22(b) & s.30

²⁵³ Becker, A., *Queensland Local Government Elections 2008*, Electoral Commission of Queensland, October 2008, p.15

²⁵⁴ Mr Peter Murphy, Submission 33, p.2. & Mr Peter B Ryan, Submission 120, p.2

considerable cost savings. The Commissioner advised that running a full postal ballot local government election would cost approximately \$2 million less than a typical local government attendance election which includes some postal voting. The downside to a full postal ballot is that, although it is easier and cheaper, it does not allow for a final result to be determined on election night.²⁵⁵

On the question of absent voting, many submitters acknowledged that voters have been adversely affected by the restriction on them to attend only polling booths in the division in which they are enrolled. The concern was expressed that many voters may work on polling day and may find it impractical to attend a booth in their area of residence.²⁵⁶

Many noted that a balance needs to be achieved between greater flexibility for voters and the administrative difficulties and the increased cost for councils of absent voting. More flexibility may be achieved by setting up one or more divisional booths within a local government area rather than making every booth cater to voters of all divisions.²⁵⁷ This has been done on the Gold Coast.

*In elections up to and including 2004, Gold Coast City had multidivisional booths in selected areas within the city in recognition that many electors had to work on the Saturday and that it was not necessarily practical for them to attend a polling booth close to their residence.*²⁵⁸

The majority of those in favour of absent voting stated that it should be restricted to a local government area.²⁵⁹

The main objection expressed to absent voting was that it would be impractical to administer, requiring swathes of voting papers to be available at each booth to accommodate all voters. Many argued that postal or pre-poll voting should be utilised by voters instead.

The optimal balance between pre-polling, postal, attendance and absent voting may differ from council to council.

*These questions seem to reflect a trade-off between administrative efficiency and costs, versus making it easy for electors to exercise their vote. Ideally, this balance should be towards encouraging voting so that the elected Council is as representative of its community as possible. Question 26 canvasses the option of allowing postal voting to be extended to all voters in every area. This would enhance voting opportunities and encourage voting, and as such is supported. However, the converse also applies. Many Councils only offer the option of postal voting, and this tends to disenfranchise itinerant electors, and those with limited literacy. In particular, indigenous communities appear to be disenfranchised by postal-only ballots. One Council has an indigenous community of over one quarter of its population, yet no representatives from that community. The option of voting in person should be provided in all towns in a local government area.*²⁶⁰

11.4 Conclusion

Queenslanders should be given every opportunity to participate in the democratic election of their local representatives. Currently voters must provide reasons as to why they want to complete a declaration vote, either by post or by pre-polling. The Committee received

²⁵⁵ Meeting with the Queensland Electoral Commissioner, 31 August 2010

²⁵⁶ See for example: Submissions 48, 50, 52, 55, 130 & 133

²⁵⁷ Redland City Council, Submission 55, p.9 & Cr. Donna Gates, Submission 122, p.5

²⁵⁸ Gold Coast City Council, Submission 47, p.6

²⁵⁹ Only eight submissions were in favour of unrestricted absent voting

²⁶⁰ ORION Consulting Network, Submission 83, p.11

evidence that some electors feel compelled to provide false reasons as to why they require a postal or pre-poll vote.

The requirement for reasons to accompany a postal vote or pre-poll application should be removed. The Electoral Commissioner's submission states that this is time consuming for voters, and the Committee received further evidence that applications for a postal vote or pre-poll are not rejected due to the reasons provided by the elector, which seems to negate the requirement to provide reasons. Further, the Electoral Commissioner recommends in his submission that the requirement for applications for postal votes to be signed should be removed to allow electors to apply for a postal vote electronically, bringing this matter in line with recent Commonwealth amendments. This could allow postal ballots to be provided to electors in a more timely manner than at present.

Electors in undivided local government areas are able to vote at any polling booth in that local government area. To provide consistency absent voting should be provided within a divided local government area to allow voters to vote at any polling booth within that local government area. The Committee does not recommend that absent voting be available across local government areas as this would be administratively burdensome due to the vast number of ballot papers that would be required at each polling centre.

Recommendation 28:

That the Local Government Electoral Act should, for attendance elections, allow enrolled voters to be able to pre-poll within a local government area, without requiring the voter to provide reasons why they are pre-poll voting.

Recommendation 29:

That the Local Government Electoral Act should, for attendance elections, allow enrolled voters to automatically obtain a postal vote upon application, without having to provide reasons why a postal vote is sought, and that such application may be made electronically without the need for a signature.

Recommendation 30:

That the Local Government Electoral Act allow absent voting within a local government area, without requiring the voter to provide reasons why they are absent voting.

12. PROPERTY FRANCHISE

12.1 Background

The history of the property franchise in Queensland local government elections is a mix of giving and taking rights away. A brief outline since 1859 is described in the April 1990 EARC issues paper, *Local Authority Electoral Review*.²⁶¹

On separation in 1859, Queensland inherited New South Wales legislation, including the Municipalities Act 1858. This established a ratepayer franchise (excluding ratepayers in arrears with their payments)...

...The Municipal Institutions Act 1884 introduced two significant alterations. The first limited franchise to male ratepayers aged 21 years or more. The second introduced plural voting: electors paying between five and ten pounds annually in rates were entitled to two votes, and to three votes for more than ten pounds.

The Local Government Act 1878 permitted women ratepayers to vote but not to be candidates in municipal councils.

...

In 1920, the Ryan government secured the enactment of major changes: replacement of the property franchise with the universal (obligatory) adult franchise...

In 1929 the Moore Government legislated to replace the universal adult franchise with a more restrictive occupier franchise, and to return to the indirect method of electing mayors and shire chairmen. The legislation's definition of "occupier" as, in effect, the ratepayer, debarred all but very few women from standing or voting in council elections.

However, the election of the Forgan Smith government in 1932 saw the 1920 changes re-instated...

12.2 Current provisions

Currently in Queensland local government elections eligibility to vote is restricted to residents.²⁶² This mirrors the situation in State and Federal elections where people are only able to vote in the seat in which they reside. Persons who own property or a business away from the area where they reside do not have the ability to also vote in seats where that property or business is located.

The 'property franchise' theory recognises that person who don't live in an area but own property there have a financial 'stake' in an area that gives them a legitimate interest in the operation of its local government, the provision of services to the area, and the future of the district. These 'non-resident ratepayers' include persons who own property in an area and intend to move into it at some time in the future, or who own property in an area solely as an investment with no intention of ever residing there, as well as occupiers of commercial premises such as business lessees.

A property franchise opens up the potential for property interest holders to vote in the elections of two or more local governments (where they live as well as where they have a property interest) as well as potentially two or more elections at a local government level (e.g. in multiple divisions within a larger council). It also means that some properties within a

²⁶¹ Electoral and Administrative Review Commission, *Issues Paper No. 2, Local Authority Electoral Review*, April 1990, para.3.3, pp.5-7

²⁶² *Local Government Act 2009*, s.276 & *Electoral Act 1992* (Qld), s.64(1)(b)

local government area can attract multiple-eligibility. This could result in the owner of a property being eligible to vote in local elections, as well as the residential or commercial occupiers of that property (the tenants).

Arguments that have been historically advanced in favour of a property franchise include that a person's voting rights should be tied to the value of their financial contribution to a local government (i.e. the more properties you own in an area, the more rates you pay, the greater your financial commitment to the area, therefore, the greater your say should be in what happens in that area). Correlative to this, persons may live in an area temporarily and thus be entitled to a vote due to their residency, but have no particular financial or other interest in the future of the area. This could include workers temporarily assigned to live at a work area/site or students living close to campus for the semester, who return home to a different district after their work or exams are completed. Persons in those circumstances have a narrower range of matters that are of concern to them due to the temporary or transitory nature of their connection to the area and they do not make the ongoing financial commitment to the area that ratepayers do.

Conversely, arguments against a property based franchise support the view that local governments should represent and reflect the will of the people living in the local area and, as such, only residents should have the right to vote. This notion is the basis for the Queensland State and Federal electoral systems, as well as the existing Queensland local government electoral system. It has also been noted that permitting non-residents to vote in local government elections requires the creation of a separate electoral roll, requiring resources for its compilation and verification, as well as for the resolution of any enrolment disputes. A review into local government electoral systems in Western Australia noted that the preparation and maintenance of that roll is the responsibility of the local government CEO, and that management of that process takes the time and focus of the CEO away from core local government activities, for what has turned out to be (in Western Australia) a low level of voter turnout of non-resident voters.²⁶³

12.3 Other Australian jurisdictions

New South Wales

Section 266 of the *Local Government Act 1993* (NSW) provides that a person may be enrolled to vote at a local government election if that person is on the electoral roll for the State House of Assembly and Federal House of Representatives' elections. That section also provides that a person who is not a resident of an area, but who owns, or is an occupier or lessee of rateable property in that area, may be enrolled to vote in a local government election for the area.

Voting is compulsory for residents of a local government area but is optional for non-resident ratepayers, occupiers or lessees.²⁶⁴ Electors are allowed one vote per local government area if they satisfy the enrolment requirements.²⁶⁵ This means that where a person owns two properties in an area, or where they satisfy more than one criteria of eligibility to be enrolled, they still only have one vote in that area.

Victoria

Electors enrolled on the State and Federal electoral roll are automatically enrolled for the municipal council in which they reside.²⁶⁶ The *Local Government Act 1989* (Vic) allows

²⁶³ Local Government Advisory Board, *Local government structural and electoral reform in Western Australia: ensuring the future sustainability of communities*, Government of Western Australia, 2006, pp.148-155

²⁶⁴ *Local Government Act 1993* (NSW), s.286

²⁶⁵ *Ibid*, s.268

²⁶⁶ *Local Government Act 1989* (Vic), s.12

electors to vote for their principal place of residence and also for property owned in another municipality.²⁶⁷ Those persons who own property in an area but do not live in that area are automatically enrolled on the council electoral roll for that area if they are the first or second named ratepayer for that property.²⁶⁸

Non-Australian citizens who live in the area, occupiers, and bodies corporate who pay rates in a municipality, but have no other voting entitlement in the municipality, can apply to enrol to vote at local government elections.²⁶⁹

Western Australia

Part 4.29 of the *Local Government Act 1995* (WA) provides that a person who is eligible to vote in State elections for the Western Australian Legislative Assembly is eligible to vote in a local government election in respect of their residence. Owners or occupiers of rateable property located in a different local government area to that in which they reside, are eligible to be enrolled to vote in local government elections for the area in which the property is located.²⁷⁰ This includes bodies corporate which own or occupy rateable property.²⁷¹

Tasmania

Electors enrolled for Tasmanian State elections are automatically enrolled to vote in the election for the local government area in which they reside.²⁷² Owners or occupiers of land in a local government area are entitled to vote if the land is in a different local government area to which they are enrolled by virtue of their residence.²⁷³ A person can also vote on behalf of a body corporate which owns or occupies land in a local government area.²⁷⁴ Each person is entitled to two votes, one as a resident or owner or occupier, and one vote on behalf of a body corporate, regardless of how many properties are owned by the body corporate or person.²⁷⁵

