

Local Government Reform: Minister Knoll's Discussion Paper – Reform Area 3

This Alert is the fourth in our series covering the *Reforming Local Government In South Australia Discussion Paper*, released by Minister Knoll ('the Paper').

The focus of this Alert is Reform Area 3: *Efficient and Transparent Local Government Representation*.

A summary of the Reform proposals in this Area, as prepared and published by the Department of Planning, Transport and Infrastructure, are an [Attachment](#) to this Alert.

We have recently published:

- an overview of the [Paper](#);
- a review of [Reform Area 1: Stronger Council Member Capacity and Better Conduct](#), and
- a review of [Reform Area 2: Lower Costs and Enhanced Financial Accountability](#).

The final Alert, dealing with Reform Area 4, will be released over the next week.

As with our previous Alerts, our focus is on the key issues arising, in this instance from Reform Area 3, to provide councils with valuable insights to assist in the consideration of, and response to, the Paper by **Friday 1 November 2019**.

Following the conclusion of this consultation process, each of the Reform Areas and any submissions received, will be reviewed by the Government in its preparation of a Local Government Bill, scheduled for release in early 2020.

Reform Area 3: Efficient and Transparent Local Government Representation

The legislative framework for the conduct of council elections is comprised of the *Local Government Act 1999*, the *Local Government (Elections) Act 1999*, the *Local Government (Elections) Regulations 2010*, and, for the City of Adelaide, the *City of Adelaide Act 1998* and the *City of Adelaide (Elections and Polls) Regulations 2010*.

As readers are aware, every four (4) years elections to determine the membership of each council are held ('periodic elections'), which coincide with the same year that State Government elections are held.

The most recent election cycle for councils occurred in November 2018.

Supplementary elections are held (as required and subject to certain conditions) to fill most mid-term casual vacancies as they arise.

The significant elements for the conduct of periodic elections in South Australia currently include:

- **enrolment** for natural persons, bodies corporate or groups of persons who own or occupy rateable property (subject to conditions);
- **voluntary postal voting**; and

- a **proportional representation** voting system.

These elements are, therefore, critically important in any consideration of proposed reforms in this Reform Area.

However, rather than evidencing an opportunity for 'true' reform, in our view, the mooted reforms in this Area may be considered to be lacking in substance and, instead, to be seen as little more than 'tinkering around the edges' of the existing framework. To this extent, it is a missed opportunity to effect significant, tangible change for the benefit of residents, ratepayers, communities – and councils.

On our review of the Paper, it is also evident that the reforms in this Area will be significantly driven by the submissions made by the Electoral Commissioner of South Australia ('ECSA'), as reproduced in past Election Reports, which can be accessed from the ECSA [website](#).

The ECSA report for the 2018 council elections is due to be published later in 2019. We hope this will occur prior to 1 November 2019, to assist councils in preparing informed responses to this Reform Area.

While the proposed reforms requested by the ECSA are eminently sensible and predominantly aimed at addressing a number of 'technical' issues, inconsistencies and streamlining some processes (as is the case for the listed LGA proposals), it could not be said that these reforms give rise to any quantifiable advancements for councils in the subject matter of this Area.

Whilst below, we consider the 'key' reform proposals, a glaring omission from the proposed reforms are those directed towards the issue of cost, and in particular, cost to councils. Whilst it might be considered trite to assert that this is simply a cost of democracy, it is nevertheless to be noted that the total cost of the 2014 elections, as reported in the Local Government Election Report 2014 prepared by ECSA, was \$4,357,028 for 67 councils across the sector, up from \$3,555,059 in 2010, for the same number of councils.

As advised in our Alert for Reform Area 2, the issue of financial accountability for councils is 'under the microscope' and in an environment where the ongoing rhetoric of the call for 'rate capping' is seen as some sort of panacea to all council related matters, the reform process should contain, at the very least, a consideration of how to achieve more cost effective periodic (and supplementary) elections.

There are a number of reforms that could be employed in this regard, including greater use of electronic voting than the limited use canvassed in the Paper, nomination fees and/or an examination of the timing of the election cycle (to name just a few).

The voting cycle has been ignored as a proposed reform in the Paper, save for a consideration to move the 2026 council elections to 2027 being the year following the State election (and, hence, creating a one-off five (5) year term) reverting back to four (4) years thereafter. There are, however, a multitude of other considerations that could be 'brought to the table' for consideration in a progressive reform objective, including alternative voting terms and arrangements if the 'cabinet model' as raised in our earlier Alert were to be pursued, or have a mid-term election of a certain number of members to 'refresh' the governing body, or elect one-third of members every year for three years without any elections in the fourth year and, for these purposes, make greater use of electronic voting options. It might even be considered whether to devolve to councils as an exercise in true local democracy, the power to determine their own position and processes in respect of casual vacancies, subject, of course, to there being a stipulated minimum number of members at any given time.

