

Submission to Review of Tasmania's Local Government
Legislation Framework: Reform Directions Paper

Dr Kevin Bonham

July 2019

Summary

This submission concerns various aspects of the Reform Directions Paper that have a bearing on local government elections.

In many cases I support the proposals in the Reform Directions Paper, at least in broad terms. Especially it is very pleasing to see proposals aimed at fixing the serious problem of excessive informal voting, and also a proposal for introducing deposits for being a candidate for local government.

Author background

I have 30 years' experience as a scrutineer of local government elections (primarily Hobart). I am a prominent Tasmanian psephologist (website kevinbonham.blogspot.com.au) and have provided detailed coverage of council election counts online. I have also worked as a consultant on implementation of computer counting software for the Tasmanian Electoral Commission. I have no employment or political connection with any council and this submission represents my own views in a private capacity only and not those of any candidate, party, authority or relative.

Recommendations

Where I do not think detailed discussion of a recommendation is necessary I have simply stated my approval of a proposal below. These recommendations are noted as "(No further comment.)" The discussion section of this submission provides detailed comments where needed. There are a number of areas where I have not commented because I do not have a view or believe the issue will be adequately canvassed by others.

1. That reform 9 (amend the voting process to reduce informal votes) be adopted. This is essential to an adequately democratic local government election system.
2. That the status quo for mayoral elections (option 7A) be retained, and especially that options 7B and 7C be abandoned immediately.
3. That reform 13 (deposits) be adopted in principle, but a candidate's deposit should be returned if they are elected whatever their primary vote, and the proposed deposit levels for all positions should be reconsidered.

I have highlighted the above three as I think they are most important. The rest are in the order they appear in in the paper:

4. That reform 3 (A new electoral act specific to local government) be adopted. (No further comment).
5. That reform 5 (eligibility for General Managers Roll) be amended by allowing sufficiently established residents who are not citizens to enrol, and otherwise adopted.
6. That reform 6 (one person, one vote per municipality) be accepted. (No further comment)

7. That either the proposed round-table election of Deputy Mayors (reform 7) be adopted, or else that when there is a mid-term mayoral vacancy, the replacement mayor be elected around the table.

8. That reform 8 (provision for electronic voting) be abandoned until issues with electronic voting have been clearly overcome, as legislative changes can be made later if that point is ever reached. Alternatively, that it be modified to ensure that electronic voting cannot be introduced on a significant scale without rigorous, extensive and completely independent security and privacy testing including open-source publication of the code.

9. That reforms 10 and 11 (Electoral Integrity) be adopted. (No further comment.)

10. That reform 14 (declaration of gifts and donations) be adopted to provide a level playing field for incumbent and challenging candidates and to improve public disclosure. (No further comment.)

11. That reform 19 (remove compulsory public meetings and elector polls by petition) be adopted, or else that the threshold to trigger an elector poll be increased to 20% of residents or 5000 voters, whichever is smaller.

Amendment to reduce informal votes (reform 9)

I strongly support the proposed amendment to reduce informal voting for the reasons stated in my previous submissions. To restate these briefly, informal voting increased from 2.43% in 2011 to 4.49% in 2014 and 5.13% in 2018, with the increase from 2011 to 2014 more than accounted for by unintentional informal voting. This was a result of the shift from half-in-half-out to all-in-all-out, meaning that in Hobart (for instance) voters had to vote 1 to 12 without error for their vote to count. This has resulted in extremely high rates of informal voting in the larger cities.

Mayoral election options (reform 7A-7D)

I strongly support retention of the status quo for mayoral elections. Direct election of mayors ensures that these important position-holders have a direct popular mandate and avoids the problems caused by unaccountable backroom lobbying for the awarding of what are often full-time jobs.

The arguments given for possible simplification are that the process of filling out two ballot papers (three actually) can be confusing and can result in a candidate being unable to accept the mayoralty or deputy mayoralty because they haven't been elected as a councillor. It is also noted that confusion can increase informal voting (this is mainly caused by hopelessly confused voters who try to vote across multiple ballot papers).

Concerning the first there has not yet been an example of a candidate being elected as a mayor but not a councillor, and there is unlikely to be one as the mayoralty tends to be strongly contested by popular councillors. There is also some evidence that running for mayor boosts a candidate's councillor vote unless the number of candidates is very large.

Concerning the second argument, the problem of increased informal voting has been overwhelmingly caused by inflexible savings provisions rather than cross-paper voting.

