

# Review of 2014 Local Government Elections

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The Office of Local Government takes responsibility for the contents of this paper, and gratefully acknowledges the input of the Local Government Association of South Australia and the Electoral Commission of South Australia.

Comments on the attached paper close 5pm Friday 27 November 2015.

Submissions on this paper should be made to the Office of Local Government  
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**Government  
of South Australia**

Department of Planning,  
Transport and Infrastructure

## **CONSULTATION QUESTIONS FOR REVIEW OF 2014 LOCAL GOVERNMENT ELECTIONS**

Similar to previous years, the Office of Local Government, with input from the Local Government Association and the Electoral Commissioner, is reviewing and evaluating the 2014 Local Government Elections. The review will focus on specific matters that will improve the operation of the elections, as well as voter turnout, rather than a broad examination of all systemic and policy based matters. The Office of Local Government takes responsibility for the content of this discussion paper.

Appended to the back of this paper is a table detailing proposed technical amendments to the *Local Government (Elections) Act 1999*. The Electoral Commissioner of South Australia has proposed the amendments to remove inconsistencies and address technical issues that have arisen at the 2010 and 2014 Local Government elections.

Councils and other interested stakeholders are invited to consider the following issues and accompanying questions relating to Local Government elections in South Australia.

### **Voter participation in Local Government elections**

In South Australia, since the 2000 Local Government elections, ballot papers have been posted to enrolled voters, and voting is voluntary. Tasmania and Western Australia have similar voting arrangements.

In Victoria, NSW, Queensland and the Northern Territory, enrolled voters are required to vote in their Local Government elections, but with various qualifications and penalties applied across the jurisdictions.

**Comparison of Voting Method and Voter Turnout in Jurisdictions with Compulsory Voting (excl. Vic)**

Jurisdiction	Method of voting	Year	Participation Rate
NSW <sup>1</sup>	Polling Booth	2012	82.1%
Qld <sup>2</sup>	Polling Booth, or postal at Minister's discretion	2012	80%
NT <sup>3</sup>	Polling Booth/ early voting centres	2012	70.3%

It is clear from the above table that a requirement to vote in Local Government elections does not result in 100% participation rate, and that an administration and cost question arises from the enforcement of compulsory voting. Who is responsible for enforcing compulsory participation requirements? Who bears the cost?

In Victoria, postal or attendance (polling booth) voting occurs at Council's discretion. Voting is only compulsory for voters under 70 years old and who are on the residential roll only.

**Comparison of Voter Turnout in Victoria**

Year	Postal Participation Rate	Attendance Participation Rate
2012	72.57%	63.62%

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<sup>1</sup> NSW: compulsory for those on residential roll only. Electoral Commissioner (EC) to serve penalty notice to non-voters

<sup>2</sup> QLD: councils can apply to Minister to conduct full or partial postal voting if their Local Government area includes a large rural sector, large remote areas or extensive island areas. EC to serve penalty notice to non-voters

<sup>3</sup> NT: penalty for not voting occurs at council's discretion. No notices served for 2012 LG elections.

## **Voting in Local Government Elections in South Australia**

In South Australia, voters who are already on the State Electoral roll in their Council area to vote in State elections are automatically included on the Council voters roll and receive ballot papers in the post. However, landlords, business lessees or resident non - Australian citizens who wish to vote in Council elections must enrol for each Local Government elections by completing an enrolment form.

The voting system is preferential voting, and the vote counting method used in Local Government elections is known as Proportional Representation. It is a counting method designed to ensure that vacant positions are allocated as nearly as possible in proportion to the votes received. A candidate is elected after obtaining a quota or proportion of the formal vote. It is assessed as a 'fair' system for counting votes but more complex counting process than other counting systems, and may take longer to finalise.

Other commonly used voting systems include full preferential voting, optional preferential and first past the post systems.

With regard to the costs and expenses incurred by the returning officer in local government elections, section 13 of the *Local Government (Elections) Act 1999* states that

*All costs and expenses incurred by the returning officer in carrying out official duties must be defrayed from funds of the council.*

## **Voter Turnout in South Australia**

At the 2014 Local Government elections the average statewide voter turnout was 31.99%, with 20.05% the lowest turnout for a position, and 77.67% the highest turnout for a position.

Before the introduction of postal voting in Local Government elections in 1997, the statewide average voter participation in contested elections rarely exceeded 20%. Since 2000 (when postal voting was introduced statewide for the first time) participation rates have been consistently above 30%. However, after the peak year of 2000 (when 40.10% of

voters participated) the percentage dropped to 32.67% in 2003, 31.62% in 2006, 32.88% in 2010, and 31.99% at the 2014 Local Government elections.

