

# LARGEST REMAINDER

(Not quite Quota Notes)

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## Editorial

In the recent Victorian election, above-the-line voting and its associated group voting tickets have again proved to be a failure.

In five of the eight Legislative Council electorates, candidates gained seats with less than four percent of the primary vote. It is obvious to any impartial observer that these candidates would not have been successful, had voters been free to express their own preferences to the extent that they chose.

An argument often presented to justify this farce is ‘well, at least the “ordinary voter” is being represented’. Well if this is the desired outcome, then let everybody have an opportunity – just choose the last candidate for every electorate randomly from the community in the same way that a jury is selected.

These successful candidates do not represent the community.

Again we call on all Parliaments and Governments to let voters have a free and open ballot when choosing those who will represent them.

*Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time...*

– Winston Churchill<sup>1</sup>

Electoral Reform Australia believes we should actually give democracy a chance!

<sup>1</sup> United Kingdom, *Parliamentary Debates*, House of Commons, 11 November 1947, vol 444, col 207 (Winston Churchill).

## Reform of Local Government

*The following is an edited version of a submission by Electoral Reform Australia to the Hon. Paul Toole, Minister for Local Government (NSW).*

We would like to make the following submission to the current inquiries concerning the future of local government in New South Wales.

### 1. Mayoral Terms – Two Year Terms

Electoral Reform Australia supports the proposed change to increase to two years the term for mayors elected from amongst the sitting Councillors.

Increasing the length of the council term from three years to four years in 1983 had the unintended consequence of allowing Councillors to make deals, some quite unsavoury, with regard to who takes the top position.

With mayoral terms at one year it is sometimes considered expedient to offer the mayoralty to a lone Independent for one year as part of a deal to secure the mayoralty for the remainder of the council term. Two year terms will virtually eliminate this dealing.

Two year terms also allow a Councillor newly elected to the mayoral position the opportunity to go through the annual cycle at least twice; the first as a learning experience and the second as an opportunity to implement change.

### 2. Popularly Elected Mayors

The election of popularly elected mayors rarely achieves any substantial benefits for their communities. The implementation of two year terms for those Mayors elected by their fellow Councillors would further reduce any benefits that may have been achieved by virtue of continuity of an individual mayor holding the position.

In addition to the flawed electoral provisions currently used to elect popularly elected Mayors (see next item), the major disadvantage of the election of a popularly elected Mayor is that there is no guarantee that the political and social values of the Mayor and the majority of elected Councillors will align.

Should they not align, the result will vary between benign antagonism, with both parties unable to carry out their programs, and outright hostility which regularly results in complete paralysis of all council initiatives. This antagonism affects the lives and careers of all involved, including council staff, and can overflow into the community.

There are no deadlock provisions in local government to resolve these conflicts and the situation can continue for the life of the council. There is also no guarantee that the next scheduled election will resolve the situation.

Despite their overwhelming acceptance by the community at large, through their passage of referendums, Electoral Reform Australia opposes popularly elected Mayors.

### **3. Method of Election of Popularly Elected Mayors is Flawed**

Under current legislation, a popularly elected Mayor is automatically elected to a Councillor position. The votes initially cast for the Mayor as the leader of their team on the ballot paper for Councillor positions are then distributed starting from their second preference. In councils with a ward structure this invariably means that the Mayor's team unfairly gains one extra place on the council.

Even in councils where there are no wards, the composition of the council can be distorted. For example, in an undivided council of nine members a quota for election is 10%; should the Mayor be popularly elected then the quota for the remaining eight members becomes 11.12%.

The mathematics is simple – it is easier to win four out of eight (44.45%) (and get a free mayoral position) than five out of nine (50%) – but the result does not accurately reflect the choice of the voters.

The result is undemocratic, undermining the principle of one vote one value - 44.45% of the vote should not give any one group absolute control of a council.

With more and more councils moving to the popular election of Mayors, this situation is going to occur more often.

Electoral Reform Australia recommends that no one should be elected as Mayor unless they are first elected as a Councillor. To be elected as Mayor requires 50% of the vote. Election first as a Councillor, requiring a much smaller percentage, would be almost automatic for an aspiring Mayor at the head of their team.