South Australia

Electors in South Australia who are enrolled for State and Federal elections are automatically enrolled to vote in local government elections in the local government area in which they reside. Electors are entitled to only one vote per local government area.²⁷⁶

Part 4 of the *Local Government (Elections) Act 1999* (SA) provides that non-resident owners or occupiers of rateable property may apply to the council CEO to vote in respect of that property. Bodies corporate and groups may also vote in respect of rateable property owned or occupied by that body corporate or group upon application to the CEO. In the case of bodies corporate and groups only one person nominated by that body corporate or group may vote on its behalf. A person is not entitled to vote in that local government election in more than one capacity, i.e. as a resident and as a nominated person for the body corporate or group. Voters' rolls are maintained by the CEOs of local government areas.²⁷⁷

²⁶⁷ Ibid, s.13

²⁶⁸ Ibid

²⁶⁹ Ibid, s.14-15

²⁷⁰ *Local Government Act 1995* (WA), part 4.30 & 4.32,

²⁷¹ Ibid, part 4.31(1G)

²⁷² http://www.electoral.tas.gov.au/pages/LocalGovernment/LG_WhoCanVote.html

²⁷³ *Local Government Act 1993* (Tas), s.254

²⁷⁴ Ibid, s.255

²⁷⁵ Ibid, s.256

²⁷⁶ *Local Government (Elections) Act 1999* (SA), s.14

²⁷⁷ Ibid

Northern Territory

Eligibility to vote in Northern Territory local government elections is based on age, citizenship and residence. There is no opportunity for non-resident property owners or occupiers to vote in a council election if they do not reside in the local area.²⁷⁸

12.4 What the Committee heard

The vast majority of submissions to the Committee's inquiry were opposed to the re-introduction of a property franchise in Queensland.

The few submissions which supported the re-introduction of a property franchise in Queensland did not provide many reasons for their statement. One reason put forward was to allow permanent residents, who do not hold Australian citizenship, to vote in State and local government elections for the area in which they reside:

*I have a temporary long term retirement visa to live in Australia for the next 10 years, at which time I can renew it for another period of 10 years. I own a property here, I work and pay taxes but so far am unable to vote in the local or state elections, it appears that this is because the electoral roll for voting is the same as the one for the federal elections which because I am not an Australian citizen I cannot vote in. There must be thousands if not millions of permanent residents and temporary residents in this position, we make a contribution and would like to have a say in how the local and state governments work.*²⁷⁹

Some submitters felt that whilst a property franchise could be justified on the ground of a non-resident property owner being a ratepayer and having a financial interest in the area where their property is located, it was too hard and too expensive to administer and maintain a separate roll. Others thought that local councillors might feel conflicted between the (possibly competing) interests of absent property owners and local residents.

*While non - resident owners and investors certainly have a financial stake in the area in which they own property, including being subject to council rates and decisions, their interests may be very different to those of residents. In a rapidly growing region like the Sunshine Coast, investment interests may directly conflict with those of existing residents – for example, the nature and rate of new development.*²⁸⁰

*No. Again it does not seem fair denying what appears a legitimate right, but keeping it simple saves bureaucratic bungling and, more important, expense.*²⁸¹

Many submitters felt the re-introduction of a property franchise is against democratic principles and would unduly benefit property developers by allowing them more votes and therefore more say in how an area develops.

Some felt that it would be a step backwards for Queensland:

*... I don't think anyone can nor should have more than one vote. This would seem to be a retrograde move back to the rotten boroughs of the 18th/19th century in the UK.*²⁸²

²⁷⁸ <http://notes.nt.gov.au/nteo/Electorl.nsf?OpenDatabase>

²⁷⁹ Ms Lynne Morley, Submission 4, p.1

²⁸⁰ Sippy Downs and District Community Association Inc, Submission 23, p.2

²⁸¹ Mr Gordon Moore, Submission 18, p.4

²⁸² Mr Michael Moores, Submission 11, p.3

A witness at the Committee's public hearing in Brisbane discussed his concerns about a potential property franchise:

Councillor Tully: I think it is probably one of those deep philosophical issues. Where do you start? There are people who are renting properties. You often hear people saying, 'They're only renting,' as if they have no right to comment on the parks and the community facilities. If you start going backwards with a property franchise, people will then argue that renters who are not paying rates should not vote. If it is argued that people who are paying rates should be entitled to a vote then the other side of the argument is that this other group of people who rent—which in the case of Ipswich would perhaps be 20,000 or 30,000 people—and are not paying rates should not be entitled to vote.

I guess it is one of those philosophical issues. We have some ratepayers who live outside Ipswich but own 100 or 200 homes in the city of Ipswich. Do those people get one vote or 200 votes? If they get one vote, it is not going to make any difference anyway. Should people who are living outside the city be entitled to vote? It is one of those philosophical issues. The open franchise was fought for so long so why should we start going backwards?²⁸³

Some submissions were concerned that it could allow investors from interstate or overseas who owned property in Queensland to have a say in how local councils were elected.²⁸⁴

The Committee's issues paper also canvassed who should be responsible for a separate property owner/occupier/lessee electoral roll if a property franchise were introduced. Although most submitters disagreed with the notion of a property franchise they variously nominated the local government, the EQC, the AEC and the State as the agency that should assume responsibility for a non-resident electoral roll if a property franchise was introduced.

12.5 Conclusion

As outlined above at 12.3, all other States in Australia permit some form of voting at local government elections by eligible persons who either own or lease property in a local area but who don't live there.

It is only Queensland and the Northern Territory where voting rights for local elections are restricted to eligible residents of the particular area.

As many other Australians enjoy those additional voting rights, the Committee would have been remiss had it not raised the issue of a potential property franchise for Queensland and asked for the views of Queenslanders on this issue.

The Committee's issues paper essentially asked Queenslanders whether they thought "absent" landlords and property owners should receive a vote in areas where they own property but don't live. The scenario canvassed by the issue's paper was a situation where a resident of a local government area would receive a vote in that area's local election (whether they were a property-owner or renter) because they live in the area and, *in addition*, owners of property in that area who don't live there would also receive a vote in that election. The rationale of such property franchises as they exist in other States is that they afford a say on the future governance of an area to those who live there and to those who pay rates there even if they don't live there.

Overwhelmingly the responses received by the Committee opposed the introduction of any form of a property based franchise.

During its inquiry, the Committee also spoke to representatives from other States on this issue and noted the difficulties encountered in those States with maintaining the accuracy

²⁸³ Cr Paul Tully, *Transcript of Proceedings, LJSC Brisbane public hearing*, 3 September 2010, pp.23-24

²⁸⁴ Cairns Regional Council, Submission 62, p.9 and see also Gympie Regional Council, Submission 72, p.6

and currency of the additional electoral rolls needed for a property based franchise. The Committee has heeded the cautions of some with whom they spoke that despite the significant administrative burdens those additional property based voting rights can create, once the notion of a voting “right” is entrenched, it is very difficult to remove.

Having observed the administrative complexity inherent in maintaining separate electoral rolls for property owners as experienced by other States, and noting the strong opposition to the introduction of a property franchise in Queensland as expressed in evidence given to the inquiry, the Committee sees no valid reason that would support the introduction of a property based franchise in Queensland. Accordingly, the Committee considers that there should be no change to the current criteria for eligibility to vote in a local government election.

Recommendation 31:

That the Local Government Electoral Act provides for voter eligibility as is currently prescribed by s.276 of the *Local Government Act 2009*.

13. VOTING SYSTEMS

13.1 Background

Under the (now repealed) *Local Government Act 1936*, voting in Queensland local authorities was by First-Past-The-Post unless a direction under Rule 21A of schedule 3 of the Act applied. Rule 21A provided that the Governor-in-Council could make a direction (either on his/her own motion or on application from a local authority) for preferential voting to apply in single member divisions. In its review of Queensland's local authority electoral system, EARC noted that at that time (1990) First-Past-The-Post was used by 124 Queensland local authorities while only 10 used preferential voting.²⁸⁵

EARC recommended preferential voting for single member divisions; Proportional Representation for undivided councils; and First-Past-The-Post for councils with multi-member divisions or a mix of single and multi-member divisions.²⁸⁶ The Parliamentary Committee for Electoral and Administrative Review endorsed those recommendations.²⁸⁷ In passing the *Local Government Act 1993* however the Queensland Parliament introduced the Optional Preferential voting system for single member divisions to harmonise the local government voting system with that used in state elections.²⁸⁸

13.2 Current provisions

Section 283 of schedule 2 of LGA currently provides that the voting system for a councillor or Mayor is Optional Preferential where the local government area is divided into single member divisions and First-Past-The-Post in all other cases. A brief outline of these two systems is below.

Preferential voting

Optional Preferential Voting (OPV) is used in Queensland State elections and in Queensland local government elections for councillor and mayoral elections where the local government area is divided into single-member divisions. It is also used in South Australian local government elections where there is a single vacancy. In New South Wales OPV is used for local government elections for one to two councillors and mayoral elections, and for State elections to the Lower House.²⁸⁹

OPV allows voters to give preferences to only those candidates they wish to vote for i.e. if they prefer only one candidate, OPV allows them to vote for that person only; if they prefer two or three they may vote for them in order of preference, or, if they wish, they may vote for all of the candidates in order of preference.

Full (or compulsory) preferential voting is used in Victorian single-member local government elections and elections for the Federal House of Representatives. This means that voters must number all of the candidates in order of preference.

A candidate is elected if they receive the majority (50% plus 1) of primary votes (candidates with a '1' next to their name have a primary vote). If no candidate achieves a majority the

²⁸⁵ Electoral and Administrative Review Commission, *Report on the Local Authority Electoral System of Queensland*, September 1990, Serial No. 90/R2

²⁸⁶ Ibid

²⁸⁷ Parliamentary Committee for Electoral and Administrative Review, *Report of the Parliamentary Committee for Electoral and Administrative Review on remaining matters arising out of a report of the Electoral and Administrative Review Commission on the Local Authority Electoral System of Queensland*, Queensland Parliament, June 1991

²⁸⁸ Queensland Legislative Assembly, *Transcript of Proceedings* (Hansard), 18 November 1993, at p.5985, T.Mackenroth MP, second reading speech.

²⁸⁹ *Local Government Act 1993* (NSW), ss.284-285

candidate with the least number of primary votes is excluded. The ballot papers with the excluded candidate as number '1' are now re-counted and allocated in accordance with the second preference of those voters. Again, if a candidate receives the majority of the votes at this second count they are elected. If not, the candidate with the least amount of primary votes is excluded and their ballot papers are counted and allocated in accordance with the subsequent preference, i.e. where the first and second preferences have been excluded, the third preference is transferred. This carries on until a candidate receives the majority and is elected.