Rural councils consistently achieve higher rates of voter participation than metropolitan and provincial city councils. In the 2014 Local Government elections, the average metropolitan turnout rate was 27.74%, compared to 43.28% for non-metropolitan councils. This is broadly consistent with previous elections since the introduction of postal voting.

The following table shows voter turnout in the three jurisdictions which have voluntary postal voting in Local Government elections. The results for the most recent Local Government elections (shown below) are broadly consistent with previous years' results in these jurisdictions.

#### **Comparison of Voter Turnout in Jurisdictions with Voluntary Postal Voting**

<b>Jurisdiction</b>	<b>Year of LG Election</b>	<b>Participation Rate</b>
WA	2013	27.76%
Tas	2014	54.28%
SA	2014	31.99%

#### **Questions:**

- 1. Would compulsory voting be a better option to improve voter turnout at Local Government elections?*
- 2. What other options could improve voter turnout at Local Government elections?*

### **Electronic Voting in Local Government elections**

In recent years the issue of electronic voting in Local Government elections has been raised on several occasions. However, due to the significant costs involved and security risks presented, careful consideration needs to be given regarding what benefits electronic voting offer, compared to continued use of the postal voting system.

A number of countries have introduced some form of electronic voting system in recent years, including the United States, Canada, Brazil, the United Kingdom (now abandoned), Ireland (now abandoned), and India.

In the 2015 NSW elections, the NSW Electoral Commission anticipated that up to 200,000 eligible electors would use the electronic voting system 'iVote'. However, immediately prior to the elections, researchers found security flaws that allowed for the interception and changing of votes<sup>4</sup>. The researchers stated that they were able to *"make the voter's web browser display what the voter wanted, but secretly send a different vote to the iVote voting server."*

The researchers concluded that *"the electoral commission's security testing failed to expose the vulnerability we found, and may have also missed flaws in the server software, verification protocol, and auditing process."*

Further, an analysis by the ABC's Antony Green<sup>5</sup> comparing iVote to ordinary, pre-poll and postal ballot paper voting results in the 2015 NSW elections found that voters' screen size influenced their vote:

*"...it is clear that the current electronic ballot paper structure has created a new donkey vote... parties in the first few columns on the ballot paper are clearly advantaged by the presentation of the ballot paper."*

Few attempts to introduce electronic voting have been free from controversy, which have mainly revolved around four key issues:

- Security: can the system be made secure from tampering?
- Operational: can the system be securely and effectively administered by electoral officials? Can votes be verified and scrutinised?
- Authenticity – who is voting? Can votes be verified?
- Perceptual: even if the system is secure, will electors accept this to be the case?

Overall, the security issue sits at the core of the debate. The potential for fraud is very high. A resourceful hacker, and not the voters, could decide who wins an election. The simple act of conducting an election on the internet may be seen as a challenge to some hackers.

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<sup>4</sup> <http://theconversation.com/thousands-of-nsw-election-online-votes-open-to-tampering>

<sup>5</sup> <http://blogs.abc.net.au/antonygreen/2015/04/does-electronic-voting-increase-the-donkey-vote.html>

Personal computers are extremely vulnerable to cyber attacks. Furthermore, it is much harder to be sure that the person casting the vote is the same person that the vote is registered to, and there is no way to know for sure that the vote was cast in secret and without undue pressure.

Proponents of electronic voting have cited low voter turnout rates as a reason for introducing electronic voting. It should be noted that in 2013, Norway trialled internet voting, but ended trials because of security concerns and a lack of evidence that the trials led to increased participation. There was also evidence that a small percentage of people voted twice – once on the internet and then at a polling booth.

The cost of introducing an electronic voting system requires careful consideration, with regard to both the initial investment and ongoing maintenance.

In its Second Interim Report<sup>6</sup> delivered in November 2014, the Commonwealth's Joint Standing Committee on Electoral Matters noted the high cost of electronic voting systems. The Report noted that in 2011, the NSW Electoral Commission introduced iVote to voters who were vision impaired, voters who were disabled (within the meaning of the anti-discrimination legislation), or lived more than 20km from a polling station. At an approximate total cost of \$3.5m, iVote had an average cost per vote of \$74 compared to an average cost of all votes cast of \$8.

The Committee also noted that the development of the static electronic voting system used in Ireland cost approximately A\$78m, which included not only the up-front purchase of machines, but the total cost of ownership including review, software upgrade, maintenance and replacement. These ongoing costs contributed to Ireland abandoning electronic voting.

