



issues backgrounder

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City of Sydney Amendment Bills 2014 – the Borsak and Greenwich Bills

On 14 August 2014 two Private Members' Bills were introduced in the NSW Parliament, both dealing with voting in local government elections for the City of Sydney, specifically as this relates to non-residents. One Bill, the [City of Sydney Amendment \(Elections\) Bill 2014](#), sponsored by Robert Borsak of the Shooters and Fishers Party, was introduced in the Legislative Council; a second Bill, the [City of Sydney Amendment \(Business Voting and Council Elections\) Bill 2014](#), sponsored by the Independent member for Sydney, Alex Greenwich, was introduced in the Legislative Assembly. The first Bill will be referred to henceforth as the **Borsak Bill**; the second as the **Greenwich Bill**.

While the two Bills are concerned with broadly the same subject, their approach is markedly different, as is the substance of the legislation they propose. It is also the case that the Borsak Bill in particular has been the subject of extensive media comment, based on support or opposition for the proposal to extend the rights of the non-residential or the "business" vote in the City of Sydney.

This proposal follows on from an inquiry by the [Joint Standing Committee on Electoral Matters](#) [the Committee report] into the 2012 Local Government Elections, the key recommendations of which are set out later in this paper; as are the findings of the October 2013 Local Government Acts Taskforce report, [A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988](#) [the Taskforce report].

For City of Sydney elections, as for local government elections generally in NSW, electors include ratepayers who may reside outside the local government area. For local government elections generally, the relevant provisions are set out in the *Local Government Act 1993*, whereas a separate legislative scheme is in place for the City of Sydney. Under the *Local Government Act 1993* (s 286), voting is not compulsory for those enrolled on the non-residential rolls; for the City of Sydney, on the other hand, voting is mandatory once enrolled.

As for the rationale behind non-residential voting, the March 2014 Committee report explained:

6.5 The main rationale for this is that the rates from non-residential owners or ratepayer lessees generally constitute a substantial proportion of council revenue. As such, those ratepayers should be granted a say in how that revenue is to be spent on the services in which they help fund.¹

The same report noted:

¹ Parliament of NSW, Joint Standing Committee on Electoral Matters, [Inquiry into the 2012 Local Government Elections](#), Report 4/55 - March 2014, para 6.5.

The City of Sydney is the council with the largest non-residential roll. It included 1,709 electors at the close of the rolls before the last election. This constituted 53.8% of the entire non-residential roll of 3,178 in NSW.²

It should be emphasised that this Issues Backgrounder is only intended to serve as an introduction to key sources and debates; it is not a comprehensive account, historical, philosophical or otherwise of the many issues raised by these Bills. The paper is organised under the following headings:

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1 HISTORICAL NOTE AND KEY DEVELOPMENTS

The best and most authoritative source on the history of local government in NSW generally is the multi-volume study by FA Larcombe; this includes *The Advancement of Local Government in NSW 1906 to the Present* (published in 1978). Shirley Fitzgerald has also written extensively on the City of Sydney, including *Sydney 1842-1992*. Fitzgerald wrote in 1992:

The question of “who is a citizen” has never been resolved according to any clear philosophical criteria, and the extent of the franchise has varied, with no discernible trend towards democratically elected Councils.³

A summary of some of the key findings of these works, in relation the franchise and other matters, is found in a Research Service 1995 briefing paper, [*Sydney City Council: moving boundaries and a changing franchise*](#). It stated:

In recent times the debate has centred on the relationship between the residential and non-residential vote. Whereas until the first decades of the 20th century at least the qualification for the residential vote itself was the key issue, with the debate revolving around issues of gender, duration of occupancy and property qualification. Other matters of more or less enduring interest in this context are: (a) the distribution of electors between wards, when these have been in existence; and (b) the issue of compulsory voting.⁴

² Ibid, para 6.45.

³ Shirley Fitzgerald, *Sydney 1842-1992*, p 136.

⁴ G Griffith, [*Sydney City Council: moving boundaries and a changing franchise*](#), NSW Parliamentary Research Service Briefing Note 21/1995, p 10.