Advantages of preferential voting include that the elected candidate is preferred by most of the voters either as their primary or subsequent choice. This means that a minority of voters cannot elect a candidate as in the First-Past-The-Post system (discussed below). Some consider that votes are not wasted as their first preference is indicated and, if that candidate is not elected, their subsequent preferences will also be taken into account. Further OPV is seen to provide a choice for the voter to only vote for those candidates that they want to vote for. At a public hearing of the Legal, Constitutional and Administrative Review Committee in November 2008 Emeritus Professor Colin Hughes stated:

Having been connected with its introduction in Queensland, I think the principal argument for it is that it does not force people to say something that they do not believe. It does not force them to say, 'I prefer the communists to the fascists,' or 'I prefer the fascists to the communists.' It does not require them to choose any more than they have genuine choices.²⁹⁰

Some believe that preferential voting can produce results that are not proportionate with the wishes of the electorate, particularly when compared with Proportional Representation voting models.²⁹¹ Optional Preferential voting can result in a candidate not receiving an absolute majority of the votes and can turn into something akin to First-Past-The-Post, as it does not force a majoritarian winner like Full Preferential voting does. This is because voters can choose to vote for all, some or only one of the candidates. During the count of the votes, a ballot paper is extinguished or exhausted at the point where no further preferences are indicated. The extinguished ballots are then removed from the count, resulting in fewer votes for the candidates.²⁹² This does not happen in Full Preferential votes as voters are required to list preferences for all candidates. Full Preferential systems can however result in voters having to allocate preferences for candidates they do not wish to vote for and whose principles or policies they do not support.

In discussing the preferential voting system used in the House of Representatives, Scott Bennett and Rob Lundie state that Full and Optional Preferential voting gives a disproportionate advantage to major parties, as minor parties and independents find it difficult to attract the votes required to attain a seat. They also argue that preferential voting can provide a 'wrong result' in that a candidate may receive the most first preference votes, but where this is less than 50% plus 1, may fail to win the seat due to the subsequent preference distribution.²⁹³

First-Past-The-Post voting

This system is also known as *Simple Majority*. The candidate with the most votes wins. The successful candidate does not need to have an absolute majority (50% plus 1); a simple

²⁹⁰ Legal, Constitutional and Administrative Review Committee, *Transcript of Proceedings, Inquiry into Certain Contemporary Electoral Matters*, 24 November 2008, Emeritus Professor Colin Hughes, p.15

²⁹¹ Ace Electoral Knowledge Network, *Advantages and Disadvantages of AV*, *International Institute for Democracy and Electoral Assistance*, available at: <http://aceproject.org/ace-en/topics/es/esd/esd01/esd01d/esd01d01?toc>.

²⁹² Bennett, S., & Lundie, R., *Australian electoral systems*, Australian Parliamentary Library, Research Paper, August 2007, p.12

²⁹³ *Ibid*, p.7

majority (more than any other candidate) can get that candidate *past-the-post*. First-Past-The-Post is used in Queensland local government elections to elect mayors in undivided local government areas, and bloc voting, a version of First-Past-The-Post system to fill multiple vacancies, is used in multi-member divisions or undivided local government elections in Queensland.²⁹⁴

Advantages of this system include its simplicity and quick turnaround time to determine the winning candidate. Although this system is seen to promote the two-party preferred system (potentially because political parties have access to more resources to spend on advertising than independent candidates) some independent candidates can succeed against the two big parties without obtaining 50% of the vote.²⁹⁵

Disadvantages of First-Past-The-Post include the election of candidates with a minority of votes. Although obtaining the most votes out of all of the candidates, the elected person may be the preferred candidate of only a minority of the overall voters i.e. a majority of the voters (who would have voted for a number of other candidates) may not prefer the elected candidate. Also, although it is possible for minority candidates and/or parties to succeed, they can find it difficult to win against the major parties' candidates.²⁹⁶

The UK Electoral Reform Society describes the disadvantages of using First-Past-The-Post in multi-member divisions (or bloc voting) as:

*In short, electing multiple representatives at the same time under a plurality voting system leads to exaggerated swings and majorities, which can give dominance of a ward to one party with only one-third of the vote. It can also play havoc with voters' wishes, and can lead to situations where a voter can unwittingly deny their first-choice candidate a seat.*²⁹⁷

In the ECQ report on the 2008 local government elections, Mr Becker found that where First-Past-The-Post was used, it was difficult to count the votes and to audit the poll, particularly where there were numerous candidates. He suggested that consideration be given to an electronic solution to this problem, such as that used in industrial ballots around the country, but acknowledged that this may require legislative change.²⁹⁸

Proportional Representation voting systems

The Committee's terms of reference provide that the Committee must consider electoral systems including Proportional Representation.

Proportional Representation is an umbrella term which includes a number of systems used to elect representatives. Using this system, the number of elected representatives of a group or party is in proportion to the vote achieved by that group or party. For example, if party X gets 25% of the overall votes then they get roughly 25% of the vacancies; if party Y gets 65% of the vote then they get roughly 65% of the vacancies and so on.

There are many commentators with differing views on the advantages and disadvantages of a range of Proportional Representation voting systems.²⁹⁹ Proponents argue that

²⁹⁴ *Local Government Act 2009*, sch.2, s.283(2) & s.355

²⁹⁵ www.Australianpolitics.com

²⁹⁶ *Ibid*

²⁹⁷ Electoral Reform Society, *Systems Guide, First Past the Post*, available at: <http://www.electoral-reform.org.uk/article.php?id=54>

²⁹⁸ Becker, A., *Queensland Local Government Elections 2008*, Electoral Commission of Queensland, October 2008, p.12

²⁹⁹ See for example: Diamond, L., & Plattner, M., *Electoral Systems and Democracy*, 2006, John Hopkins University; Gallagher, M., Mitchell, P., *Introduction to Electoral Systems*, contained in *The Politics of Electoral Systems*, 2008, Oxford University Press; Soberg Shugart, M., & Wattenberg, M., *Mixed-Member Electoral systems The Best of Both Worlds?*, Oxford University Press, 2003, Farrell, D.M., McAllister, I., *The Australian Electoral System origins, variations and consequences*, UNSW Press, 2006.

Proportional Representation generally provides electors with a government proportionate to the wishes of the community. Those who do not support Proportional Representation claim that it can provide fractured, unstable governments.

Single Transferable Vote (STV)

The STV system (also known as the *Hare-Clark system*) could potentially apply to undivided councils or multi-member divisions. This system is similar to Preferential Voting (above) as votes are cast in order of preference (though, again, this may be optional).

Candidates must obtain at least the quota of votes to be elected. The quota is calculated by dividing the number of votes by the number of vacancies plus one (i.e. where there are four vacancies the number of votes is divided by five) plus one. By way of example, where there are 100 voters who vote to fill 4 vacancies the quota would be calculated as follows: $\text{quota} = (100 \text{ votes} / 4 \text{ vacancies} + 1) + 1$, $\text{quota} = 21$. A candidate must obtain at least 21 of the 100 votes to be elected.

This particular formula for calculating the quota is the *Droop quota*. This formula is an extension of the preferential system where 50% +1 is required for election to single member divisions as only one candidate can achieve that. Only four candidates can reach the quota above as their minimum combined total would be 84 of the 100 votes available.

When counting the votes, the first preference votes are counted first (all the candidates with a number '1' against their name). If a candidate reaches or exceeds the quota then they are elected. If vacancies remain then the elected candidate's votes over the quota are distributed amongst the other candidates; these are called the *surplus votes*.

To calculate the transfer value of the surplus votes the total number of preference votes is multiplied by the number of surplus votes divided by the total number of votes received by the successful candidate, and any remainders are disregarded.

If an elected candidate does not have surplus votes to distribute, or the transfer value of any votes is negligible and does not result in another candidate being elected, the candidate with the lowest votes is excluded and their votes distributed to the subsequent preference at full value (as if the subsequent preference was a '1'). The process of distribution of surplus votes and excluded candidates' votes continues until all vacancies are filled.

Advantages of STV include that, as it uses preferences, voters preferring minority candidates may still have their say on who is elected if that minority candidate is not elected by indicating their further preferences. This could increase minority representation as more electors may vote for their preferred minority candidate either as a first or subsequent preference without feeling that their vote is wasted if that candidate is not likely to, or does not win. Disadvantages of STV include that it is complex and time consuming to count the votes, specifically the repeated recalculation of surplus votes and their transfer value.

List systems

Political parties or groups develop, internally within the party or group, a list of candidates with seats allocated as per the proportion of votes achieved. Independent candidates are included on the ballot paper. Once the votes are counted, the seats are allocated in accordance with the proportion of votes received. The candidates of political parties or groups fill vacancies according to their position on the list.

Closed List systems do not provide the names of party political candidates on the ballot paper, but do provide the party or group name and the names of any independent candidates.

Open List systems provide the name of the party at the top of the ballot paper and a list of candidates, often separated by a thick, horizontal black line. The voter can vote either 'above the line' for a party generally, or 'below the line' for individual candidates in order of preference. An Open List system is used in New South Wales local government elections.

Allocation of candidates to fill the vacancies following the count of the votes is determined by the highest average or the largest remainder.

The highest average system (or D'Hondt system) is quite simple to administer, but can be difficult for voters to understand. This led to it being discarded after it was used in the first Australian Capital Territory election.³⁰⁰ The total number of votes for a party or independent candidate is counted and is then divided sequentially by the number of seats, i.e. where there are four vacancies the total number of votes for each candidate is divided first by 1, then by 2, then by 3, then by 4. The seats are allocated to the candidates with the highest votes.

The largest remainder formula for the allocation of the seats works by dividing the total number of votes by the number of seats to provide a quota. The number of votes received by each party or candidate is then divided by the quota to give the number of seats. The parties with the largest remainder are then allocated the remaining seats.

Mixed-Member Proportional (MMP) systems

Under this system each voter has two votes. The first vote is for the individual candidates. The successful candidate is elected using the First-Past-The-Post system, outlined above. However, this vote is used to elect only half the total number of representatives. The second vote is usually a statewide vote for a particular party or group. Prior to the election, each party or group usually provides a list of their candidates to allow voters to assess who the candidates are. At the election, the voters choose between these lists of candidates.

The second half of the vacancies are filled according to the overall proportion of support each party or group has obtained. In order to elect candidates under this vote, the party or group may have to achieve a minimum share of the votes - a hurdle or threshold (e.g. 4%).

Following the count of the individual candidates, the overall proportion of the groups or parties is calculated and the number of seats allocated accordingly. This means that the parties fill the vacancies from the lists according to the overall proportion of the votes they received. Parties can increase the number of candidates elected from the first count of individual candidates if they receive a larger proportion, but it may also mean the party reduces the number of candidates elected in the first count if it obtains a smaller proportion overall.

Disadvantages of the MMP system include the potential for some elected representatives to be chosen from the party list and to be elected without local electors voting for them specifically. These representatives may have no link to the area and to the people they are to represent, which may lead to the local community not accepting them.

Proportional Representation and political parties

Many jurisdictions which use Proportional Representation voting systems utilise a threshold or hurdle, as noted above. This means that, to be elected, a candidate or party must exceed that threshold. This can benefit larger parties by making it more difficult for smaller parties or independents to gain a 'fair share' of seats.³⁰¹ It can also limit 'extremist' candidates or those candidates or parties that have very limited platforms, views and policies.

