Inquiry into the 2015 NSW state election

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Suggested Changes to Legislative Council Nominations

A large and complex ballot paper is one of the unfortunate consequences of electing 21 members to the NSW Legislative Council from a state-wide electorate.

The changes introduced after the 1999 election to eliminate the chances of another 'tablecloth' ballot paper have substantially reduced the size of Legislative Council ballot papers. By toughening party registration rules, and abolishing group ticket votes, the 'gaming' of the system by complex preference deals has been eliminated. This stands in contrast to Senate elections where there has been a profusion of parties and a growth of so-called 'preference harvesting'.

However, after four elections using the electoral system introduced in 2003, it may be timely to review several aspects of the nomination process for Legislative Council elections.

The table below shows the number of vacancies and candidates at Legislative Council elections since popular election was introduced in 1978, as well as the number of columns on the ballot paper.

Table 1 – Columns and Candidates at Legislative Council Elections 1978-2015

Election	Vacancies	Columns	Candidates
1978	15	8	46
1981	15	9	48
1984	15	8	43
1988	15	13	56
1991	15	12	54
1995	21	28	99
1999	21	81	264
2003	21	16	284
2007	21	20	333
2011	21	17	311
2015	21	25	394

While the number of candidates has been higher than 1999 at every election under the new system, the number of columns has been substantially reduced. There has been no requirement to reduce the font size, as occurred it the 2013 Federal election, or revert to layering the ballot paper.

However, the 2015 election saw a substantial increase in the number of candidates, and an increase in the number of unnamed groups contesting the election.

At the 2015 election, nine of the 25 columns on the ballot paper carried no party affiliation. In addition, four of these columns had no group voting square.

Table 2 below shows the results for these groups at the 2015 election.

Table 2 – 2015 Results for Legislative Council Groups with no Party Affiliation

Column	Candidates	GVT	Votes	Pct
D	16	Yes	6,251	0.14
H	15	Yes	3,024	0.07
J	15	Yes	4,361	0.10
M	16	Yes	2,782	0.06
P	15	Yes	2,767	0.06
U	2	No	113	..
V	14	No	959	0.02
W	2	No	113	..
Ungrouped	17	No	1,273	0.03
Total	**112**		**21,643**	**0.50**

In total these groups represented more than a third of the columns on the ballot paper (36%), and more than a quarter of the candidates (28%) yet attracted just one in 200 of the votes (0.50%).

It has to be asked whether it was too easy in 2015 for candidates with no hope of election to get their names on to the ballot paper, unnecessarily increasing the size of the ballot paper. A larger ballot paper has consequences in increasing the cost and complexity of the election, and may play a part in the high informal vote at Legislative Council elections.

This is not to say that Independent groups cannot play an important part in Legislative Council elections. In 2011 there were two non-party groups, and both polled strongly, with Pauline Hanson's group polling 2.41% and John Hatton's 1.29%.

While it is important to respect the right of a citizen to nominate for Parliament, it is also an important and legitimate part of sensible electoral administration to impose rules that test the support and seriousness of candidates before permitting them on the ballot paper.

Rules of this type have always existed. We ask candidates to have nominators as a very basic test of support. We ask candidates to lodge a deposit as a test of a candidate or party's seriousness.

The large number and small support for independent groups at the 2015 election suggests that the current balance may not be correct for NSW Legislative Council elections.

To assess this, let me compare the current NSW nomination procedures with those used elsewhere in Australia.

Nomination Deposits

The current NSW Legislative Council deposit is $500 per candidate. The deposit is capped at $5,000 for groups that nominate between 11 and 21 candidates.

In jurisdictions with similar state-wide electorates, the nomination deposit is $2,000 per candidate for Senate elections, and $3,000 per candidate for the South Australian Legislative Council.

Taking account of the minimum nomination fees required for nominating a group, the nomination cost per group is $5,000 for a 15-person NSW Legislative Council group, $4,000 for a two-person Senate group, and $6,000 for a two-person group in South Australia.

While the NSW Legislative Council fee is low by interstate comparison, it is not low once ballot paper grouping is taken into account.

On this basis, I would make the following recommendation.

Recommendation 1 – The nomination deposit for Legislative Council elections does not need to be raised.

Number of Nominators

Nomination for the Legislative Council requires either the signature of the authorising officer of a register political party, or requires 15 nominators per non-party candidate.

Nominators must be on the electoral roll, and no elector may nominate more than one candidate.

Candidates that wish to be grouped indicate their wish with a request to be grouped. To have a group voting square printed 'above the line', a group needs to have 15 candidates. With each candidate requiring 15 unique nominators, this effectively means an independent group needs 225 individual nominators.

By comparison, the number of nominators per candidate is 100 for Senate elections, and 250 for the South Australian Legislative Council. For a column with a group voting square, the Senate effectively requires 200 nominators, and South Australia 500.

