

Local Government Electoral Act Review

Discussion Paper

November 2013

The Department of Local Government, Community Recovery and Resilience leads a coordinated Queensland Government approach to delivering short and long-term solutions for strong local government.

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Local Government Electoral Act Review

Introduction

Scope and Purpose

The *Local Government Electoral Act 2011* (LGEA) governs the conduct of council elections in Queensland. The LGEA deals with a range of issues including electoral rolls, voter enrolment, how voting takes place and the regulation of how-to-vote cards. As part of the Queensland Government's *Six Month Action Plan July 2013 – December 2013*, the Department has commenced a review of the LGEA. The review will consider a range of issues identified by the local government sector and the Electoral Commission of Queensland (ECQ) following the 2012 local government elections. These include measures to provide CEOs with the opportunity to act as returning officer in local government elections, measures to address issues in full postal ballots and measures to provide greater clarity to candidates and voters in local elections.

The review of the LGEA will also be informed by the reform of the *Electoral Act 1992* (EA) which governs state elections. Under the *Partners in Government Agreement*, governance arrangements (including electoral arrangements) that apply to local government should, where appropriate, be consistent with those applying to the State Government.

In January 2013, the Attorney-General commenced a far-reaching review of the EA with the release of a public discussion paper. The paper provided a range of options in relation to issues including political donations, the system of preferential voting, electronic voting, enrolment, postal voting and political advertising. An outcomes paper published in July 2013 subsequently detailed a number of reforms supported by the Government. A number of reforms, which are detailed in this discussion paper, will have implications for council elections.¹ The Bill to amend the EA (the Electoral Reform Amendment Bill 2013) was introduced into the Legislative Assembly on 21 November 2013.²

The purpose of this consultation paper is to canvass issues and options for improvement and change to Queensland's local government electoral laws. The options outlined in this paper are not intended to be exhaustive and stakeholders are encouraged to submit other options for improving local government electoral laws. The options outlined in this Discussion Paper do not represent Queensland Government policy.

Submissions received in response to this Discussion Paper will be considered and following this, there will be on-going consultation with key stakeholders as legislative amendments are developed.

Timeframe

Your comments on these and other aspects of potential reform of the local government electoral system are invited by **Friday 17 January 2014**. Submissions should be forwarded to:

Policy, Legal and Corporate Support
Department of Local Government,
Community Recovery and Resilience
PO Box 15009
CITY EAST QLD 4002

Electronic submissions and any queries regarding the discussion paper can be directed to policy&legislation@dlgcr.qld.gov.au

¹ Department of Justice and Attorney General, "Electoral reform – Queensland Electoral review outcomes", July 2013.

² <https://www.legislation.qld.gov.au/Bills/54PDF/2013/ElectoralReformAB13.pdf>
<https://www.legislation.qld.gov.au/Bills/54PDF/2013/ElectoralReformAB13E.pdf>

Proposed amendments

The following proposals have been arranged to generally align with the relevant sections of the LGEA. A series of proposed technical amendments have also been included separately at the end of the discussion paper in the interest of maximising the opportunity for stakeholders to participate in the review.

Administration

1. Providing CEOs the first offer to act as returning officers

Currently, the LGEA provides the ECQ the power to appoint the returning officer for a local government election and it specifically excludes the Chief Executive Officer (CEO) from fulfilling this role, except in certain circumstances.

Consistent with the Queensland Government's policy of empowering local government, it is proposed to include a provision to require the ECQ to first offer CEOs the option to act as the returning officer for their council's election, providing the CEO is not a member of a political party.

Consequential amendments to implement this proposal include:

- a) Section 8 – to identify the Electoral Commissioner as the responsible officer for all local government elections.
- b) Section 9(4) – to mirror section 31(4) of the EA to provide that a returning officer must act in accordance with any directions given by the commission.
- c) Section 202 – to clarify that where the CEO is the returning officer, the local government will not be responsible for ECQ expenditure related to providing returning officers
- d) Section 206 – to clarify that where the returning officer is the CEO, the public office for the purpose of the LGEA will be the Council chambers.

Voter Rolls

2. Aligning roll closure and enrolment with state provisions

The LGEA states that the roll for a quadrennial election must be compiled at 31 January in the year of the election. This means it can be more than two months old at the time of an election.