Within the context of Local Government elections in South Australia, section 13 of the *Local Government (Elections) Act 1999* states that

*All costs and expenses incurred by the returning officer in carrying out official duties must be defrayed from funds of the council.*

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<sup>6</sup> Second interim report on the inquiry into the conduct of the 2013 federal election: An assessment of electronic voting options

There are therefore significant direct cost implications for councils if electronic voting is introduced.

**Question:**

**3. Do Councils support the introduction of electronic voting, despite the security risks and costs involved?**

## Property Franchise

Until the 2010 Local Government elections, those entitled to the property franchise did not need to enrol to vote and their entitlement existed whether or not they chose to exercise it.

The 2008 *Independent Review of Local Government Elections*<sup>7</sup> found that:

*...councils incur significant expense in compiling and maintaining a separate voters roll for local government elections... in most cases, the vast majority of this effort is wasted in respect of the 82.8% of property franchisees who choose not to vote.*

A review undertaken to assist in preparing the 2008 Interim Report found that the costs of maintaining a separate Council voters roll, comprising those voters who are landlords, business lessee or resident non-Australian citizens, was in the order of \$1 per enrollee, and, depending on voter turnout, could often be as high as \$4 per actual property franchise voter. In six country councils in 2006, the entire cost of preparing the Council's roll for the elections was wasted when a subsequent lack of nominees meant that in each of these six councils no election was required.

As a result of the Review's findings, the *Local Government (Elections) Act 1999* was amended in 2009 to remove the automatic entitlement of property owners who were not on the House of Assembly electoral roll for a council area to be included on the voters roll for council elections (except for the City of Adelaide where the automatic entitlement was retained).

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<sup>7</sup> [http://www.dpti.sa.gov.au/\\_\\_data/assets/pdf\\_file/0019/152542/IRLGE\\_-\\_Final\\_Report\\_-\\_2008-01-08.pdf](http://www.dpti.sa.gov.au/__data/assets/pdf_file/0019/152542/IRLGE_-_Final_Report_-_2008-01-08.pdf)

Specifically, section 15(5a) of the *Local Government (Elections) Act 1999* stipulates that the voters roll expires on 1 January after each periodical election and that a fresh voters roll must be prepared after that date (with the exception of the City of Adelaide). Such action is a method of purging the roll to ensure that only those currently eligible are included on the voters roll. An alternative method to ensuring the accuracy of the voters roll is to periodically write to those on the roll requesting them to confirm their eligibility.

However, concerns were raised at the 2014 Local Government elections that a large number of property owners did not receive their entitlement to vote as they were not aware of the requirement to re-enrol. Section 13A(2) of the LGE Act requires each council to inform potential electors in its area (other than where entitled as an elector on the House of Assembly roll) of the requirement to apply to be enrolled on the voters roll. However, enrolment for the property franchise portion of the council voters rolls reduced overall by 19.4% from 23 407 in 2010 to 18 871 in 2014 (Adelaide City Council accounted for 13 369 of the 18 871). Property owners did not take up the option or council activity did not deliver the desired outcome.

The matter is now being re-examined with a view to both maintaining an accurate voters roll as well as ensuring that those eligible to vote are receiving their entitlement to vote.

**Question:**

- 4. How could the Property Franchise entitlement be changed to best support and manage property franchisees?**

## **Caretaker Provisions**

Prior to the 2010 Local Government elections, an amendment to the *Local Government (Elections) Act 1999* required each Council to have a caretaker policy to govern the conduct of the Council and its staff during an election period. As a minimum, the caretaker policy was required to prohibit the making of a 'designated decision' during the election period. A designated decision is defined in section 91A of the Elections Act and further refined in the *Local Government (Elections) Regulations 2010* (the Regulations).

The objectives of the new provisions were to ensure that an outgoing Council could not bind a new Council to large contracts (other than for prescribed contracts as defined in reg 12 of the Regulations) and that no candidate, either sitting or prospective, was unfairly disadvantaged.

A designated decision, under section 91A, means a decision:

- relating to the employment or remuneration of a chief executive officer (other than a decision to appoint an acting chief executive officer); or
- to terminate the appointment of a chief executive officer; or
- to enter into a contract, arrangement or understanding (other than a prescribed contract) the total value of which exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates in the preceding financial year; or
- allowing the use of Council resources for the advantage of a particular candidate or group of candidates (subsection (8d)).

Section 91A also makes a Council's caretaker policy part of each code of conduct for Council Members and Council staff.