Put simply, the ballot for Councillors should be counted and finalised first. The ballot for popularly elected Mayor should be counted next with the candidates who have not been elected as Councillors ineligible to win the ballot. In practice, the two counts can be carried out simultaneously.

### **4. Death or Resignation of Popularly elected Mayors**

The death of the popularly elected Mayor of Willoughby and the resignation of the Lord Mayor of Newcastle have highlighted the difficulties that occur with the replacement of popularly elected Mayors.

Firstly, a by-election is required to be held over the entire Council area. Secondly, a second by-election is then required should a current Councillor contest and win the mayoralty. The requirement for a second by-election places current Councillors at an unfair disadvantage. *'Don't vote for Cr X and you can save the ratepayers \$100,000 by avoiding the second by-election'* is a cheap shot at candidates who, because of previous experience and commitment, have every right to expect to be treated equally by the voters.

Electoral Reform Australia recommends that when a popularly elected Mayor dies or resigns, no by-election take place. The Mayor should be chosen from amongst the current Councillors for the remainder of the council term. This will be completely democratic because at the previous election the retiring or dead Mayor's votes were not counted; the

count was commenced from the second preferences and the result obtained would have been identical to the result obtained had the retiring Mayor not stood in the first instance.

The advantages to the council and ratepayers are:

1. A new Mayor is in place almost immediately
2. Major savings of perhaps hundreds of thousands of dollars are made by the council by avoiding one or two by-elections. A check of the costs that will be incurred by Newcastle City Council for its two by-elections will confirm this.
3. The election reflects the result of the previous council election and avoids the possibility of conflict within the council should a mayor of a different political colour be elected.
4. Prevents grandstanding by Mayors who resign with the intention of re-contesting the election. Any resignation is permanent until the next scheduled council election.

## 5. Ward Structure

Electoral Reform Australia recommends that all councils in New South Wales should be single ward councils.

With a single ward every voter is treated equally and has the opportunity to support any candidate running and, at subsequent elections, the opportunity to consider the merits of all the Councillors.

In single ward councils there are no demarcation disputes in council. Generally the most important issues that Councillors have to consider such as the election of the Mayor, senior staff appointments, rates, building codes and traffic management plans, will affect the whole of the council area. Councillors can now consider how these issues will affect the entire council area without the distraction of how it might affect their own bailiwick.

Each Councillor has the same rights and responsibilities and every issue that is raised in council becomes the responsibility of all the Councillors.

All Councils in New South Wales, except

Botany Bay Council (see below), are elected by proportional representation. Electoral Reform Australia believes that the more Councillors that are elected from a ward, the fairer and more representative the proportional representation system becomes. Groups that are represented uniformly across the council area have a better chance to secure representation.

There is a belief that a ward structure enables better access to Councillors by residents and ratepayers. This is a myth. In the early years of last century residents may have walked around to visit their local Councillor but these days with modern communications they will email, use social networking, phone and even occasionally write to their councillor. In most cases they will contact all the Councillors. They do not walk! Where the Councillor lives is not relevant to voters. What is relevant is what they do.

It is impossible to gerrymander a single ward council and ward boundary redistributions become obsolete.

The default structure for any amalgamated Council should be a single ward Council.

## 6. Council of the City of Botany Bay

Botany Bay Council, uniquely in New South Wales, has its Councillors elected from single member wards. As a result of this winner-take-all method of election, all of the elected Councillors are members of the Labor Party. With this method of election, up to 50% of the voters of the City of Botany Bay may be unrepresented.

An examination of Botany Bay Council agendas will show that that most items, trivial or otherwise, are dealt with as mayoral minutes; there is no opposition and rarely any debate on items before the Council. Every Council needs an opposition. With six to be elected from a single ward, the quota of 14.3% would ensure that more than one group is represented.

Electoral Reform Australia calls on the Government to correct this undemocratic situation and ensure that at the next election all six Councillors are elected by proportional representation from a single ward.

## 7. Count-back to Replace By-elections

By-elections are not compatible with the principles of proportional representation. In both the Senate and Legislative Council there are constitutional procedures to ensure that with the death or retirement of a Senator or Legislative Councillor the replacement comes from the same party in order to retain the original proportionality.