That briefing paper outlines developments up to the newly elected Carr Government's *Local Government Legislation Amendment Act 1995*; its key "franchise" amendments as these related to the [City of Sydney Act 1988](#) were as follows:

- An elector was not qualified to vote in the capacity of an occupier if the occupier's primary place of residence was not in NSW;
- Only Australian citizens or a certain category of British subjects (those enrolled to vote in State and Federal before 1984) were entitled to have their names on the non-residential roll for the City of Sydney;
- Where the elector was a ratepaying lessee, they had to pay at least \$5,000 per annum for the lease and rates, which brought this requirement into line with that for an elector voting in the capacity of an occupier;
- The preparation of a non-residential roll to be used in the September 1995 election, by which the general manager of Sydney City Council, four weeks before the roll closing date, would send a claim form to all non-residents already included on the list; and
- The Lord Mayor of Sydney was to be popularly elected.

Further reform of the voting provisions to the [City of Sydney Act 1988](#) occurred under the *Local Government Legislation Amendment (Elections) Act 1998*, the main relevant features of which were as follows:

- The Act clarified the basic enrolment entitlements, introducing section 15 as it currently stands into the legislation (see below). Any uncertainty about voting age requirements were set aside by aligning the right to vote in City of Sydney elections with entitlement to vote in either NSW State elections or Federal elections.
- The Act also clarified the voting entitlements of partnerships, introducing s 16A as it currently stands into the legislation (see below). The second reading speech explained that "Currently numerous partners in a firm are able to vote at Sydney City Council elections while a corporation, large or small, has only one vote...The bill proposes to overcome this inequitable situation by treating partnerships in the same way as corporations with respect to qualification for enrolment as non-residential electors, namely, to require them to nominate a single elector instead of each partner being qualified to vote".⁵
- To ensure the accuracy of the non-residential roll, similar arrangements were established along the lines of those trialled in the 1995 election. By the insertion of s 18A into the Act, the Electoral Commissioner (and not the general manager of the City of Sydney) was to prepare the non-residential roll and the roll of occupiers and ratepaying lessees. For this purpose, a letter was to be sent, at least 3 months before the closing date for an election, to all those on each of these rolls.
- By the insertion of s 22 as it now stands in the legislation, it was clarified that voting was compulsory for non-residential voters but only where these voters appear on the relevant electoral roll. Enrolment on the roll was voluntary.

The 1998 Bill was introduced in May 1998 but was not passed until November 1998 (see debates [here](#)). At the request of the Legislative Council, the Government established an inquiry into Sydney City Council's election procedure, having regard to the Bill. The Commissioner of the inquiry, William Fisher AO QC, delivered his [report](#) on 1 October 1998. The report's relevant recommendations were summarised as follows (p6-7):

Minimum voting age, residency, and the removal of the deemed nomination of corporation secretary provisions contained in the 1998 Bill should be introduced. I recommend that

⁵ NSWPD, 20 May 1998, pp 4894-4895.

consideration should be given to introducing a similar residency requirement in respect of owners of rateable land, and recommend that residency requirements be uniform for local government in NSW.

Of the matters falling within the scope of the Inquiry which are more technical in nature and which touch the procedures for conducting elections and for ascertaining the results of elections for the City of Sydney and for the Lord Mayor, I recommend that many of those procedures be brought in line with those currently in force for all other local councils in NSW.

As to the preparation of the non-residential roll for the City of Sydney, I recommend that the State Electoral Commissioner have the function of preparing the non-residential roll. In the alternative, I recommend that the General Manager prepare the non-residential roll and that roll certified by the General Manager be confirmed by the State Electoral Commissioner, as is presently the case for all other local councils in NSW.

I do not consider that the General Manager should be required to keep a non-residential list. I recommend that the non-residential roll lapse after each election, and that a new non-residential roll be created a reasonable period before each election. Eligible non-residential electors should be given adequate notice of the creation of the roll. Non-resident electors should be required to apply for enrolment for each election, declaring with reasonable particularity the basis upon which it is sought to be enrolled.