One of the key areas of concern and uncertainty within Councils was the provision in section 91A(8)(d) of the Elections Act which defined a designated decision to include:

*(d) allowing the use of council resources for the advantage of a particular candidate or group of candidates (other than a decision that allows the equal use of council resources by all candidates for election).*

After the 2010 Local Government elections it was agreed that it was inappropriate to include this provision in a definition of a designated decision as it is clearly distinguishable from other matters that form part of the definition, which have the effect of binding an incoming Council to a significant policy decision, expenditure, or employment contract for a CEO.

The attached table of proposed amendments to the *Local Government (Elections) Act 1999* reflects the consensus that there was a need to remove this section from section 91A.

However, there remains the question of whether the provision is placed elsewhere in the Act, or removed altogether and becomes a policy matter for Councils.

Clearly, the intention of this section was to ensure that councils weren't providing assistance, or an advantage, for some candidates over others eg through the use of Council photocopiers to print election material. However, because a designated decision is linked to a Council Member's or staff member's code of conduct by section 91A(7), some Council staff have felt individually responsible for how Council Members used Council resources.

**Question:**

***5. How can the current Caretaker Period provisions be improved?***

## **Concurrent Timing of State and Local Government Elections**

At the November 2014 Local Government elections it was suggested that holding State and Local Government elections on the same day would improve voter turnout for Local Government elections.

As this would necessitate a move from postal voting to polling booth in Local Government elections, consideration needs to be given as to how voting papers would be provided for voters on both House of Assembly and non-House of Assembly electoral rolls. Significant costs may be incurred through the necessity to hold ballot papers for every ward and council at each booth statewide. As outlined earlier, the *Local Government (Elections) Act 1999* stipulates that such costs are to be borne by councils.

**Question:**

***6. How could concurrent Local and State Government elections be held in a way that would both improve voter turnout and not significantly add to the costs to councils?***

## **Access to Voters Roll**

Under section 26(2)(c) of the State *Electoral Act 1985*, electronic copies of the House of Assembly roll for any district may be given to members of the Legislative Council and registered political parties, while a member of the House of Assembly may receive the roll for their district .

Section 15(15) of the *Local Government (Elections) Act 1999* states that a Local Government elections candidate can obtain a printed copy of the voters roll from the relevant council. The provision of electronic copies of the roll is not referred to in the Act.

The combination of the two Acts means that candidates who are members of registered political parties can get access to an electronic copy of the House of Assembly portion of the voters roll in Local Government elections, but candidates who are not members of a registered party can only obtain a printed copy of the entire voters roll.

### **Question:**

#### ***7. Should all candidates have access to electronic copies of the voters roll?***

## **Disclosure of Candidates' residential address**

Candidates for Local Government elections are required to complete a Nomination Form, the front page of which is displayed at the Council office for interested members of the public. Included in the front page is the candidate's enrolled address, and address of rateable property, if different from enrolled address.

Section 17(1)(b) of the *Local Government (Elections) Act 1999* states that a person is eligible to stand as a candidate in Local Government elections if the person is an elector for the area or the designated person for a body corporate which has its name on the voters roll for the area.

Particularly in the case of Council areas which attract a large number of businesses, such as the City of Adelaide or City of Marion, the potential contribution of Councillors who may reside outside of the Council area, but operate businesses in the Council area, is arguably as equally important as those Councillors who reside in the same area.

Regardless of where a Councillor resides, section 59(1)(b) of the *Local Government Act 1999* states that the role of the elected member is to:

*represent the interests of residents and ratepayers, to provide community leadership and guidance, and to facilitate communication between the community and the council.*

It has been suggested that both the candidate profile and nomination form should state the candidate's residential suburb. There have been some concerns raised that non-resident candidates are not able to represent a council area's community as well as candidates who reside in the area, and that electors would benefit from knowing whether a candidate resides in the council area.

There are valid, important reasons of safety why candidates may wish to have their residential address suppressed, such as occupation (police officer etc), Family Court orders etc. There is a real possibility that disclosure may inadvertently endanger a Councillor, or his or her family.

***Question:***

- 8. How would disclosure of a candidate's residential suburb change representation and decision-making on Councils?***
- 9. How could voters identify whether a candidate resides in the Council area without compromising their safety?***

## **Disclosure of Candidate's Political Party Membership or Affiliations**

Currently, a candidate is not required to declare membership of a political party. As a result of an Ombudsman's investigation, it has been recommended that candidates are required to declare the name of any political party, or any body or association formed for political purposes, of which the candidate is a member or has been a member within the past 12 months.

There are strong arguments both for and against candidates disclosing political party memberships and affiliations. At the heart of the matter is the need to balance transparency for voters and ratepayers with good representation and decision making on councils.