There are, of course, many other variations and options that could fall for consideration in this area.

The Reform proposals are not based on issues of 'costs' for councils but, rather, on the risk of elector fatigue and apathy being of concern to ECSA, given that periodic elections are conducted within close proximity to the State Government elections.

While there is also the opportunity to consider charging a (not prohibitive) fee at nomination, which could be used to offset the costs to facilitate elections, this has not, currently, been canvassed. However, what we cannot afford to do is the proverbial 'naval-gazing' or otherwise fail to lift our vision to the horizon to identify and explore more progressive options for local government elections. The concern about voter-fatigue might, in fact, be best addressed by a total refreshment of these elections.

Rather, though, the 'key' reform proposals for consideration in this Area, as identified by the Paper, are limited to the following:

Enrolment

Simply put, voters must be on their council's voters roll to vote and while voters who are already on the State Electoral roll in their council area are automatically included on the Council voters roll, landlords, business lessees or resident non-Australian citizens who wish to vote, must enrol by completing an enrolment form.

It is not widely understood that the application for enrolment on the voters' roll must be made to the CEO of the council and, because of this, many eligible voters do not secure the opportunity to participate in their council elections.

While there was a change introduced between 2000-2008, where property owners automatically received ballot papers in the post, a Review in 2008 found that the costs of maintaining a separate council voters roll was high and did not correlate with a significant increase in voter turnout from property holders. Subsequently, the requirement to automatically enrol property holders was removed. What is not considered in this Reform Area is the alternative proposition to limit local government elections to natural person citizens/residents to occur with similar voting entitlements for persons in State and Commonwealth elections.

Two (2) proposals are suggested in the Paper, to improve participation in local government elections by property holders, namely to **require councils** to undertake specific activities to inform property holders of the need to enrol before an election (with a penalty for non-compliance); and the re-introduction of **automatic enrolment** of property holders, with each body corporate and group required to nominate an eligible natural person in order to receive ballot papers.

However, no cogent evidence is presented to suggest that the experiences in 2000 – 2008 would not be repeated in these circumstances. Properly understood, each proposal does nothing more **than increase** the cost for councils, with past experiences pointing to little improvement in voter turnout if these reforms were to be implemented.

The above might, therefore, be considered to 'miss the mark' for proposed reforms in this space. The reform process should be an opportunity to think 'bigger picture' and progressively in relation to enrolment and electoral participation, including a serious look at IT solutions to the perceived difficulties with electronic voting. In this regard, maybe a glance towards Japan might assist, where electronic voting legislation was introduced in 2002, allowing for the introduction of electronic voting machines in local elections. Together with an early voting

system, the net effect can only be described as positive. Another, possibly more radical consideration from our Japanese neighbours, is the 'walkover election' whereby if there are only as many candidates in an election as there are positions at the commencement of the election period, those candidates are declared elected without any further electoral activity!

It has been said in the Paper that the 'chief' issue consistently raised in this Area has been 'voter turnout', with a State-wide average of only 32.94% of those eligible choosing to vote in the 2018 local government elections. However, this had been effectively 'sidelined' as an area under consideration.

This has been partly attributed to the fact that one of the reforms raised to address the issue, the introduction of electronic, online, voting, presents a range of *'technological challenges that must be overcome before online voting can be introduced.'* Surely some 16 years after Japan legislated for such, we have the IT 'wherewithal' to address this issue?

But even more tellingly, it has been stated that *'[i]t is also not proposed to move compulsory voting', as enforcement 'in a postal system, is difficult and resource intensive'*. Of course, one of the most obvious reforms to address the issue of voter turnout would be the introduction of compulsory voting. That **enforcement** of the same is difficult and resource intensive simply **does not** address the substantive issue as to whether there is merit (or otherwise) in considering its introduction.

Indeed, voting is compulsory in local government elections in all States **save for** South Australia, Western Australia and Tasmania.

There is also a very 'live' argument regarding legitimate representation for communities, in circumstances where candidates in a local government election can be elected on a handful of votes, or, indeed unopposed. However, to be weighed against this, is the 'nanny State' concerns that every conceivable concern can be remedied by legislating it out of existence!