Although candidates may at some point have had an affiliation with a political party, the vast majority of candidates for local government elections outside of Brisbane run as independents. Whilst some candidates choose to run in teams or groups and may have shared policies or ideals, on the whole political parties are not prominent in Queensland local

³⁰⁰ See discussion at: <http://www.hansard.act.gov.au/hansard/1991/pdfs/19911121.pdf>

³⁰¹ Gallagher, M., & Mitchell, P., *Introduction to Electoral Systems*, contained in *The Politics of Electoral Systems*, 2008, Oxford University Press, p.13

governments. The lack of party politics in Queensland's local government elections has been raised many times during this inquiry:

*Local government is identified as the level of government closest to the people and the absence of party political activity within Queensland local government is highly regarded by the community. It is a welcomed alternative to the political and heavily adversarial nature of state and federal politics. It provides the opportunity for genuinely independent members of the community not beholden to or constrained by political party controls to seek election to represent the whole community not just those of like political persuasion. This is a strength of local government in Queensland that should not be eroded.*³⁰²

*Local governments work better without party politics and anything that encourages party politics into local government should be resisted.*³⁰³

The introduction of Proportional Representation in Queensland local government elections could induce more political parties to become involved in local government.

*Different kinds of electoral system also result in different relationships between individual candidates and their supporters. In general, systems which make use of single-member electoral districts, such as most plurality/majority systems, are seen as encouraging individual candidates to see themselves as the delegates of particular geographical areas and beholden to the interests of their local electorate. By contrast, systems which use large multi-member districts, such as most PR systems, are more likely to deliver representatives whose primary loyalty lies with their party on national issues. Both approaches have their merits, which is one of the reasons for the rise in popularity of mixed systems that combine both local and national-level representatives.*³⁰⁴

Richard Katz (2008) describes Proportional Representation as a result, rather than a cause, of parties dominating politics and goes on to note:

*More recently Boix (1999) has employed multivariate techniques and data unavailable to Rokkan both to confirm, and to refine, the hypothesis that electoral system change is brought about by the attempts of ruling parties to maximize their representation in a changed electoral arena. This self-interest-driven account of the adoption of PR has been challenged by an idea-based account asserting that PR was introduced because ruling parties recognized that 'Proportional Representation is the only means of assuring power to the real majority of the country, an effective voice to minorities, and exact representation to all significant groups of the electorate' (Castairs 1980...).*³⁰⁵

As the Committee noted in its issues paper it can be argued that Proportional Representation (in elections where party politics dominate) can lead to governance issues due to no single party gaining a majority of the seats. It can be argued that this can lead to problems in governance where the parties, often with distinct policies on certain matters, cannot agree. It can also lead to small parties holding the balance of power where the two major parties are opposed. Arend Lijphart discussed this issue in his essay *Constitutional Choices for New Democracies*, concluding that Proportional Representation systems provide for more minority parties within a government. He states that Proportional Representation is likely to be associated with power sharing governments, or coalitions, rather than a majoritarian system which usually results in the executive being one dominant party with

³⁰² Local Government Association of Queensland, Submission 84, p.31

³⁰³ Burdekin Shire Council, Submission 30, p.6

³⁰⁴ ACE Project, *Electoral Systems and Political Parties*, International Institute for Democracy and Electoral Assistance, 2005 available at: <http://aceproject.org/ace-en/topics/es/ese/ese07?toc>

³⁰⁵ Katz, R., *Why are there so many (or so few) Electoral reforms?*, contained in *The Politics of Electoral Systems*, 2008, Oxford University Press, p.57 quoting Grumm (1958)

majority control of the legislature.³⁰⁶ His 1991 essay stimulated debate on the effectiveness of Proportional Representation and the parliamentary or presidential models of government. Those arguing against Proportional Representation assert that whilst it does allow minority parties to gain seats, it also allows a fractious society to replicate those divisions within the government.³⁰⁷

13.3 Other Australian jurisdictions

New South Wales

The introduction to Chapter 10 of the *Local Government Act 1993* (NSW) states:

Introduction. This Chapter deals with the election of persons to civic office. Those qualified for civic office are elected for 4-year terms under a system which is preferential (wherever 1 or 2 positions must be filled) and proportional (wherever 3 or more positions must be filled).

Mayors are either appointed by their fellow councillors, or are popularly elected by voters from the whole local government area. Where mayors are popularly elected, the Optional Preferential voting system is used.³⁰⁸ Optional Preferential voting is also used to elect councillors where there are one or two vacancies.³⁰⁹

Proportional Representation is used to elect three or more councillors.³¹⁰ The system used is a combination of STV and Open List whereby voters can either vote for a group or party above the line, or may indicate their individual preferences for each candidate by voting below the line. By voting above the line, the voter elects to follow the preferences arranged by that group or party.

In a report on the 2008 New South Wales local government elections, the Electoral Commissioner for New South Wales noted that the operational implications of the two voting systems were significant. Where voters chose to vote above the line, the Electoral Commissioner notes that specially developed software is required as, due to the number of preference combinations flowing from the groups above the line, voters' preferences could not be readily counted without appropriate software.³¹¹ As this software is cost-prohibitive to councils in New South Wales, a centralised and computerised Local Government Counting Centre was established. The less complex elections were counted by individual Returning Officer's, whilst those elections of greater complexity, with Proportional Representation and above the line voting, were counted at the Local Government Counting Centre.³¹²

Victoria

In Victorian local government elections preferential voting is used where only one vacancy is to be filled³¹³ and STV where more than one vacancy is to be filled.³¹⁴ Electors need to order

³⁰⁶ Lijphart, A., *Constitutional Choices for New Democracies*, 1991, republished in *Electoral Systems and Democracy*, edited by Diamond, L., & Plattner, M., 2006, John Hopkins University Press, 2006, pp.73-74

³⁰⁷ Quade, Q., & PR and Democratic Statecraft, 1991, republished in *Electoral Systems and Democracy*, edited by Diamond, L., & Plattner, M., 2006, John Hopkins University press, 2006, p.93

³⁰⁸ *Local Government Act 1993* (NSW), s.284

³⁰⁹ *Ibid*, s.285(a)

³¹⁰ *Ibid*, s.285(b)

³¹¹ New South Wales Electoral Commission, *Report on the Local Government Elections 2008*, p.57 available at: http://www.elections.nsw.gov.au/data/assets/pdf_file/0007/65077/Report_on_the_Local_Government_Elections_2008.pdf

³¹² *Ibid*

³¹³ *Local Government Act 1989* (Vic), s.10, sch.3. Section 9 provides that where there are only two candidates for one vacancy the candidate with the most first preference votes is elected.

³¹⁴ *Ibid*, s.11B, sch.3

their preferences for all candidates. Parties and groups are not indicated on the ballot papers.³¹⁵

Committee members spoke to various Victorian agencies and organisations concerned with local government election administration. The members were repeatedly told about the phenomenon of ‘dummy candidates’ (fake candidates who are put forward to ‘harvest’ or direct preferences for legitimate candidates) and how the use of them in Victorian local elections has led to calls for the introduction of Optional Preferential voting in local government elections for single member wards. These ‘dummy’ candidates often have no wish to serve as a councillor but, in the ballot information provided to all voters, they advise voters to direct their preferences to another candidate – their running partner. This higher/inflated number of candidates may also lead to a higher vote informality rate as, for a vote to be valid/formal, electors must number all squares of the ballot paper up to the total number of candidates, without repeating or omitting a number. The higher the number of candidates, the greater the chance of an error in numbering occurring.

South Australia

The STV Proportional Representation voting system is used in South Australian local government elections for multi-member divisions and undivided councils. Voters must sequentially number the candidates on the ballot paper in order of their preference to fill the number of vacancies and may indicate further preferences if they wish. Optional Preferential voting is used for single member divisions, voters need only mark their first preference for the ballot to be formal but may indicate further preferences if they wish.

Western Australia

The First-Past-The-Post system is used to elect Western Australian councillors.³¹⁶ The local government electoral system has changed twice since 2007, from First-Past-The-Post to Preferential Proportional Representation in 2007 and then back to First-Past-The-Post in 2009.

In 2007 the Western Australian Parliament amended the *Local Government Act 1995* (WA) to introduce Proportional Preferential Representation. At the introduction of the Bill, there was significant confusion as to which system would apply, either Proportional Representation or preferential. A possible reason for the uncertainty was differing terms used in the second reading speeches. Hon. Jon Ford MLC stated that the Proportional Representation system would be used for single and multi-member electorates.³¹⁷ The explanatory memorandum which accompanied the Bill stated that the proportional system would be used for single and multi-member electorates and was based upon that used for Western Australian Legislative Council elections.³¹⁸

To promote further public consultation on the proposed voting system change, the Western Australian Parliament split the original Bill in two and referred the second Bill, regarding local government elections, to the Environment and Public Affairs Committee (EPAC). EPAC recommended that the second Bill be passed without amendment.³¹⁹

Notwithstanding strong opposition to the proportional preferential representation system from the Western Australian Local Government Association and around 100 councils, the

³¹⁵ Victorian Electoral Commission, Submission 26, p.3

³¹⁶ *Local Government Act 1995* (WA), sch.4.1. See also Western Australian Electoral Commission website at www.waec.wa.gov.au

³¹⁷ Hon Jon Ford MLC, Minister for Local Government and Regional Development, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 26 October 2006, p.7748

³¹⁸ *Local Government Amendment Bill 2006* (WA) Explanatory Memorandum

³¹⁹ Standing Committee on Environment and Public Affairs, *Report 8, Local Government Amendment Bill (No.2) 2006*, Western Australian Legislative Council, p.43. Note, a minority of the committee members did not support the recommendation, pp.43-44

Western Australian Parliament passed the Act and the new system was used to elect councillors in the 2007 local government election.³²⁰

Despite fears that the system was too confusing for voters, the participation rate in the 2007 local government elections increased 17% on the previous 2005 election and the informality rate was low.³²¹ The increase in participation could be attributed to the widespread media campaign that promoted that election.³²² The Western Australian Department of Local Government and Regional Development noted in its *Annual Report 2007-08*:

*The proportion of informal votes to the number of votes received was 1.2%. While state elections, being compulsory, would be expected to have a higher informality rate than local government elections, the 4-5% state informality rate indicates that 1.2% is not a high rate for optional voting elections. The record number of voters, together with a low informality rate, indicates that numbering ballot papers with preferences using the new PPR system did not deter people from voting and the majority voted correctly.*³²³

In August 2009 the *Local Government Act 1995 (WA)* was again amended, this time to revert to First-Past-The-Post.³²⁴ The reason for this most recent change was to restore a system that is easy to understand and apply at the local level.³²⁵ The second reading speech of the amending Bill in the Western Australian House of Assembly reads:

Since the previous government introduced the Preferential Proportional Representation system, the local government sector has been constantly expressing a strong desire to revert to the provisions of the First-Past-The-Post system that was previously in place. The sector's concerns with the unpopular Preferential Proportional Representation system are that it is complicated and difficult to understand; that it is time consuming, requiring new and additional resources to apply; and that it was hastily introduced without prior consultation.