As to compulsory voting, I recommend that neither enrolment nor voting for non-residential electors should be compulsory.

I do not consider that compulsory postal voting should be introduced for the City of Sydney. I recommend that there be an increase in the number of pre-polling offices to assist electors to exercise their vote.

The [*City of Sydney Amendment \(Electoral Rolls\) Act 2003*](#) made further alterations to the arrangements for the preparation of the relevant electoral rolls, introducing sections 18A, B and C as they currently stand in the legislation (see below). The amendments required that, for the purposes of the roll of non-resident owners of rateable land and the roll of occupiers and ratepaying lessees, eligible persons had to apply for inclusion of their names on the relevant rolls. The amendments also clarified that the rolls lapse after each election. According to the second reading speech for the relevant Bill:

The purpose of the amendments to the City of Sydney Act is to clarify the procedure for the preparation of the non-residential roll and the roll of occupiers and rate-paying lessees for the elections for the Council of the City of Sydney by the Electoral Commissioner.

The necessity for this amendment arises from an ambiguity as to what data the Electoral Commissioner is to use to prepare the rolls. Section 18A of the City of Sydney Act presently requires the Electoral Commissioner to prepare the nonresidential roll and the roll of occupiers and rate -paying lessees for elections for the City of Sydney council. The Electoral Commissioner is also required by section 18A (3) to send a letter to persons on each such roll at least three months before the closing date for an election informing them that they are electors. However, the operation of the provision is unclear. Section 3 of the City of Sydney Act provides that the Act is to be read as if it forms part of the Local Government Act 1993—the principal Act. Sections 299 and 300 of the principal Act provide that the non-residential roll and the roll of occupiers and rate -paying lessees lapse after the election for which they were prepared. The essential question of interpretation is whether section 18A overrides the principal Act, and therefore whether the rolls lapse or continue to exist from election to election.⁶

⁶ [*NSWPD*](#), 28 May 2003.

2 CITY OF SYDNEY ACT 1988 - THE CURRENT POSITION

A brief summary of the Act, as this relates to elections, was presented in the April 2013 Discussion Paper released by the NSW Local Government Taskforce, as follows:

Part 3 of the Act specifies the framework for elections for the City Council and in particular, the non-residential voting franchises. The non-residential roll is required to be prepared by the NSW Electoral Commissioner in the manner provided. This roll lapses after each election. The Electoral Commissioner also prepares the residential roll for the City Council and for all other council areas.

Section 23 requires the Lord Mayor to be elected by the electors of the area. The Lord Mayor must also be a candidate for election as a councillor.

Section 24 provides that the provisions of the Act relating to the eligibility for people to vote at an election for the City Council also apply to referendums and polls conducted by the Council. Section 24(2) effectively provides that voting in a poll for the City Council is not compulsory.⁷

In more detail, in its October 2013 report, [*A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*](#), the Local Government Acts Taskforce presented this overview:

Under the CoSA (City of Sydney Act) a person is entitled to be enrolled and vote in the City of Sydney elections if on the NSW Electoral Commissioner's State electoral roll for Legislative Assembly seats in the City of Sydney area. Moreover, the following are entitled to apply, by a nominated date, to vote in the election of the City of Sydney:

- non-residential sole owners of land
- non-residential joint owners of land not being a corporation, each entitled to vote
- sole corporations as owners of land who can nominate one elector
- two or more corporations owning land who can nominate one elector for each corporation
- occupiers/lessees of land not being residents of the City of Sydney, who pay more than \$5,000 in rates/rent; each tenant is entitled to be enrolled as an elector
- sole corporations as lessees of land who are entitled to nominate one elector
- two or more corporations as lessees of land who are entitled to nominate one elector for each corporation
- those eligible under section 16A of the CoSA.

The non-residential rolls are prepared by the NSW Electoral Commissioner and lapse after the election for which they were prepared. The current legislation casts the onus of enrolling on those in the above categories. It has been submitted that the process of enrolling is bureaucratic, onerous and leads to a limited response to enrolling.