In the sphere of government that is most connected to its residents and ratepayers, but is perhaps, somewhat incongruently, the least understood by the same, a relevant consideration must also be whether the introduction of compulsory voting would serve to increase the knowledge of community members regarding the extent and reach of the roles and responsibilities of councils. Intuitively, one would think not.

In light of the above, 'dabbling' in proposed reforms aimed at increasing the participation of property holders is little more than a pretence to real reform in the arena of voter turnout and a missed opportunity at true, progressive reform.

'Side-lining' important issues such as the introduction of electronic voting, an examination of the merits (or otherwise) of compulsory voting, as well as a consideration of the election cycle, each having the potential to address low voter turnout, are missed opportunities to give considered thought to one or more fundamental elements in the conduct of periodic elections.

Nominations

Those who wish to be elected to council are required to nominate as a candidate and while councils facilitate information sessions for proposed candidates to attend, these are not mandatory.

Similarly, while ECSA prepares a nomination kit before nominations open, there is no guarantee that a proposed candidate will read and consider the material within, either at all, or sufficiently, to educate themselves.

It is against this background that the most oft repeated comment heard from newly elected members across metropolitan, rural and regional councils during elected member mandatory training sessions has been that they just simply **did not** understand how complex the role of an elected member is. This includes, of course, the role of the council, and the substantial and significant time impost required to give effect to the responsibilities of public office.

Once a person has determined to nominate, councils have a role in receiving and publishing nominations and a number of councils have expressed concern regarding this involvement. Not only does it place pressure on council employees, but it can give rise to an impression that employees are assisting or benefiting some candidates over others, particularly assistance that may be perceived to be provided to re-nominating candidates.

In partially addressing the above, it has been proposed that ECSA will be responsible for the nominations process, (including managing an online nomination portal), and will publish candidates profiles, including profile statements, on its website with certain, amended, maximum lengths, along with removing provisions relation to the candidates statement (and the requirement for the LGA to publish these).

While these are, clearly, sensible proposals to address the inherent conflict for councils and employees in the nomination process while, simultaneously, reducing the timing and resourcing impost for council employees, they do not do anything to ensure that candidates are appropriate equipped to deal with the rigours of public office.

Consideration **must be** given to introducing mandatory attendance at an information session(s), prior to a nomination being accepted. This could also include, as part of the online nomination process, the proposed candidate being required to complete a mandatory online multiple-choice assessment, prior to submitting a nomination. The IT development input to such an interface would, surely, not be overly significant.

We do not advocate the creation of 'barriers' to people who wish to take up public office, but at the very least there does need to be a minimum level of understanding, and exposure to, what will be required should a candidate be successful.

Candidates

After a nomination has been accepted, a person becomes a 'candidate' and can commence campaigning. However, despite a number of significant issues having been identified in the 2018 election cycle with regards to campaigning, the proposed reforms introduce, in our view, insignificant amendments to the process, which included the following:

- candidates be required to state whether they live within the ward or council area that they are contesting(!!);
- membership of any political party, or any association or body formed for political purposes, of which the candidate is a member or has been a member within the past 12 months be stated;
- responsibility for receiving information about donations received by candidates and compliance with campaign donations returns, be transferred from council CEOs to ECSA (which is to be welcomed);
- that all candidates be entitled to an electronic copy of the voters roll on request to their council, with penalties for use of the roll for any purpose other than campaigning in the

election (which is likely to have associated privacy issues, or difficulties around managing inappropriate use of the same); and

- that the 'designated decision' requirements within caretaker policies regarding the use of council resources for the advantage of a particular candidate or group of candidates be removed and be stated within the general caretaker responsibilities (which, of course, ignores the fact that as this is already prohibited under the *Local Government (Elections) Act 1999*, in any event.

Unfortunately, while the use of social media was identified as an issue in the Paper, (which enlivened Code of Conduct considerations for incumbent members), it is not dealt with in the proposed reforms. Neither is the issue of what might be considered to be past criminal convictions that are not yet 'spent' and which would be of interest to voters!

However, it was abundantly clear to many that as part of the most recent election cycle the campaign process has simply not kept up with technological advances, including the regulation of the use of social media by candidates. Indeed, there were a number of issues encountered, particularly in relation to the authorisation of campaign material on social media, that had not previously been an issue and for which no ready solution had been considered.

Given the ever-increasing use of social media by candidates (and elected members) to correspond with potential voters, it is crucial that not only ECSA, but councils, give early, close, consideration to managing this issue, and if required, to regulate it.