*Further, both the Western Australian Local Government Association and Local Government Managers Australia expressed disappointment that they were not given the opportunity to comment on the Preferential Proportional Representation proposals within the communication and consultation time frame provided in the previous government's State-Local government partnership agreement. The Western Australian Local Government Association has also advised that a large majority of local governments surveyed supported the return to the First-Past-The-Post system for local government elections.*³²⁶

Tasmania

The *Local Government Act 1993 (Tas)* provides that the Hare-Clark method of STV is used to elect councillors in local government elections. The Tasmanian model differs from the description of STV above which states that remainders or decimal points are disregarded in determining the transfer value of the ballot. In some local governments in Tasmania, there are so few electors that votes are counted to two decimal places.

³²⁰ See for example: Murray, K., *More Open Elections System Supported*, WALGA, 13 January 2009, available at: <http://www.walga.asn.au/news-publications/media-releases/2009/january-2009/more-open-election-system-supported>

³²¹ Department of Local Government and Regional Development, *Annual Report 2007-2008*, Government of Western Australia, 2008, p.76

³²² Ibid

³²³ Ibid

³²⁴ Amended by the *Local Government Amendment (Elections) Act 2009 (WA)*

³²⁵ *Local Government Amendment (Elections) Bill 2009 Explanatory Memorandum*, available at: <http://www.parliament.wa.gov.au/web/newwebparl.nsf/iframewebpages/Bills+-+All>

³²⁶ Western Australia, *Parliamentary Debates*, House of Assembly, 18 March 2009, p.2046

The Robson Rotation system is used to rotate the order in which candidate names appear on ballot papers for councillor, mayoral and deputy mayoral elections. This means that rather than allocating candidate placement on the ballot paper from a draw, the names of all candidates are rotated on different ballot papers. This reduces the opportunity, when electors choose to have a donkey vote, for one candidate to receive first preference votes simply because of their placement at the top of the list on all ballot papers.³²⁷

Mayors and deputy mayors are elected using a preferential voting system similar to that used for the Tasmanian Legislative Council and Federal House of Representatives elections.

Northern Territory

Full Preferential voting is used in the Northern Territory local government elections.³²⁸ This system is used to elect the principal member of the council and all councillors in both single division and undivided councils.³²⁹

Where there are a number of councillors to elect, the count proceeds as if for a single vacancy, described above. A person is elected once they exceed the 50% threshold. The formal votes are then recounted with the elected person or persons excluded from the subsequent count. The next person to gain 50% of the remaining preferences is elected. This process continues until all vacancies are filled.³³⁰

This process would seem to be very time consuming for Queensland local government elections. The STV system would provide the same results, i.e. a number of vacancies filled by reference to voters' preferences but, with a lower quota to reach, vacancies could be declared quicker.

13.4 Informality

The Committee recognises the importance of electors understanding how to cast their vote properly. To do this they need to understand how to fill in their ballot paper correctly according to the voting system in use. If they do not fill in their ballot correctly, their vote may not be valid. When a vote is not valid, it is an informal vote. The informality rate of an election is the percentage of electors who do not fill in their ballot correctly for one reason or another.

Some informal votes are attributable to people choosing to have a protest vote where they will either not mark their ballot paper or they will mark it incorrectly to render it void. In some cases, however, voter confusion may lead to the voter unintentionally filling in the ballot paper incorrectly. One potential cause of voter confusion arises when different electoral systems are used to elect different levels of government.

With three levels of government to elect, Local, State and Federal, it is important that electors are aware of differences between voting systems at the different levels. Federal elections to the House of Representatives use the Full Preferential voting system which requires voters to number all candidates in order of their preference. The Queensland State elections use Optional Preferential voting which entitles the voter to give preferences only to the candidate/s of their choice.

Local government elections in Queensland currently use Optional Preferential voting for councillors and mayors in local government areas divided into single member divisions. As discussed above, the Optional Preferential system requires that the elector marks at least

³²⁷ A 'donkey vote' is where an elector numbers the ballot paper starting with '1' for the candidate at the top of the ballot paper, '2' for the second candidate down, '3' for the third, and so on until all candidates are numbered.

³²⁸ *Local Government Act 2008 (NT), Local Government (Electoral) Regulations (NT), r.18*

³²⁹ *Local Government (Electoral) Regulations (NT), r.53*

³³⁰ *Ibid, r.54*

one candidate to be a formal vote. The option is then available for the elector to mark any further preferences they wish.³³¹ First-Past-The-Post is used in undivided local government elections to elect mayors, where electors need only mark the ballot paper with a '1' or a tick or cross, and in undivided councils or multi member divisions where the elector may number the ballot paper up to the number of vacancies to be filled.³³²

This means that, depending upon the divisional status of their local government area, some Queenslanders may vote using several different voting systems at the three tiers of government: First-Past-The-Post in an undivided local government election, Optional Preferential for state elections, Full Preferential for Federal House of Representatives elections and Proportional Representation for Senate elections.

The informality rate at the 2010 Federal election was 5.45% in Queensland. This is only slightly lower than the informality rate for Australia which was 5.55%. Queensland did not have the highest informality rate; South Australia (5.56%), the Northern Territory (6.19%) and New South Wales (6.83%) had higher informality rates. Both South Australia and New South Wales also use Optional Preferential voting in local government elections. A number of media articles following the Federal election quoted Australian Electoral Commission officials as raising concerns over the number of informal votes in Queensland:

*Australian Electoral Commission national spokesperson Phil Diak this week expressed concerns about the number of informal votes cast in Queensland by people who did not realise they had to number every box on the ballot sheet in a federal election.*³³³

In addition:

*AEC state manager Anne Bright said voters appeared to be confused over the difference between the state and federal systems...*³³⁴

An article in the *Brisbane Times* following the Federal election stated that:

*According to AEC data, the most common reasons votes are discounted as informal in Queensland is that the voter numbered their ballot with a '1' only - followed by submitting blank ballots and the use of non-sequential numbers.*³³⁵

One former Federal politician publicly urged Australians to not vote (or to not cast a valid vote) in the 2010 Federal election. It is possible that his comments may have affected the informality rate at the 2010 Federal election for the House of Representatives.

In previous Queensland state elections a campaign to 'Just Vote 1' encouraged electors to vote for one person or party only without listing any preferences on the ballot paper. Electors may also 'Just Vote 1' in single member divisions of local government as Optional Preferential is used. In Federal House of Representative elections, where the Full Preferential voting system is used, a vote is informal if the voter does not number preferences for all candidates.

In Queensland State elections, electors may also mark the ballot paper with a tick or cross instead of a number '1' when they do not wish to indicate any further preferences. At Federal elections doing this would render the vote informal.

Problems arise when electors believe they can 'Just Vote 1' in Federal elections (where compulsory/Full Preferential voting is used). For a vote to be valid the elector must number all preferences rather than just indicate their first preference. Where an elector 'Just Votes '1'

³³¹ *Local Government Act 1993*, s.354, sch.2

³³² *Ibid*, s.355, sch.2

³³³ Lappeman, S., *Beattie's poll plan hits vote*, *Weekend Gold Coast Bulletin*, 28 August 2010, p.5

³³⁴ *Ibid*

³³⁵ Hurst, D., Waters, G., *See your vote really does count*, *Brisbane Times*, 24 August 2010, <http://www.brisbanetimes.com.au/federal-election/see-your-vote-really-does-count-20100823-13ib9.html>

in those elections, their vote will be invalid and informal. In the 2007 Federal election for the House of Representatives, around 30% of informal voting was due to the elector only numbering one box.³³⁶ The Committee does not have statistics from the 2010 Federal election of the number of informal votes attributed to incorrect numbering of the ballot paper. At the time of writing this report the Queensland Attorney-General, Hon. Cameron Dick MP, was looking into the concerns raised by the AEC national spokesperson (quoted above) and the effect that using different voting systems at State and Federal elections had on the informality rate for Queensland.³³⁷

One solution to informal voting caused by voter confusion could be to harmonise voting systems used across the three levels of government. This would result in consistent voting systems throughout all levels of government i.e. the introduction of Full/Compulsory Preferential voting in Queensland State and local government elections would provide consistency with the voting system used for the Federal House of Representatives, whereas introducing Proportional Representation in Queensland State and local government elections would provide consistency with Federal Senate elections.

Harmonisation of voting systems was the principle reason that Parliament introduced the Optional Preferential voting system into the *Local Government Act 1993*. In his second reading speech for the Local Government Bill, the then Minister for Housing, Local Government and Planning, Terry Mackenroth MP, stated:

When the Electoral and Administrative Review Commission examined the local authority electoral system, it recommended local government elections should remain under the Local Government Act, but the election rules should be amended to achieve consistency, as far as practicable, with the State requirements. This general philosophy has been followed in the preparation of the electoral provisions in the new Local Government Act. However, continuing recognition has been given to a number of intrinsic differences between the state and local government systems. For example, the system of Optional Preferential voting that applies for state elections can only be used for those local government elections where a single councillor has to be elected.

...The increased uniformity in voting procedures and other changes that have been made also provide electors with a better chance of casting a formal vote.³³⁸

It is not only the differences in voting systems which can cause higher informality rates. Evidence provided to the Committee suggests that an election with a high number of candidates produces a higher informality rate. The Queensland Electoral Commission stated in its submission:

It may also be pertinent to provide a comparison of informality rates under the existing Optional Preferential and First-Past-The-Post systems. At the 2008 elections, the average informality rate across all council elections was 2.77%. In contrast, informality rates just for large undivided councils (30,000 electors and above) were as follows:³³⁹

³³⁶ Australian Government, Electoral Green Paper, *Strengthening Australia's Democracy*, September 2009 citing www.aec.gov.au/Voting/Informal_Voting/

³³⁷ Hon Cameron Dick MP, ABC Radio 612, 26 October 2010

³³⁸ Queensland Legislative Assembly, *Transcript of Proceedings* (Hansard), 18 November 1993, p.5985

³³⁹ Electoral Commission of Queensland, Submission 41, p.2

Council	Informal	No. of candidates	No. to be elected
Townsville	9.46%	49	12
Fraser Coast	9.33%	29	10
Mackay	8.21%	37	10
Gympie	7.97%	42	8
Gladstone	6.84%	15	8
Toowoomba	6.77%	36	10

The above table relates to 2008 local government elections in undivided local governments where First-Past-The-Post was used. It depicts a much higher informality rate for large undivided councils which have a large candidate pool, than the average informality rate of 2.77% at the 2008 local government elections.

As discussed elsewhere in this report, whether electors attend a polling booth to vote, or whether they vote by post also impacts significantly on the informality rate. The Victorian Electoral Commission provided the following table which indicates informal votes cast at the 2008 local government elections in Victoria.³⁴⁰

Number of candidates	% informal votes – Postal elections	% informal votes – Attendance elections
2 – 5	2.05	6.07
6 – 10	2.72	8.26
11 – 15	4.05	12.59
> 15	6.28	18.24

It is clear from this table that regardless of whether the election is a postal or attendance poll, the informality rate increases with the increased number of candidates (in conjunction with Full Preferential voting), though it is significantly less with postal voting. The lower informality rate in postal elections may be attributed to the fact that postal voters have more time to consider their vote and to read and think about the instructions on the ballot paper.