At the state level, amendments in 2011 to the close of roll process have increased inconsistencies between the two Acts. For the first time in Queensland, eligible voters were allowed to enrol or update their details after the rolls had been closed and up to the day before the 2012 state election. During this period an additional 18,908 people enrolled to vote and a further 45,710 people updated their details.³

These new allowances led to a degree of voter confusion in the state and local government elections of 2012 as voters in local government elections were not afforded the same opportunity. According to the ECQ:

When state and local government elections occur within close proximity, the potential for confusion is readily apparent. 18 year olds who enrolled after the close of rolls were able to vote in the State election but found they were ineligible to vote in the Local Government elections that followed. Changes in an elector's address likewise took effect for the State election but not for Local Government.⁴

³ ECQ, "Annual Report 2011-12", p19.

⁴ ECQ, "Queensland Local Government 2012 Elections Report", p11.

Aligning the roll closure provisions of the LGEA with the EA would provide greater consistency and reduce a potential source of voter confusion in future elections. It is therefore proposed to:

- a) amend section 18 to close the roll five to seven days following the notice of the election, and
- b) introduce the ability to enrol after the rolls have closed after the cut-off day for the poll and no later than 6pm on the day before the polling day for local government elections.⁵

3. ECQ to nominate the format of the voters roll provided to candidates

Section 21 currently requires that the returning officer provides a copy of the voters roll to each candidate as soon as practicable after the nomination day for the election. It is proposed to amend this section to clarify that:

- a) the voters roll can be provided in either hard or soft copy; and
- b) the ECQ will nominate the format that is used.

Local Government Elections

4. How a nomination deposit can be paid

The LGEA provides for a deposit of \$250 to accompany a nomination. Currently, this deposit must be paid by either a bank cheque or in cash given to the Returning Officer. In the interest of flexibility for candidates, and particularly candidates in remote locations, it is proposed to amend the LGEA to also allow nomination deposits to be paid by electronic funds transfers (EFT).

5. Introducing a cut-off date for approving full postal ballots

The ability to conduct an election entirely by postal ballot is unique to local government. The LGEA provides that councils can apply to the Minister to conduct all or part of their elections as a full postal ballot, if their area includes a large rural sector, large remote areas or extensive island areas.⁶

Full postal ballots are resource intensive and require detailed forward planning. The 2012 elections demonstrated that issues in public awareness and logistical support can occur when notification for four large councils was not provided to the ECQ until December 2011.⁷ For example, some electors reported discarding their postal ballot material because they did not recognise it when it arrived in the mail and some electors still believed they would have the option of attending a polling place on election day.

It is proposed to amend the LGEA to include a cut-off date for approval of a postal ballot of at least six months before polling day. This would allow time for greater consultation between councils and the ECQ on possible logistical issues and time to conduct public awareness and other supporting activities. This would mean that councils must apply to the Minister well before they are six months out from their election to allow enough time for the Minister to consider the application and for the outcome to be conveyed to ECQ.

6. Aligning ballot paper provisions with state elections

Currently the LGEA is silent on the responsibility for printing and approving ballot papers in local government elections. It states that the returning officer is responsible for determining the order of candidates on a ballot paper and that an adequate number of ballot papers are at polling booths for an election, however this differs from state elections where these are the responsibilities of ECQ. In light of these issues, it is proposed:

- a) to bring the LGEA into line with the state electoral system by ensuring that all ballot papers are approved and printed centrally by the ECQ; and

⁵ This provision was included in the *Local Government (De-Amalgamation Polls) Regulation 2013*. See section 28.

⁶ In the 2012 elections, 30 out of 73 local governments were approved by the (then) Minister to conduct full postal ballots, which was a significant increase from the previous quadrennial elections where only four councils applied to conduct full postal ballots.

⁷ ECQ, "Queensland Local Government 2012 Elections Report", p11.

- b) that the ECQ must determine the order of candidates for each ballot paper and ensure there are an adequate number of ballot papers in polling booths for an election.

7. Expanding access to postal voting

Two proposals regarding expanding the access to postal voting have come out of the review of the EA and are relevant to local government. At state elections, the Government supports removing all restrictions on who can apply for a postal vote so that any eligible elector can cast their vote this way.⁸ This is intended to acknowledge changing social conditions that can make this a more convenient option for many voters.

At the same time, the Government will allow electronic applications for postal votes subject to providing the necessary security safeguards⁹. This will make both applying for a postal vote more convenient for electors and reduce delivery times for postal vote material. Following the passing of legislation to implement these reforms for state elections, it is proposed to reflect these new arrangements for local government elections by:

- a) removing all restrictions on postal voting and pre-poll voting; and
- b) allowing online applications for postal voting.

The relevant amendments to the EA are contained in Clauses 11 and 12 of the Electoral Reform Amendment Bill 2013.