Electoral Reform Australia recommends that, because of the more informal nature of local government, replacement of dead or retiring Councillors be by count-back. We would recommend that the original ballot papers be kept and recounted as though the dead or retiring Councillor had never contested the ballot.

For political parties and established local groups, the likelihood is that the replacement will be from the same group. For Independents, the original candidate's second preferences will determine the result. In both cases the result of the general election will as far as possible be maintained.

The advantages to the Council and ratepayers are:

1. A new Councillor is in place almost immediately
2. No expensive and disruptive by-election.
3. The election reflects the result of the previous council election and avoids the possibility of conflict within the council should a Councillor of a different political colour be elected.
4. Prevents grandstanding by Councillors who resign with the intention of re-contesting the election. Any resignation is permanent until the next scheduled council election.

## 8. Abolish Above-the-Line Voting and Introduce Optional Preferential Voting.

The above-the-line voting boxes are a vestigial remnant of the previous system which also included group voting tickets. Even a cursory examination of current NSW Local Government and Legislative Council ballots demonstrates that voters do not avail themselves of the opportunity, by voting preferentially above-the-line, to give second

and subsequent preferences. In fact, the ambiguity of the voting paper and the distracting big black line leads to many voters casting informal votes because they give a second [1] to a different group above the line.

By forcing parties and candidates to stand many more candidates than they could possibly hope to have elected, above-the-line voting also contributes to the excessive number of exhausted votes. These makeweight candidates are eliminated early in the count but voters are given the wrong impression that their vote will continue to the end.

In local government elections the compulsory numbering of preferences is unnecessary and leads to a high informal and high exhausted vote. The argument that it is necessary to give preferences to more than one candidate to minimise exhausted votes is false.

Elections for the ACT Legislative Assembly, where there is no above-the-line voting and a single [1] is a valid vote, demonstrate that nearly all voters will give preferences to all the candidates within the party group they wish to support. Most will, without compulsion and despite having to find a new group and column, continue their vote to other groups and candidates. After almost a hundred years of preferential voting, most Australians seem to do this instinctively.

The number of candidates contesting local government elections will also be reduced. Parties and groups will no longer need to include candidates who cannot be elected (and in many cases do not want to be elected) just so that they have sufficient candidates to ensure that their supporters' votes will not be declared informal.

Electoral Reform Australia calls on the Government to abolish above-the-line voting and adopt the ACT model. Voters should be advised to vote for as many candidates as there are positions to be filled, but allow fully optional preferential voting – any vote with a single No [1] to count as a formal vote.

## 9. Robson Rotation

Electoral Reform Australia recommends that the Robson rotation should be applied to all local government elections in NSW.

The Robson rotation applies to elections in the Tasmanian House of Assembly and the ACT Legislative Assembly. It randomises the position on the ballot paper of all the candidates within a party group. The Robson rotation is beneficial in ensuring that the votes of groups obtaining in excess of a quota are shared more evenly amongst its candidates. Opportunistic groups will not be able to assume that they will pick up the remainder of the major parties' quotas.

The major parties should favour the Robson rotation because, as well as being democratic in eliminating the donkey vote, it also maximises the chances that a major party will be able to increase its representation above that which, on a superficial examination, appears to be its mathematical entitlement. The definition of a major party, in this local government context, is any party sufficiently popular to obtain more than a quota in the regular election.

The Robson rotation will help bring stability to local government elections because only parties or groups with sufficient support to obtain a quota can be guaranteed election. Conversely, any party that does not gain at least half a quota is very unlikely to win a seat, and no party can reasonably hope to be elected until they gain at least 85% of a quota.

The Robson rotation will also help reduce the number of candidates seeking election. The major parties would know the number of seats their percentage vote would entitle them to and, hoping for a favourable outcome, would therefore nominate a few more than that number so that they can appeal to all sections and regions of the council. This also ensures that there are replacements available in case of casual vacancies. So that they do not dilute their vote too widely these groups would not run a full team. Gone would be the current practice of running a full team of nine or twelve candidates when only one or two could possibly hope to be elected.

No candidate should run for election unless they actually want to be elected.