13.5 What the Committee heard

There was a considerable response in the submissions regarding voting systems. Of the submissions that commented on this question, most simply stated which system they preferred, with only a limited explanation of the reasons behind their choice. Some, however, provided detailed reasoning in support of their recommended voting system.

Of those submissions which commented on the questions of preferred voting system, many preferred to retain the current system. These submissions argued that OPV is more democratic than First-Past-The-Post as the most preferred candidate is elected, it gives

³⁴⁰ Victorian Electoral Commission, Submission 26, p.8

voters the option to indicate further preferences, and it is simple and understood by Queensland voters, being the system also used in Queensland State elections.³⁴¹

The majority of council submissions, including the Local Government Association of Queensland (LGAQ), preferred to retain the current system of Optional Preferential voting and First-Past-The-Post. The submission from the LGAQ argued:

The principal view underlying most comment received about the conduct of local government elections is that every opportunity should be made available to ensure the election process is simple, easy to understand and convenient for the elector.

It is important that the conduct of local government elections be as simple and straightforward as possible to allow the community the best chance to cast their vote for the candidates they believe will best represent them.

Optional Preferential and First-Past-The-Post systems are well known in Queensland local government elections, having been in use for decades and the electorate is comfortable with, and understands these systems. Indeed there is no evidence of broad based community interest in or calls for change.³⁴²

The arguments offered for retaining First-Past-The-Post and Optional Preferential voting were that voters understood their requirements, their vote is not extinguished if their first choice is not elected, and they are not required to give a preference to a candidate or candidates whom they do not wish to vote for.

In the case of electing the Mayor and where the outcome of one councillor per division is required, OPV is a must. For undivided councils electing councillors, First-Past-The-Post is adequate.³⁴³

The existing voting system for local government should remain, that is First-Past-The-Post Voting, Optional Preferential Voting, depending on whether the election is for multi member or single member Divisions as they are considered to be most appropriate.³⁴⁴

It was also noted that First-Past-The-Post is easy to understand, with a quick turnaround:

First-Past-The-Post voting is best for any council or government election because even if it has the drawback of perpetuating major party politics, it is the most readily understood system by the voters.³⁴⁵

Council should remain First-Past-The-Post, because of its simplicity and in the interest of achieving an outcome in a short time.³⁴⁶

First-Past-The-Post. This system prevents political parties/teams from getting an advantage by passing on the vote to another party member. It increases the chances of an independent being successful.³⁴⁷

Those submissions that sought to remove First-Past-The-Post argued that it does not accurately reflect voters' wishes and that administrative ease should come second to reflecting the wishes of the voters.³⁴⁸

³⁴¹ See for example: Submissions 8, 47, 55, 82, 103, 122, 141

³⁴² Local Government Association of Queensland, Submission 84, p.32

³⁴³ Cr Maria Bosworth, Submission 45, p.5

³⁴⁴ Moreton Bay Regional Council, Submission 50, p.7

³⁴⁵ Mr Gordon Moore, Submission 18, p.4

³⁴⁶ Gympie Regional Council, Submission 72, p.7

³⁴⁷ Cr Vern Veitch, Submission 78, pp.5-6

³⁴⁸ See for example: ORION Consulting Network, Submission 83, p.14

*First-Past-The-Post often gives you the candidate who (by a very small majority in many cases) wins. When you tally all the people who didn't vote for that person, it is clear that they are elected on the minority of votes (i.e. the minority of people wanted them to succeed).*³⁴⁹

One council recommended retention of the current local government electoral system whilst ensuring consistency with the State and Federal level. Whilst this is unachievable due to the current differing systems at the State and Federal level, the overarching idea of consistency is noted.

*The voting system should be the same as state and federal elections. The Queensland system of First-Past-The-Post for undivided areas or multi-member divided areas and Optional Preferential for single member divided areas has worked well and does not need to be changed.*³⁵⁰

Very few submitters specifically recommended Full Preferential voting, though a number of submissions recommended preferential without specifying whether it should be full or optional. Those that did suggest Full Preferential stated that it provides a better representative outcome.

*In principal, I firmly believe that a preferential system provides the most reasonable outcome for single position Elections and furthermore, in the case of Queensland local government elections, where there is typically a manageable number of Candidates, full (compulsory) numbering would be the most appropriate system.*³⁵¹

Of those submitters that recommended Proportional Representation in full, the majority recommended STV as the best fit for undivided or multi-member local government elections, along with OPV for single member divisions and mayoral elections. Reasons provided in submissions for introducing PR included its fairness and representation of a wide range of views in proportion to community wishes.

*The STV is the fairest and most representative system as the electors know that the elected officials are the ones the majority of electors considered suitable for the positions, also knowing their preferences have been taken into consideration.*³⁵²

Reasons provided for not introducing Proportional Representation included that its complexity makes it difficult for voters to understand.³⁵³ A number of submissions also cautioned that the introduction of Proportional Representation could increase the presence of political parties in local government elections in Queensland.

*Council can see no value in the introduction of Proportional Representation. Residents are looking for councillors who represent them and not party people who have party interests first. Introduction of Proportional Representation will encourage party participation in local government.*³⁵⁴

Political party involvement could be increased if above the line voting is introduced where voters can simply choose one party or group, but mitigated if STV were introduced, particularly if, as in Victoria, the party or group names are omitted from the ballot paper.

The Committee's issues paper canvassed whether different voting systems should apply to different sized councils. Most submitters were concerned at how this would work, and the

³⁴⁹ Longreach Regional Council, Submission 38, p.7

³⁵⁰ Townsville City Council, Submission 43, p.8

³⁵¹ Australian Election Company, Submission 34, p.5

³⁵² Mr Morris Joyce, Submission 68, p.6

³⁵³ See for example: Submissions 30, 45, 47, 82, 84, 97, 101, 145

³⁵⁴ Gympie Regional Council, Submission 72, p.7

confusion it could cause for voters. Some however, saw the merits in having different systems for different sized councils, or for regional, rural and city councils:

*Yes, different voting systems would work better for different sized local governments. Whilst the Optional Preferential system would be ideal for larger councils, it is virtually useless in circumstances where only two nominations are received (such as that of smaller councils). The voting system adopted by an electorate should be at the council's discretion.*³⁵⁵

*Yes. Council appreciates that different voting systems work better for different local governments. Regional councils that prefer multi-member divisions due to the size of an area, cannot operate under Optional Preferential for example. Council therefore supports flexibility for different sized local governments based on individual needs as long as Optional Preferential voting is retained as an option.*³⁵⁶

*We propose a population threshold for implementing Proportional Representation, unless a smaller Council chooses to implement it. All LGA's with a population greater than 10 000 will use a form of Proportional Representation, whether they are divided or undivided.*³⁵⁷

As noted previously, it has been argued that uniformity in voting systems across the levels of government would promote voters' understanding of those systems and, in turn, reduce the informality rate. The Queensland Branch of the Australian Labor Party stated at the Committee's Brisbane public hearing that there needs to be consistency between voting systems and recommended OPV for single member divisions accompanied with Proportional Representation for undivided or multi-member divisions:

*Queensland ALP policy supports the ward system with single-member electorates with a consistent voting system for local government elections. In this submission we are supporting wards and divisions for councils currently with more than eight members. For multimember wards, the ALP policy is that Proportional Representation should apply. It should be done as close as possible to the Federal Senate voting model.*³⁵⁸

Gladstone Regional Council does not support the application of uniform voting systems to the different levels of government:

*Attempts to increase the representation of minority views within a Council by the introduction of complex proportional voting systems is not seen as conducive to the effectiveness of local government as unitary decision making chamber. The State Government and Federal Government House of Representatives preferential systems assume single member wards and strong Party Political organisation of candidates. The system in Federal elections reserves the proportional system for the Senate which comprises multi member state-wide constituencies. Both of these electoral environments are different from the majority of local government elections in Queensland both in terms of Party Political involvement and scale of electorate.*³⁵⁹

³⁵⁵ Longreach Regional Council, Submission 38, p.7

³⁵⁶ Redland City Council, Submission 55, p.10

³⁵⁷ Queensland Greens, Submission 126, p.6

³⁵⁸ Mr A Chisholm, *Transcript of Proceedings, LJSC Brisbane public hearing*, 3 September 2010, p.3

³⁵⁹ Gladstone Regional Council, Submission 57, p.7

13.6 Conclusion

A common theme running through many submissions, including councils and the LGAQ, was that there should be more consistency in electoral arrangements across all three levels of government. Indeed, the LGAQ submission stated that:

*Local government has long sought greater alignment between state and local government electoral arrangements.*³⁶⁰

This sentiment was reinforced by a number of witnesses during their evidence to the Committee's public hearings:

*We would like to see consistency, where possible, between council elections and regulations and those that apply in the state and federal sphere. We feel very strongly about trying to get consistency.*³⁶¹

*One of the great credits of Queensland parliaments from the eighties and the nineties is that we have moved much closer to what I would call harmonisation. There were significant differences. There are still some such as you cannot do an absentee vote on the day because you would have to have a room out the back full of rolls. The fundamental issue is confusion amongst the electorate. They come to a polling place, and their last experience has been a federal election and they are voting at a local government election. We are concerned that over time there has been a fall in the actual non-spoiled vote and the proper vote. Some of that may well be confusion and even people moving from one state to another. But, clearly, the more consistent the three levels of government are, I think the better chance of a higher formal vote.*³⁶²

As noted above, the Australian Electoral Commission raised concerns following the 2010 Federal House of Representatives elections that voter confusion arising from the different voting systems used for different levels of government likely contributed to the incidents of informal voting by a number of Queensland voters.

In respect of voting systems, the Committee notes the concerns raised by the Australian Electoral Commission and contends that, if the use of different voting systems at different levels of government is a primary contributor to the rate of informal voting by Queensland voters, harmonisation of voting systems across levels of government could result in lower levels of voter confusion and resultant lower levels of informal voting, as voters would no longer be required to change the way they fill out a ballot paper depending upon the level of government an election is for.

Whilst the Committee considers that harmonisation of voting systems across all levels of government may go a long way towards reducing the level of informal voting by Queensland voters, it is cognisant that the Queensland Attorney-General's evaluation of the most appropriate voting system for Queensland state elections is ongoing.

Accordingly, whilst supporting the use of consistent voting systems across levels of government as a way to reduce the rate of informal voting, the Committee does not intend to recommend any specific voting system be adopted for local government elections.