8. Register of special postal voters

The EA allows the ECQ to maintain a register of special postal voters that are sent ballot material automatically providing the register is regularly reviewed. Special postal voters include silent electors, distance electors, religious electors, overseas electors and incapacitated electors.

At the council level, the LGEA limits the range of voters that the ECQ can automatically provide postal ballot material to. Currently this includes only those voters who are omitted from the roll due to concerns for their own, or someone else's, personal safety. No provision exists in the LGEA for a register of special postal voters.

Unlike state elections, distance electors, religious electors and incapacitated electors must re-apply to cast a postal vote for each council election. It is therefore proposed to introduce a register of special postal voters for local government elections to bring it into line with the state system. This would provide continuity in processes for voters in relation to state and local government elections.

9. Electronic voting

An electronic system of voting is any system enabling electors to cast their votes using an online system such as the internet or a touch-tone phone. It includes remote voting and electronically assisted voting. The Queensland Government has provided in-principle support for introducing electronic voting for blind and vision impaired voters, and voters who require assistance because of a disability, motor impairment or insufficient literacy at state elections.¹⁰ At present, these voters can't vote independently and must instead select someone to help them vote.

This proposal would have significant resource implications at the state level, with significant feasibility, systems development, trialling and implementation lead times. Once the legislation to reform the EA has been passed, it is proposed to reflect these provisions in the LGEA to allow for the introduction of electronic voting in council elections.

The relevant amendments to the EA are contained in Clauses 15 to 20 of the Electoral Reform Amendment Bill 2013.

⁸ Department of Justice and Attorney General, "Electoral reform – Queensland Electoral review outcomes", July 2013.

⁹ Ibid.

¹⁰ Ibid.

10. Proof of identity

The Queensland Government is proposing to include provisions in the EA requiring prescribed proof of identity documents on polling day at state elections. It considers this measure would enhance the integrity of state elections and reduce the potential for electoral fraud. While the Department acknowledges reservations exist within the sector, it is proposed to reflect the state proof of identity requirements in the LGEA once they have been finalised.

To address concerns about those voters who may not have photographic identity, the Queensland Government has clarified that proof of identity would not be restricted to photographic identification and that implementation of this measure will be subject to public education and careful transition planning.

The relevant amendments to the EA are contained in Clause 9 of the Electoral Reform Amendment Bill 2013.

11. Replacement postal ballots

In its report on the 2012 elections, ECQ identified a number of difficulties that occurred for voters when trying to request replacement ballot material in both attendance and postal ballots in time for voting by 6pm on polling day.¹¹ Currently the legislation requires an approved form to request a replacement postal ballot. By the time an elector is issued the approved form, completes it and returns it, the delay can mean not receiving ballot material in time to vote. It would make a significant difference to these voters, if they were able to request replacement ballot material by phone or email. This proposal can be implemented with zero risk of multiple votes occurring as the Commission's postal voting system currently has mechanisms to prevent this happening.

It is therefore proposed to amend sections 81 and 85 to allow those people who have already applied for a postal vote, or are participating in a full postal ballot, to apply for replacement material to either the Returning Officer or ECQ directly by phone or email request.

12. The system of voting for mayors in undivided local governments

Currently the system of voting for mayors in undivided local governments is first past the post and the system for mayors in divided local governments is optional preferential.

To make the system of voting for all mayors consistent it is proposed to change the system of voting for mayors in undivided local government from first past the post to optional preferential. This would mean the method of electing mayors in undivided local governments is the same as the method for mayors in divided local governments.

13. Numbering candidates in first-past-the-post elections

The First Past the Post (FPTP) voting system is used in all undivided councils because it is a more efficient method when multiple councillors are elected at one time. In FPTP elections, each elector is given as many votes as there are councillor positions available. For example, if there are six councillor positions and 20 candidates, the elector is currently required to number their six most preferred candidates. If the elector does not cast the total number of votes they are given, then the ballot paper is informal. This arrangement presently leads to a high number of informal votes and is disenfranchising electors.

In the interest of inclusion, it is proposed to amend section 84(3)(b) so that voters in FPTP elections do not have to cast as many votes as there are positions to be filled. Instead, it is proposed to allow these electors to vote for one candidate "up to" the number of councillor positions to be filled and allow voters to effectively relinquish their remaining number of votes.

¹¹ ECQ, "Queensland Local Government 2012 Elections Report", p11.

14. Online notification of poll results

Section 101 currently requires the ECQ to provide a notice of poll results to candidates in local government elections. It is proposed to remove this section given this information is available on the ECQ website.