*Question:*

- 10. How would disclosure of a candidate's political party membership or affiliation change representation and decision making on councils?*
- 11. Where would information about a candidate's political party membership or affiliation be published, or not be published and why?*

**Any other comments or suggestions to improve the operations of elections and voter turnout?**

*Any other concerns regarding the conduct of the 2014 Local Government elections should be sent separately to the Office of Local Government [DPTI.PDLocalGovernment@sa.gov.au](mailto:DPTI.PDLocalGovernment@sa.gov.au) for appropriate attention.*

**LOCAL GOVERNMENT (ELECTIONS) ACT 1999 - TECHNICAL PROPOSALS**

<b>Section</b>	<b>Source</b>	<b>Problem</b>	<b>Proposal</b>	<b>Outcome</b>
6(8) Supplementary elections	ECSA.	Currently, there is an inconsistency between closing time for voting for supplementary elections (12 noon) and closing time for Local Government periodic elections (5 pm).	Amend this section to allow for the close of voting for supplementary elections to be 5pm on polling day.  Following further review, ECSA proposes that the close of voting for supplementary elections should close at a time determined by the Returning Officer, allowing the Returning Officer to set both polling day [under section 6(6)] and the time for the close of voting on that day. Such a determination would be made by the Returning Officer when setting all other dates for the supp election including the Close of Rolls and Close of Nominations.	Corrects an inconsistency.
9(3) Council may hold polls	LGA.  ECSA	Currently, only required to give notice of polling day in print.	Amend this section so that councils must also provide notice of polling day on its website.  Amend to 'public notice'	Updates the provision in line with society's progression to the internet.
9(6) Council may hold polls	ECSA.	Currently, there is an inconsistency between closing time for voting for polls (12 noon) and closing time for periodic Local Government elections (5 pm).	Amend this section to allow for the close of voting for a council poll to be 5pm on polling day.  Amend in line with section 6(8) for consistency.	Corrects an inconsistency.

**LOCAL GOVERNMENT (ELECTIONS) ACT 1999 - TECHNICAL PROPOSALS**

<b>Section</b>	<b>Source</b>	<b>Problem</b>	<b>Proposal</b>	<b>Outcome</b>
15(13) The voters roll	ECSA.	Needs to be made consistent with section 15(14): it is understood that this remaining reference to purchase of the voters roll was an oversight.	Amend this section to remove the reference to 'purchase' of the voters roll.	Corrects an inconsistency.
19A Publication of candidate statements etc	LGA.	The cost of supporting the website and the significant workload it generates for LGA staff outweighs any benefit given due to the extremely low use of the website for <u>supplementary</u> elections.	Amend this section to remove the requirement for the LGA to operate the candidates' website for supplementary elections.	The Electoral Commission will send candidates' profiles to councils to upload onto their websites.
27(1)(a) Publication of electoral material	Councillor	Inconsistent with section 27(3) re post office box not allowed.	Amend to make consistent with section 27(3), namely, exclude the use of post office boxes.	Consistency.
28(2a) Publication of misleading material	LGA.	During the 2010 elections, the Electoral Commissioner found a number of candidates breached this section and they were requested to withdraw the offending material and publish a retraction in The Advertiser. However, the retractions, published as 'postage stamp' size entries in the back pages of the newspaper, were considered unsatisfactory.	Amend this section to require the publication of a retraction to be prominently placed in the early pages of The Advertiser and other local press.	Improves the retraction requirements.

**LOCAL GOVERNMENT (ELECTIONS) ACT 1999 - TECHNICAL PROPOSALS**

Section	Source	Problem	Proposal	Outcome
29(3) Ballot papers	ECSA.	Current time for drawing of lots for the order of candidates' names on the ballot paper for elections is 4pm and it is impractical: no need to wait till then.	Amend this section to allow for drawing of lots as soon as practicable after 12 noon.  This amendment only recommended for supplementary elections. For periodic elections, the Returning Officer will require the timing to remain at 4pm so that the relevant checks can be undertaken to ensure that no candidate for an election has nominated for any other election throughout the State.	Practical improvement.
39(4) Issue of postal voting papers  43(4) Issue of fresh postal voting papers	ESCA	Currently, applications by post and in person not aligned.	To align the cut-off for both an application by post and in person to be that in paragraphs (a), namely by 5pm on the second business day before polling day.	Achieves consistency of cut-off for both applications by post and in person.
47 Arranging postal papers	ECSA.	Will be inconsistent with sections 6(8) and 9(6) if those provisions are amended as proposed.	Amend this section to remove the reference to the close of voting at 12 noon for an election or poll.	Makes consistent with other proposed amendments.