Whilst not recommending the adoption of a particular system, the Committee does however believe that Proportional Representation should not be introduced into local government elections. The Committee believes that implementing this system would increase the complexity of the vote count and may increase the confusion of some voters. Such confusion

³⁶⁰ Local Government Association of Queensland, Submission 84, p.31

³⁶¹ Evidence of Cr Brian Battersby, Moreton Bay Regional Council, *Transcript of Proceedings, LJSC Brisbane public hearing*, 3 September 2010, p.7

³⁶² Evidence of Mr Greg Hallam, Local Government Association of Queensland, *Transcript of Proceedings, LJSC Brisbane public hearing*, 3 September 2010, pp.36-37

is likely to also be reflected in increased rates of informal voting, an outcome which would be undesirable for the reasons canvassed above.

Recommendation 32:

That to reduce confusion among voters in elections across different levels of government, efforts be made to increase consistency of voting systems across those levels of government.

Recommendation 33:

That a comprehensive educational campaign accompany any changes to the voting systems at local government elections.

APPENDIX A – LIST OF SUBMISSIONS RECEIVED

- 001 Mr Bruce Alexander
- 002 Mr Robert Bromwich
- 003 Mr Peter McMahon
- 004 Ms Lynne Morley
- 005 Mr Norman Locke
- 006 Mr David South
- 007 Mr Terence O'Donnell
- 008 Mr David Moyle
- 009 Mr Garth Harrigan
- 010 Mr Paul Askern
- 011 Mr Michael Moores
- 012 Mr George Munson
- 013 Richmond Shire Council
- 014 Ms Brigitte Szabo
- 015 Mr Phil Browne
- 016 Mr John Russell
- 017 Mr Peter Scott
- 018 Mr Gordon Moore
- 019 Mr Anthony van der Craats
- 020 Fraser Coast Regional Council
- 021 Mr Peter Lewis
- 022 Mr Lawrence Molachino
- 023 Sippy Downs & District Community Association Inc.
- 024 Mr Guy Brindley
- 025 Mr Don Willis
- 026 Victorian Electoral Commission
- 027 Mr Ken Garner
- 028 Ms Carole Lemberg
- 029 Mr Kevin John Lemberg
- 030 Burdekin Shire Council
- 031 Confidential
- 032 Cr. Marilyn McMurtrie (Southern Downs Regional Council)
- 033 Mr Peter Murphy
- 034 Australian Election Company
- 035 Cr. Mark Nolan (Cassowary Coast Regional Council)
- 036 Mr Bill Loudon

- 037 Lockhart River Aboriginal Shire Council
- 038 Longreach Regional Council
- 039 Mr Keith Neilsen
- 040 Mrs Beverley Neilsen
- 041 Electoral Commission of Queensland
- 042 Rockhampton Regional Council
- 043 Townsville City Council
- 044 Mr Denis O'Connell
- 045 Cr. Maria Bosworth (Hinchinbrook Shire Council)
- 046 Ms Sandra Chesney
- 047 Gold Coast City Council
- 048 Confidential
- 049 Mr John Chesney
- 050 Moreton Bay Regional Council
- 051 Boulia Shire Council
- 052 Mr Mark Wilson
- 053 Ms Wendy Ivey
- 054 Mr James Anderson
- 055 Redland City Council
- 056 Whitsunday Regional Council
- 057 Gladstone Regional Council
- 058 Logan City Council
- 059 Cr. Greg Betts (Gold Coast City Council)
- 060 Springfield Land Corporation Pty Ltd
- 061 Mr MJ Steffens
- 062 Cairns Regional Council
- 063 Mr Peter Stewart
- 064 Central Highlands Regional Council
- 065 Toowoomba Regional Council
- 066 Winton Shire Council
- 067 Mr Pat Coleman
- 068 Mr Morris Joyce
- 069 Ms Pam Willis Burden
- 070 Gracemere Pensioner's & Superannuants League
- 071 Mr James Goodsell
- 072 Gympie Regional Council
- 073 McKinlay Shire Council
- 074 Mr Dallas Hunter
- 075 Cr. Glenda Mather (Rockhampton Regional Council)

- 076 Ms Pip Goldrick
- 077 Cr. Paul Tully (Ipswich City Council)
- 078 Cr. Vern Veitch (Townsville City Council)
- 079 Cr. Paul Tatton (Sunshine Coast Regional Council)
- 080 Lockyer Valley Regional Council
- 081 Torres Strait Island Regional Council
- 082 Cr. Jenny Hill (Townsville City Council)
- 083 ORION Consulting Network
- 084 Local Government Association of Queensland
- 085 Mackay Regional Council
- 086 Ipswich City Council
- 087 Banana Shire Council
- 088 Mr Jonathan Metcalfe
- 089 Flinders Shire Council
- 090 Mr Denis Walls
- 091 Ms Joyce Turnbull
- 092 Mr Eric Dwyer
- 093 Eumundi Chamber of Commerce Inc.
- 094 Maranoa Regional Council
- 095 Mayor Robert Loughnan (Maranoa Regional Council)
- 096 Capricorn Coast Ratepayers and Residents Association
- 097 Balonne Shire Council
- 098 Mr Jim Stewart
- 099 Ms Adriene Isnard
- 100 Mr Blair Meldrum
- 101 Mr Marc Tack
- 102 Mr Barry Sponberg
- 103 North Burnett Regional Council
- 104 Southern Downs Regional Council
- 105 Barcaldine Regional Council
- 106 Ms Rachel Larsen
- 107 Mr Svend Larsen
- 108 Ms Jessie Kirkwood
- 109 Mr Henry Kirkwood
- 110 Nambour Heights Neighbourhood Watch Program
- 111 EF Kenna
- 112 Mapleton & District Community Association Inc.
- 113 Mr Mike Hayes
- 114 Mr John McQuillan

- 115 Confidential
- 116 Cr. Dawn Crichlow OAM (Gold Coast City Council)
- 117 Mr Aidan McLindon MP, Member for Beaudesert
- 118 Mr Gordon Edwards
- 119 Mr Michael McCabe
- 120 Mr Peter Ryan
- 121 Mr Allen Jay
- 122 Cr. Donna Gates (Gold Coast City Council)
- 123 Local Government Managers Association Queensland
- 124 Mr Glenn & Mrs Judy Burns
- 125 Mr Terry Matthews
- 126 The Queensland Greens
- 127 Yandina & District Community Association
- 128 Cr. Kathy Duff (South Burnett Regional Council)
- 129 Mr Scott Heron
- 130 Ms Kerry Silver
- 131 Mr Daryl Small
- 132 Ms Betty Levine
- 133 Urban Development Institute of Australia (Queensland)
- 134 Proportional Representation Society of Australia
- 135 Mr Allan Smith
- 136 Mr Chris Mills
- 137 Confidential
- 138 Goondiwindi Regional Council
- 139 Kenilworth Chamber of Commerce
- 140 Mr Jeff Verrall
- 141 Mr Daniel Oram
- 142 Mayor Lorraine Pyefinch (Bundaberg Regional Council)
- 143 Ms Denise Conroy
- 144 Cr. Tony Williams (Rockhampton Regional Council)
- 145 Torres Shire Council
- 146 Rockhampton Regional Western District Ratepayers Association
- 147 Blackall-Tambo Regional Council
- 148 Confidential
- 149 Mr David Neish

APPENDIX B – LIST OF PUBLIC HEARING WITNESSES

Witnesses are listed in the order of appearance at the public hearings.

TOOWOOMBA – FRIDAY 20TH AUGUST 2010

Mayor Raymond Brown – Western Downs Regional Council

Mr Norm Garsden – Manager, Governance & Administration, Toowoomba Regional Council

Mayor Donna Stewart – Balonne Shire Council

Cr. Damien Tessman – South Burnett Regional Council

Mr Ven Sorensen – Private Capacity

MOUNT ISA – TUESDAY 24TH AUGUST 2010

Mrs Betty Kiernan MP – Member for Mount Isa

Mayor John Molony – Mount Isa City Council

TOWNSVILLE – WEDNESDAY 25TH AUGUST 2010

Ms Kim Corrie – Director of Corporate Services, Townsville City Council

Mayor Brendan McNamara – Flinders Shire Council

Cr. Jenny Hill – Townsville City Council

Ms Adrienne Isnard – Private Capacity

Ms Sandra Chesney – Private Capacity

Mr John Chesney – Private Capacity

Mr Kevin Wright – Private Capacity

Mr Leslie Walker – Private Capacity

Mr David Moyle – Private Capacity

Mr Greg Harris – Private Capacity

Mr Colin Hegarty – Private Capacity

Mr Paul Verrall – Private Capacity

Mr Robert Wilson – Private Capacity

Ms Cathy O'Toole – Private Capacity

CAIRNS – THURSDAY 26TH AUGUST 2010

Cr. Margaret Cochrane – Deputy Mayor, Cairns Regional Council

Mrs Sarah Philpott – General Manager, Corporate Services, Cairns Regional Council

ROCKHAMPTON – FRIDAY 27TH AUGUST 2010

Mr Dusan Cech – President, Capricorn Coast Ratepayers and Residents Association Inc.

Cr. Darryl Camilleri – Deputy Mayor, Mackay Regional Council

Cr. Glenda Mather – Private Capacity

Mr Dan Oram – Private Capacity

Mr Aaron Griffiths – Private Capacity

Mr Jim Stoward – Private Capacity

Mr Vince Reynolds – Secretary, Rockhampton Regional Western District Ratepayers Association

Mr Chris Hooper – Private Capacity

Cr. Tony Williams – Rockhampton Regional Council

BRISBANE – FRIDAY 3RD SEPTEMBER 2010

Mr Anthony Chisholm – State Secretary, Australian Labor Party (Qld)

Ms Jackie Trad – Assistant State Secretary, Australian Labor Party (Qld)

Cr. Brian Battersby – Moreton Bay Regional Council

Mr Russell Garske – Coordinator Executive Services, Moreton Bay Regional Council

Mr Simon Benham – City Governance Manager, Logan City Council

Cr. John Grant – Logan City Council

Mr Daniel Best – City Solicitor, Ipswich City Council

Cr. Paul Tully – Ipswich City Council

Mr Scott Allen – President, Gold Coast Ratepayers Association

Mr Anthony van der Craats – Private Capacity

Cr. Paul Bell AM – President, Local Government Association of Queensland

Mr Scott Bennett – Local Government Association of Queensland

Mr Greg Hallam PSM – Chief Executive Officer, Local Government Association of Queensland

Mr Greg Hoffman – General Manager-Advocacy, Local Government Association of Queensland

Mr Bogey Musidlak – President, Proportional Representation Society of Australia

Mr Richard Kidd – Principal, Australian Election Company

Mr Bruce Alexander – Private Capacity

Mr Ken Garner – Private Capacity

DISSENTING REPORT

We the undersigned, dissent from the following recommendations contained in the report put forward by the majority of committee members ('the Report'):

Recommendation 32

That to reduce confusion among voters in elections across different levels of government, efforts be made to increase consistency of voting systems across those levels of government.

Recommendation 33

That a comprehensive educational campaign accompany any changes to the voting systems at local government elections.

In light of the Government's intention to draft a new Local Government Electoral Act, the Committee was required by way of referral from Parliament to undertake a review of the local government electoral system for all local governments except for Brisbane City Council.