## 10. Should Councils have an Odd or Even number of Councillors?

In NSW there is a trend to have councils consist of an odd (i.e. uneven) number of Councillors. There is implied in this a belief that we live in a society where only two parties have the ability to elect Councillors. Whilst political parties or their stalking horses do dominate in local government, they do not usually obtain a majority in their own right.

In considering local government in NSW, we need to bear in mind that a key feature is that the Mayor has a casting vote; in NSW there are no tied votes in council.

In a nine member Council, two groups may be equally represented with four Councillors each and a lone 'Independent' elected. Electoral Reform Australia believes that too much power resides with such an 'Independent' Councillor. The outcome varies from benign, where the lone 'Independent' co-operates with the Mayor of the day, to catastrophic where the 'Independent' demands unreasonable and excessive concessions, is totally arbitrary in his or her support, is influenced by every crackpot with a grievance and generally holds the council to ransom. In many cases one of the groups will even yield to pressure and make this individual the Mayor.

Any Mayor, despite having a casting vote, can be voted down at every council meeting and every vote becomes a vote of confidence; the Councillors, and more particularly the council staff, have to second guess every recommendation that they put to council.

With councils having an even number of Councillors, say ten, a close result may be 5:4:1 but the power of the 'Independent' is greatly reduced. The 'Independent' can only guarantee the Mayoral election in one direction. The extension of the Mayoral term to two years is also very beneficial and will help to move the role of the lone 'Independent' from kingmaker to that of a co-operative and supportive member of the Council.

Electoral Reform Australia believes that the election of an odd number of Councillors to avoid a 'hung council' is unnecessary and the power it gives to minority interests at the expense of good government is too great.

The default structure for any amalgamated council should be a single ward council electing an even number of Councillors.

### **11. Meek Method for Counting an STV Ballot to be Used.**

In the computer age, the Meek method for counting a proportional representation ballot should be used as it allows the fairest distribution of preferences. New Zealand, a country with no history of proportional representation, implemented the Meek method when it reformed its local government elections. New Zealand did this because it had no preconceived ideas and therefore chose the best system available.

Meek allows the quota to be reduced through the count. As votes exhaust and candidates are eliminated the computer recounts the ballot as though those eliminated candidates had never contested the ballot in the first place. Every elected candidate has a quota and no candidates are elected with the largest remainder.

### **Summary**

Electoral Reform Australia calls on the Government to:

1. Introduce two year terms for Mayors elected by their fellow Councillors
2. Abolish the ability of councils to move to the election of Mayors elected by popular vote.
3. Correct the currently undemocratic and flawed procedure for electing Mayors by popular vote.
4. Allow councils to replace popularly elected Mayors, who die or resign, from amongst the sitting Councillors until the next scheduled council election.
5. Reform the ward structure of councils to ensure that all Councillors are elected from single ward Councils.
6. Reform the City of Botany Bay Council

and ensure that its Councillors are elected, as every other Councillor in NSW is, by proportional representation.

7. Abolish council by-elections by having count-back of the previous election when replacing dead or retiring Councillors.
8. Abolish above-the-line voting and introduce optional preferential voting.
9. Introduce the Robson rotation for all local government elections.
10. Reverse the trend for councils to change to an uneven number of Councillors.
11. Adopt the Meek method for counting an STV ballot in local government elections.

Electoral Reform Australia congratulates the Government for taking the initiative in establishing the recent inquiries into local government in NSW.

### **Future Meetings**

The next meeting will be held on Wednesday 4 February 2015 at 7.30 pm.

Anyone is welcome to attend. For details, please contact Stephen Lesslie at [president@electoralreformaustralia.org](mailto:president@electoralreformaustralia.org) or on (02) 6351 2598 for the relevant information.

Comments and/or contributions are welcome:

[president@electoralreformaustralia.org](mailto:president@electoralreformaustralia.org), or

Electoral Reform Australia  
12 Kirkley Street  
South Bowenfels NSW 2790

#### **Electoral Reform Australia officers**

Stephen Lesslie – President  
Susan Gregory – Vice President  
Mark Rodowicz – Vice President  
Patrick Lesslie – Secretary/Treasurer

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