Option 7B (Mayor not a councillor) should be strongly rejected. It means that an incumbent Councillor cannot run for Mayor without taking the risk that they will lose their seat on Council if unsuccessful. Many councillors would not take the risk, either because they would be risking their payments as a councillor or because they are motivated by goals they want to achieve using their position on council. It should be extremely obvious that requiring mayoral candidates to surrender their council seat if unsuccessful will affect competition for mayoral positions and reduce elector choice between candidates who could be genuinely competitive. It is also likely to increase the number of cases in which mayors without a previous knowledge of a council's workings are elected from off council, which could lead to more conflicts between mayors and councillors.

The paper mentions that this option exists in Queensland and SA. At a quick check of SA 2018 results, Mayors were often returned against only one opponent or in some cases unopposed. In Queensland mayors with no previous experience as mayor or councillor are commonly elected in this system, with a high rate of mayoral turnover. (See <https://www.lgaq.asn.au/documents/10136/f8a763d3-4d94-4f3e-971e-40dbbfa9b850>)

Other states often have poor democratic cultures in local government compared to Tasmania, with the persistence of undemocratic systems such as first-past-the-post and Group Ticket Voting and primitive systems such as single-member wards. The fact that something is done a certain way in some other states is not necessarily a sound argument for adopting it.

Option 7C (Councillor elected first is Mayor) should be even more strongly rejected. The argument given for it is "*This reform retains the concept of a popularly elected mayor, without the necessity of voting twice. The Tasmanian Electoral Commission advises that this form of voting would be simple to administer and would reduce costs as there would only be one ballot*" This would indeed be simple to administer but that is about its only merit.

Firstly, the candidate elected first as a councillor may not actually want to be mayor, so presumably the position would have to go to the first willing candidate. But that then creates a problem: if a voter votes for a person as councillor knowing that that person does not want to be mayor, then they have wasted their vote so far as the mayoral contest is concerned. This also applies if a voter votes for a candidate who they like as a councillor but who is unlikely to top the ballot. If such a voter wants to have a say in the mayoral contest, they cannot vote 1 for their preferred councillor candidate. Although some part of their vote could well still flow to that candidate as a surplus, it will be diluted.

It's also possible a voter might think that candidate X is their favourite candidate for councillor but isn't up to being Mayor just yet, while candidate Y who is third or fourth on their councillor ballot would make the best Mayor. This system deprives the voter of the ability to express that judgement.

The proposal also misses the point that order of election in a multi-member single transferrable vote election isn't necessarily a proof of electoral merit. The point of the order of election isn't to rank the candidates; it's just to stop them receiving unnecessary votes as soon as their election is mathematically certain.

In general the candidate topping a councillor poll will receive a quota of votes, so the race to be elected 1 on a councillor ballot is effectively first past the post. Not surprisingly, this throws up many of the tactical voting dilemmas that make first past the post an undemocratic system. For instance, a candidate may top the poll not because they are the most liked by voters, but because they are the only strong candidate for a particular point of view, while another point of view may have several strong supporters who will all be elected but will split the primary vote up more between them.

An example of the practical problems with this proposal can be seen in the 2018 Southern Midlands election. The first three Councillor candidates on primaries were Karen Dudgeon with 497 votes, incumbent Mayor Tony Bisdee on 493 and Alex Green on 456. Quota was 364 so these were all elected on primaries, in the order 1 Dudgeon, 2 Bisdee, 3 Green. But Dudgeon was not an incumbent Councillor and had not chosen to run for Mayor or Deputy. By the order of election method Bisdee would be second in line (and he was only a few votes short of being first anyway). However Green defeated Bisdee in the actual mayoral ballot decisively after preferences, by a margin exceeding 54-46. In the actual mayoral ballot Bisdee led Green on primaries but Green got more than twice as many preferences as Bisdee. Clearly in the Councillor ballot opposition to Bisdee was spread among voters for several candidates.

The proposal would also undermine the authority of mayors by failing to provide them with a mandate in the form of evidence that the majority of voters preferred them to their major rivals. In 2018 not a single candidate received the majority of their council's councillor votes. Primary votes for top-scoring councillor candidates ranged from 13.9% to 43.8% with an average of 26.9%. This would probably increase under the proposed system but most new Mayors would have no defence against any critic who said the majority of voters didn't vote for them.

Option 7D (Round-table election of mayors) should be rejected for the reasons stated at the head of this section. Also, while this option in theory promises greater stability than direct election (which sometimes elects a mayor opposed by their council) in practice there is no guarantee that a mayor elected by fellow councillors will maintain their support in the future – especially not when the composition of a council changes through casual vacancies.

Candidate Deposits (Reform 13)

I strongly supported the introduction of deposits for candidates at an earlier stage of the review and continue to do so. Deposits are desirable to deter frivolous and ineffective candidacies and are essential to prevent an election from being ruined by deliberate nomination flooding.