In undertaking this review the Committee were required to consider different electoral systems to local government elections in Queensland including, but not limited to, postal voting divided/undivided councils and Proportional Representation.

In doing so, the Committee was required to:

- consider local government systems in other jurisdictions in Australia:
- conduct public hearings with stakeholders; and
- provide recommendations as to the content of the proposed new local government electoral act.

The undersigned members dissent from the committee's majority recommendation on the following primary grounds.

A Harmonisation of local government elections with State elections

Members supporting the majority committee recommendations raised the issue of vote system harmonisation throughout the review, particularly following the federal election result where it was reported at various times by the media that Australian Electoral Commission officials raised concerns over the number of informal votes in Queensland.

Harmonisation of local government elections and State elections took place in 1993 by the passing of the *Local Government Act 1993* which provided for a voting system of Optional Preferential for single member divisions.¹

If Members supporting the majority committee recommendation were genuinely concerned with respect to the harmonisation of electoral voting system, then one would have thought that there would have been a recommendation to the State government to lobby the federal government to change its system considering that in terms of Local, State and Federal electoral system the federal system is the only one operating on a different system to that of Local/State governments.

We note that the report indicates that Optional Preferential Voting is seen to provide a choice for the voter to only vote for those candidates that they want to vote for. Former Australian Electoral Commissioner, Emeritus Professor Colin Hughes, stated at a public hearing of the Legal, Constitutional and Administrative Review Committee in November 2008:

Having been connected with its introduction in Queensland, I think the principal argument for it is that it does not force people to say something that they do not

¹ Queensland Legislative Assembly, Record of Proceedings (Hansard), 18 November 1993, at 5985.

believe. It does not force them to say, 'I prefer the communists to the fascists,' or 'I prefer the fascists to the communists.' It does not require them to choose any more than they have genuine choices.²

It is important to acknowledge that there are many contributing factors to an informal vote percentage at any level of government election, including protest votes, donkey votes, blank votes, incorrectly filling out the ballot paper pursuant to the provisions of the prevailing electoral act and external forces including public commentary by prominent former politicians and a higher number of candidates.³

It is noted that the informal vote at the 2010 federal election was 5.45 per cent in Queensland, slightly lower than the rate of informal votes for the whole of Australia which was 5.55 per cent.⁴ Importantly, the fact is that at the 2004, 2007 and 2010 federal elections Queensland had an informal vote below the national informal vote rate.

Further, both the Northern Territory and South Australia had a higher rate of informal votes than Queensland at the recent federal election, with 6.19 per cent and 5.46 per cent respectively. This is despite the fact that both the Northern Territory and South Australia have full preferential voting systems at the State level.⁵ In addition, with respect to State elections, Queensland's Optional Preferential Voting system records much lower rates of informal voting at State elections compared to rates of informal voting at the federal level.⁶

This was also the trend during the 2007 federal election with the Northern Territory, South Australia and Western Australia having higher rates of informal votes than that of Queensland, with informal voting rates of 3.85 per cent, 3.78 per cent and 3.85 per cent respectively compared with Queensland's rate of 3.56 per cent.⁷ Again, this is despite the fact that all have full preferential voting systems at the State level.

We submit that there is a level of harmonisation already in existence between local and State government electoral voting systems in Queensland.

Local government exists by virtue of the *Local Government Act 2009* (Qld), a statute of the Queensland Parliament. Harmonisation of electoral systems should certainly occur between local and State government electoral systems which is in fact already the case in Queensland. Had the situation between local and State electoral systems been different then our view may be alternate to that set out in this dissenting report. However, because of the harmony already existing between the local and State government electoral systems no change is necessary.

B Submissions to this Inquiry

Widespread public support for the inclusion of a recommendation to provide for consistency in voting systems can not be substantiated.

As stated in the Report, the majority of council submissions, including the Local Government Association of Queensland ('the LGAQ'), preferred to retain the current system of Optional

² Legal, Constitutional and Administrative Review Committee, Transcript of Proceedings, Integrity into Certain Contemporary Electoral Matters, 24 November 2008, Emeritus Professor Colin Hughes, p.15.

³ Law, Justice and Safety Committee, *A new Local Government Electoral Act: Review of the local government electoral system (excluding BCC)*, Report No. 78, Brisbane, 24 November 2010, at p.77.

⁴ Australian Electoral Commission, *Election 2010 House of Representatives Informal Votes by State*, available at: <http://results.aec.gov.au/15508/Website/HouseInformalByState-15508.htm>

⁵ Australian Electoral Commission, *Election 2010 House of Representatives Informal Votes by State*, available at: <http://results.aec.gov.au/15508/Website/HouseInformalByState-15508.htm>

⁶ Electoral Commission Queensland *2009 State General Election - Election Summary*, available at: <http://www.ecq.qld.gov.au/elections/state/state2009/results/summary.html> recording an informal vote of 1.94 per cent during the 2009 State Election.

⁷ Australian Electoral Commission, *Election 2007 House of Representatives Informal Votes by State*, available at: <http://results.aec.gov.au/13745/Website/HouseInformalByState-13745.htm>

Preferential Voting in divided councils and First-Past-The-Post Voting in undivided councils. We note the submission from the LGAQ where it was stated:

The principal view underlying most comment received about the conduct of local government elections is that every opportunity should be made available to endure the election process is simple, easy to understand and convenient for the elector.

It is important that the conduct of local government elections be as simple and straightforward as possible to allow the community the best chance to cast their vote for the candidates they believe will best represent them.

Optional Preferential and First-Past-The-Post systems are well known in Queensland local government elections, having been in use for decades and the electorate is comfortable with, and understands these systems. Indeed there is no evidence of broad based community interest in or calls for change.⁸

Further, in reviewing the submissions made to the committee, there was very little support expressed for the implementation of a compulsory preferential voting system.

There were various submissions with regard to consistency between local government and State government electoral reform. We agree that there should be greater consistency between the electoral acts applicable to the State and local government. We note that a number of recommendations supported by all members of the committee achieve this goal. However, government majority Members supporting recommendations 32 and 33 have attempted to frame this argument in favour of consistency in terms of voting systems, not because there is inconsistency between State and local government electoral systems but in fact between State/local government and the Federal electoral system.

C Political Opportunism

During this review the State government started publicly discussing the issue of voting systems in the State including potential voter confusion.⁹

This new found desire to end potential voter confusion at a State level appears to be the rationale behind government members' support for changing the local government voting system to be consistent with the federal voting system.

Recently, the Queensland Parliament debated the issue of Queensland's voting system. The Leader of the Opposition in his contribution to the debate said, amongst other things, the following:

The argument from the current Premier that optional preferential voting at state elections results in a high informal vote at federal elections does not stack up. Let us examine the facts. The Premier has gone on record as saying that when there is a proximity of federal elections to state elections there is a higher rate of informal votes. Yet when the 2010 federal election occurred we had not had a state election for nearly 18 months. In 2001 and 2004 the federal and state elections were held in exactly the same year, but I have not seen any evidence to show that the rate of informal votes increased markedly in 2010 compared to 2004 or 2001.

In the 2010, 2007 and 2004 federal elections, Queensland had an informal vote rate that was below the national informal vote rate. In the 2010 election, the Northern Territory at 6.19 per cent and South Australia at 5.46 per cent both had higher informal vote rates than Queensland at 5.45 per cent. Northern Territory and South Australia both have compulsory preferential voting at a state level. In

⁸ Local Government Association of Queensland, Submission 84, p.32.

⁹ Wardill, S 2010, "Anna Bligh may dump optional preferential system as LNP accuses her of trying to rig poll", *Courier Mail*, 27 October 2010.

2007 the Northern Territory at 3.85 per cent, South Australia at 3.78 per cent and WA at 3.85 per cent all had a higher informal rate than Queensland at 3.56 per cent. The Northern Territory, South Australia and Western Australia all have compulsory preferential voting at a state level. On those numbers alone, it is clear that the argument that somehow optional preferential voting is causing high informal votes in Queensland is simply not true.

New South Wales and Queensland are the two states running optional preferential systems for state elections, with New South Wales introducing it in the early 1990s and Queensland introducing it in 1992. The research shows that New South Wales and Queensland, the two states with optional preferential voting, have the lowest levels of informal voting among all the large states for state elections. Let me repeat that: the two states with optional preferential voting, New South Wales and Queensland, have the lowest levels of informal voting among all the large states for state elections.

Has this system of optional preferential voting really affected the level of informal voting at the federal level? At the 1984 federal election, in Queensland there was a 4.5 per cent informal vote and at the 1987 federal election in Queensland there was a 3.4 per cent informal vote. Those levels were higher than the three federal elections preceding the introduction of optional preferential voting. While some would argue that trend data would support the argument that optional preferential voting has somehow caused a rise in informal voting at the federal level, to automatically assume that OPV has somehow caused that does not correlate when, as I have previously stated, other states without optional preferential voting have greater rates of informal voting than Queensland.¹⁰

We are concerned that local governments will be used as a trigger for changing the electoral system in Queensland at a State level, notwithstanding the absence of any support for change at either level. By this we mean that if the new Local Government Electoral Act provides for the use of compulsory preferential voting at local government elections, thereby harmonising local government and federal government electoral systems, this in turn would provide a trigger for the State government to amend the State electoral system to reflect same.

This would constitute blatant political opportunism on the part of the current State government which perceives that it may benefit from a compulsory preferential voting system at the next State election.

Compulsory preferential voting has the potential to distort electoral outcomes. At a local government level, compulsory preferential voting can be used to “harvest” or direct preferences via “dummy candidates” to legitimate candidates. At a State or Federal level, compulsory preferential voting can deliver a parliamentary majority to a political party that does not have the support of the majority of electors at State and Federal levels.¹¹

In 1992, Queensland saw a change of the voting method for State elections by the Goss Labor government to Optional Preferential Voting. This was as a result of the recommendation by the Electoral and Administrative Review Commission. Former Premier Peter Beattie subsequently employed the ‘Just Vote 1’ strategy during several State election campaigns.

It is regrettable that the referral from Parliament has resulted in government members of the committee supporting recommendations 32 and 33 as a means to potentially change voting systems that could be politically advantageous to members of the current State government.

¹⁰ Queensland Legislative Assembly, Record of Proceedings (Hansard), 27 October 2010, at 3940.

¹¹ Law, Justice and Safety Committee, *A new Local Government Electoral Act: Review of the local government electoral system (excluding BCC)*, Report No. 78, Brisbane, 24 November 2010, at p.71.

Conclusion

Notwithstanding the concern expressed by Australian Electoral Commission officials following the recent federal election, the informal vote in Queensland is relatively low both at State and Federal elections compared with other States and Territories.

Therefore, we **recommend** that no changes be made to the current voting system for local governments in Queensland. Further, that if any educational campaign were to take place then that campaign should focus on the existing voting systems in Queensland.



Mr Andrew Cripps MP
Member for Hinchinbrook



Mr Jarrod Bleijie MP
Member for Kawana



Mr Ray Stevens MP
Member for Mermaid Beach