Further, while views about candidate training and qualifications were considered, the Paper states that these **will not** be introduced, given concerns about enforcement and the impact requirements may have on the range and number of people choosing to stand for their council.

As above, while there should not be any inappropriate barriers for persons wishing to represent the community, given the ever increasing complexities involved in the business of local government, a minimum expectation of demonstrated knowledge, whether by mandatory attendance at information session(s), a multiple choice assessment as part of the nomination process, a formalised certificate course, or otherwise, or office held on 'probation' until the satisfactory completion of mandatory training, are all potential reforms that should be considered.

Receiving and Counting Votes

It is reported in the Paper that requests have been made to change the system of voting, from the 'Proportional Representation' system (requiring candidates to reach a determined quota, calculated by dividing the number of formal ballot papers by the number of vacancies to be filled) to optional preferential voting to encourage voter participation.

It is not immediately clear why optional preferential voting would have a material impact on voter participation. Filling in a relatively short ballot paper is far from onerous and, arguably, if a voter is not willing to enter a handful of numbers, simply requiring them to enter one number, is unlikely to address the root apathy.

It was also noted that the November 2018 period elections evidenced additional expense and delay in the posting of ballot paper, raising associated issues about the voting period (two weeks), and the ability to post a vote that would be received before the end of the prescribed period.

In our view, electronic voting would address both of these concerns and the Government should be encouraged to determine how best to overcome its perceived 'technological issues'.

However, the proposed reform in this Area is, simply, to retain partial preferential voting and to amend the counting method to the exclusion method, which excludes at each count the candidate who has received the fewest votes until the number of candidates continuing in the count is equal to the number of vacancies to be filled. Accordingly, it appears that any proposed reforms in this Area are predominantly to the benefit of ESCA, rather than councils.

Supplementary Elections

Supplementary elections must be **funded by councils** and involve substantial expense. Where a supplementary election is required more than once during a term of the council, the costs for a council can be significant.

Voter participation in supplementary elections is lower than at periodic elections and it is often not understood by elected members that a resignation may ‘force’ a supplementary election, at great cost to the council, (another reason to ensure that candidates understand the task ahead of them if they are successful).

It has been proposed that to reduce the impact of supplementary elections, if the vacancy is created within twelve months of the periodic election, the last excluded candidate at the most recent periodic election be elected. This would be a welcome amendment.

It is also proposed that the period in which a vacancy does not need to be filled be extended to twelve months prior to the next periodic election or a general election. While this is a sensible proposal, it is also important to balance this against the impact of under-representation of the community, particularly for councils with smaller governing bodies.

Representation Reviews

Between 2010–2018, all councils completed representation reviews, following which, there has been a number of requests to review and simplify the requirements that apply to this, often complex, technical process.

In particular, there is a view that:

- the public consultation process is unnecessarily prescriptive and prevents councils from properly responding to, or adopting, changes to proposals that may arise throughout the consultation (which is, of course, the entire purpose of consulting in the first place!) and
- council members have, or are seen to have, an inherent interest when making a decision on the representative structure for their council (i.e. they may be reluctant to make changes which would affect their chances of re-election and hence acting in their own interests rather than that of the council and its community).

The mooted proposals for the reform of representation reviews include a review of the current provisions to make the public consultation requirements more flexible, as well as other (currently unspecified) simplifications and improvements; or transferring responsibility from councils to the Boundaries Commission on a cost- recovery basis for each council:

While simplification of the existing process is a welcome reform, caution is required about ‘handing over’ the representation structure of the council to another body.

Elected Members Contesting State Elections

Members of councils may, and do, from time to time, choose to run for political office in State or Federal elections. There is no prohibition on such candidates continuing in their role as a council member throughout that campaign.

The issue raised is whether it is appropriate for those candidates to remain in their role as an elected member in these circumstances, or whether they should be required to take a leave of absence.

Any such proposal can, of course, only apply to State elections, as Commonwealth legislation prevents its application to elections to the Commonwealth Parliament.

In our experience, most State and Federal candidates take a leave of absence, for reasons not the least of which include the rigours associated with a campaign process. A requirement that any member who has nominated in a State election is required to take a leave of absence (to include a loss of allowance for the prescribed period) would ensure that there was a consistent approach applied to all elected members across the State and is to be welcomed.

Additional Proposals

A number of additional proposals, requested by the ESCA and the LGA have also been proposed, the purpose of which are to remove inconsistencies and address technical issues.

While there is little of significance in these for councils, for completeness, they have been included in the [Attachment](#) to this Alert.

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