The recommended deposit level is 4%. The level of 4% is the federal deposit threshold but there is nothing sacred about this level. I understand the 4% convention to reflect the historic power of the Australian Democrats at the time of the deposit being set (1983), and the level that party was confident of its ability to exceed at that time.

Commonly one or two of the final councillors elected will have polled less than 4% of the primary vote; in Hobart 2018 three councillors were elected off less than 4%. Most councillors not elected will not poll 4%, even if their campaigns were serious and they came close to winning. At the very least, candidates should have their deposits refunded if they win. However I also don't think it is necessary to set the councillor target as high as 4% to discourage ineffective candidates. This is why I suggested 2% in my previous submission. I also think that for new candidates in the big cities, 2% is a more realistic target and more likely to motivate them to campaign seriously. 4% is very difficult for new candidates unless they are very high-profile.

Concerning Mayor and Deputy positions, however, a deposit with a 4% threshold would have virtually no impact and would be not even worth the effort of administering. Only four candidates for each of these positions failed to reach 4% in 2018, with half of the candidates failing to do so in Hobart. This is why I suggested 10% in my previous submission.

General Manager Roll (Option 5)

I agree with the desire to tighten General Manager Roll requirements to prevent short-term residents who are not citizens from voting. Such voters are likely to have little knowledge of local government politics and their participation may be manipulated. However, I think that preventing all non-citizens from voting is harsh on permanent or long-term residents who have legitimate interests in local politics and should be included in the community.

Therefore I would support either or both of the following (or something similar):

- Allow residents with permanent resident status to enrol even if they are not citizens
- Allow anyone who has been resident for five years to enrol even if they are not citizens

Deputy Mayor elections (reform 7)

At an early stage of this process I supported retaining the current direct election of Deputy Mayors. However on review of the evidence concerning the performance of Deputy Mayors as Councillor candidates, and based on issues seen with the promotion of the Deputy Mayor to become Mayor late in a term, my view on this has changed.

I am now open to the round-table election of Deputy Mayors as proposed in this review. However an alternative that I would also be happy with is to maintain the current direct election of Deputy Mayors, but to no longer automatically promote Deputy Mayors to late-term Mayoral vacancies. Instead, when a vacancy arises too late in the term for a mayoral by-election to be held, the replacement Mayor should be elected round the Council table.

Electronic Voting (reform 8)

Extreme caution is required in the introduction of any form of electronic voting in an Australian context. Evidence from experts is that the problems with implementing electronic voting are very serious (eg see Drs Vanessa Teague and Chris Culnane at <https://electionwatch.unimelb.edu.au/articles/why-cant-we-just-vote-online>) A valid electronic voting system needs to – at all steps - preserve the anonymity of the voter while also maintaining verifiability that how a voter voted was as recorded by the system. However it is very difficult to accomplish the latter without retaining a record that links the vote to the voter's identity. Voting is distinguished from other areas of electronic activity (such as banking), because in banking errors can be identified and rectified, and linking transactions to identity is desirable rather than undesirable. Hacking and reverse-engineering exploits associated with electronic voting have occurred. It is notable in this regard that the TEC's own online express voting application system was recently hacked, with personal details being taken but fortunately without compromising any actual voting data.

A license to introduce electronic voting when a government Minister considers it viable and without legislative review on a 12-month time frame would be a flimsy and dangerous provision. The decision to introduce electronic voting could very easily be taken by a future Minister with insufficient care based on imperatives such as cost-cutting, supporting local business, the desire for a good news story or in response to criticism of the current system. I would prefer not to see electronic voting mentioned in legislation at all until the science surrounding a safe electronic voting system has been settled for at least one electoral cycle. If it is to be included at all it should be subject to safeguards such as requirements for rigorous, extensive and completely independent security and privacy testing including open-source publication of the code.

Electoral Polls (Reform 19)

I support the proposal to abolish the ability of constituents to force a council to hold an electoral poll. The expense of electoral polls is very high, and there are not sufficient safeguards to ensure that the questions asked in electoral polls will be fairly designed, or to ensure that both sides of a debate will be equally presented. (See my criticism of the recent Hobart building heights poll at <http://kevinbonham.blogspot.com/2019/07/hobart-building-heights-electoral-poll.html> .) The electoral poll system is prone to abuse of process (a possible example of which was Hobart having an electoral poll regarding the proposed Bell Bay pulp mill which was nowhere near the municipality) and could in theory be used to initiate unpleasant and inappropriate public polls on sensitive social issues (such as a current Hobart flashpoint, gender rights awareness). If this system is to be retained, the signature thresholds to force a petition should be greatly increased.

The electoral poll system may be a useful system for Councils to consult with their voters at their own expense regarding major municipal issues such as amalgamation, so I would support giving Councils the power to initiate polls themselves at their own expense.