15. Recounting of votes

Currently, both the LGEA and the EA have provisions related to disputed results and the Court of Disputed Returns. However, unlike the EA, the LGEA does not have provisions relating to the recounting of votes. Therefore, it is suggested a provision mirroring section 130 of the EA be included in the LGEA to allow the Electoral Commission to direct a recount of votes.

Enforcement

16. Failure to vote provisions

Sections 160 and 164 provide for the compilation of a list of non-voters by the returning officer and the value of this list as evidence in enforcing action against non-voters. In practice however, returning officers do not prepare a list of non-voters and there have been difficulties in enforcing these matters in court. In part, these difficulties have related to the absence of a defined place where a non-voting offence can be said to have occurred which is required by the *Justices Act 1886*. It is therefore proposed to amend the failure to vote provisions in LGEA to align the provisions more closely with sections 134, 135 and 186 of the EA including:

- a) deleting the current evidentiary aid in section 160 of the LGEA and inserting new evidentiary aid provisions similar to those contained in section 186 of the EA;
- b) inserting a new deeming provision in the LGEA similar to section 186(8) of the EA, which states the place of the offence as being that of the returning officer for the electoral district for which the elector was enrolled for the election; and
- c) deleting and replacing the word 'reason' with 'excuse' in the offence provision in section 168 (1)(a) of the LGEA to ensure uniformity of terminology with that used in the EA.

17. Regulation of how-to-vote cards

The Queensland Government is introducing a number of measures to increase regulation of how-to-vote cards in state elections. These include providing the ECQ with the ability to refuse to register a card if it would be likely to mislead or deceive voters, and introducing a requirement for all how-to-vote cards to be published on the ECQ website. This will facilitate greater scrutiny of the cards before polling day and also provide postal voters with access to how-to-vote guidance.

Currently, how to vote cards in council elections must be provided to the returning officer for authorisation "no later than 5pm on the Friday that is at least 7 days before the polling day". It is proposed to bring these provisions into alignment with the EA by instead:

- a) introducing a requirement for all how-to-vote cards to be registered with the ECQ and to be published on the ECQ website; and
- b) enabling the ECQ to refuse to register a how-to-vote card if the card is deemed to be misleading or confusing.

The relevant amendments to the EA are contained in Clause 21 of the Electoral Reform Amendment Bill 2013.

Technical Amendments

Section 17. Removal of outdated subsection

Subsection 3 provides for an electoral registrar under the EA to give the returning officer the assistance the officer reasonably requires to compile a voters' roll for an election. However, in practice, the voters roll for Queensland is now maintained by the Australian Electoral Commission under a joint arrangement between the Commonwealth and Queensland Governments. It is therefore intended to remove this subsection.

Sections 27 and 31. Combining nomination provisions

These sections relate to the certification of nominations and how and when a nomination takes place to stand in a local government election. To streamline administration, it is proposed to combine these two sections.

Section 55. Attaching ballot papers to a perforated butt

Both the LGEA and EA require that ballot papers are attached to a perforated butt for historical reasons. The ECQ has advised that in the current environment this requirement only adds to the cost of printing ballot papers and serves as a hindrance in elections. To make ballot papers more cost effective and easily dispensed it is proposed to remove the requirement that they be attached to a perforated butt.

Sections 70 and 71. Casting of ordinary and pre-poll votes

Subsection 5 under each of these sections provides that voters casting pre-poll or ordinary votes should return declaration envelopes they possess, but do not require, at the time of voting. It is proposed to remove this provision as the only voters who complete declaration envelopes are postal voters and electors who are not on the roll but claim they should be. An elector voting pre-poll or at a booth on polling day would not have a declaration envelope. Voters who must complete declaration envelopes are dealt with in section 69.

Sections 79-82. Application and distribution of postal ballot material

Each of these sections requires that postal ballot material is delivered in envelopes that bear the words "Ballot paper – (name of local government area)". During the 2012 elections this led to some misdirection of completed ballot papers as Australia Post did not look at the actual PO Box the material was to be delivered to, and instead sent the ballot papers directly to the council named. It is therefore proposed to remove this requirement so that completed postal ballots are instead sent to the PO Box of the relevant returning officer.

Section 92. Completing the polling booth return

This section deals with the preliminary counting of votes and outlines a process in subsection 6 for providing a written statement in approved form on the preliminary polling booth outcomes. Rather than outlining a process for preparing this statement, the ECQ have advised it is only necessary to include at subsection 6 "Complete the polling booth return".

Section 94. Receipt of things given to the returning officer

ECQ have advised that returning officers do not provide a receipt when booth materials are returned and that this is not necessary in present-day elections. It is therefore proposed to delete this section.