The rules for the South Australian Legislative Council were substantially changed for the 2014 state election. Ungrouped South Australian candidates are permitted to have their own column on the ballot paper, and until 2014 had the right to a group voting ticket. This right was removed for the 2014 election, resulting in a decrease from 35 to 25 columns. This decrease was entirely due to the decrease in single candidate groups.

The 2013 NSW Senate ballot paper had 46 columns and 110 candidates. It is highly likely the Commonwealth's looser party registration rules, plus the continued existence of group ticket voting encourages parties to nominate for election.

With tougher party registration and without group ticket voting, there is less incentive for 'micro-parties' to nominate for the NSW Legislative Council.

Yet the large number of unlabelled and largely unknown independent columns on the Legislative Council ballot paper in 2015 suggests the threshold for getting on to the ballot paper may be too low.

This is especially the case for the three groups that nominated fewer than 15 candidates and therefore did not have access to a group voting square. It was fortunate that the random ballot draw put these three groups at the right hand end of the ballot paper. Had they been distributed across the ballot paper they could have confused voters.

The Commonwealth, NSW and Victoria allow candidates to request that they be grouped, but impose no higher test to be grouped. South Australia and Western Australia allow Independents to have their own column, but insists they appear after party and grouped independent columns. Western Australia still allows single Independents to lodge ticket votes. South Australia lists parties first, then grouped independents, then single independents. Random draws determine order within each of these categories.

NSW has by far the toughest time test for registering a political party. A party must be registered twelve months out from a state election. South Australia requires that an application must be lodged six months before an election, while others states permit the completion of registration up to the issue of writs.

The ACT and Tasmania both use the Hare-Clark electoral system and do not have group ticket voting. Both make it much tougher for non-party groupings to have columns on the ballot paper.

The ACT electoral act does not permit Independent groups on the ballot paper. Only registered parties are permitted to have a group on the ballot paper. All Independents must appear in the ungrouped column of the ballot paper.

Under a very similar electoral system, the Tasmanian electoral act permits independent groups, but requires them to meet a higher nominator threshold to have access to a column.

Tasmanian political parties need 100 state wide members to be registered. Under Tasmanian electoral law, the names and addresses of the 100 members are printed in the government gazette and listed in newspaper advertising.

Tasmanian House of Assembly elections require Independent candidates to have 10 nominators from electors on the electoral roll. To have their own column on the ballot paper, an Independent or

group of Independents must pass a higher threshold of 100 nominators from electors on the electoral roll.

While nominating for independents should be made tougher for NSW Legislative Council elections, it would be unfair to prevent independents from nominating and making requests for grouping on the ballot paper. This is especially the case given the twelve month qualifying period imposed on the registration of political parties.

I recommend that a modified version of the Tasmanian approach be adopted as a way to control the number of columns on NSW Legislative Council ballot papers.

Recommendation 2 – Access to a column on the ballot paper by an independent or non-party should require them to nominate 15 candidates to avoid there being groups without group voting squares.

Recommendation 3 – The number of nominators for a Legislative Council candidate should be increased from 15 to 50, thus requiring an independent or non-party group to have 750 nominators, equal to the number of members required to register a political party.

Recommendation 4 – That independent or non-party groups wishing to have a column on the Legislative Council ballot paper be required to lodge their nominations a day early at the same time as centrally nominated party candidates. This extra day would allow time for the validity of nominators to be checked.

Legislative Council Ballot Paper

Shortly after the election I wrote a column pointing out that the NSWEC's iVote system appeared to advantage groups on the left-hand side of the ballot paper. (2 April 2015, "Does Electronic Voting Increase the Donkey Vote?", http://blogs.abc.net.au/antonygreen/2015/04/does-electronic-voting-increase-the-donkey-vote.html)

One of the suggested solutions to this is relatively simple – to randomise the first column presented to voters when they open their electronic ballot paper. The columns would remain in the same order, but the operation would be changed to randomly present part of the ballot paper to voters where the 2015 implementation always presented the first four to six columns to voters.

This randomisation of the screen display is an approach taken to electronic voting by the ACT Electoral Commission.

An alternative approach would be to actually randomise the ballot papers themselves to eliminate the donkey vote on both electronic and paper ballot papers.

One approach to randomisation would be to vary the ordering of Legislative Council ballot papers from electorate to electorate.

While attractive as a method of removing ballot paper advantage for parties appearing on the left of the ballot paper, randomisation would make it much more difficult for parties and candidates distributing how-to-vote material to let voters know where on the ballot paper their candidates laty.

Recommendation 5 – That the 'landing' position of iVote ballot papers be randomised to remove some of the 'donkey vote' advantage evident in the 2015 results.