Preceding a council election, the Electoral Commissioner is required, 90 days before the closing date of the election, to send an enrolment letter addressed to each person whose name appeared on the non-residential rolls for the previous election and to each corporation which nominated an elector for the previous election.⁸

By reference to specific provisions, s 15 of the [*City of Sydney Act 1988*](#) provides:

- (1) A person is entitled to be enrolled as an elector for the City of Sydney if the person is:
- (a) an owner of rateable land in the City of Sydney, or

⁷ NSW Local Government Taskforce, *A new Local Government Act for NSW*, Discussion Paper, 4 April 2013, p 61.

⁸ NSW Local Government Taskforce, [*A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*](#), October 2013, pp 51-52.

- (b) a ratepaying lessee or occupier of rateable land in the City of Sydney, or
- (c) a resident of the City of Sydney.

(2) A person is not entitled to be enrolled as an elector under subsection (1) unless the person (or, in the case of a corporation, the person nominated as the elector by the corporation) is entitled to vote at an election of members of the Legislative Assembly or an election of members of the Commonwealth House of Representatives.

Section 16 provides:

(1) If a corporation is the owner, ratepaying lessee or occupier of rateable land, one natural person nominated in writing by the corporation as elector shall be taken to be entitled to be enrolled as an elector instead of the corporation.

(2) (Repealed)

(3) If the same person or group of persons is the owner, ratepaying lessee or occupier of 2 or more parcels of rateable land (whether in one or more of those capacities), all those parcels shall be taken to be a single parcel of land for the purposes of this section and (if applicable) to be held by the person or group in only one of those capacities.

(4) If a person is entitled to be enrolled as an elector because the person is a resident of the City of Sydney, the person is taken not to be entitled to be enrolled as an elector in any other capacity.

By s 16A which relates to partnerships, if a person is an owner, ratepaying lessee or occupier of rateable land in the person's capacity as a partner of a firm:

- (a) the person is taken not to be an owner, ratepaying lessee or occupier of that rateable land, and
- (b) the firm is taken to be a corporation that is the owner, ratepaying lessee or occupier of that rateable land.

By s 18A, the [City of Sydney Act 1988](#) requires the Electoral Commissioner to prepare and confirm the non-residential rolls for all elections for the Council of the City of Sydney, rolls that lapse after each local government election (s 18A(2)).

By s 18B, 90 days before the closing date for an election, the Electoral Commissioner is to send an enrolment letter to all non-residential voters and corporations stating, among other things:

- (c) that the person the enrolment letter is addressed to may be entitled to be enrolled as an elector on the roll of non-resident owners of rateable land or the roll of occupiers and ratepaying lessees, or to nominate a person to be so enrolled, for the election,
- (d) that a person will not be enrolled on such a roll unless inclusion on the roll is applied for before the date prescribed for the closing of the roll of electors for the election...

As for compulsory voting, the position is that if a person is on the non-residential roll or the roll of occupiers and ratepaying lessees, then, by s 22 of the [City of Sydney Act 1988](#), voting is compulsory. However, the onus is on the eligible elector to enrol.

3 THE LOCAL GOVERNMENT TASKFORCE 2013

The Local Government Acts Taskforce (the Taskforce), chaired by John Turner, was appointed by the then Minister for Local Government, Don Page, to re-write the *Local Government Act 1993* and review the *City of Sydney Act 1988*. As part of the inquiry process, the Taskforce released a Discussion Paper in April 2013, canvassing a range of

issues including the non-residential vote in elections for the City of Sydney. At that stage, it reported that:

Concerns have been expressed about the difficulties that eligible voters experience in seeking enrolment on the non-residential roll of electors for the Council. The roll lapses following each ordinary election and the definitions of the various categories of non-residential electors have been suggested as unduly legalistic.

There is no data base containing the details of persons and entities that may qualify as non-residential electors. Nor does it appear feasible to prepare such a data base, and to keep it current, without incurring considerable ongoing expense. Reports suggest that prior to the 2012 council ordinary elections, initial delays in Council administrative processes hindered eligible electors being placed on the non-residential roll. It is understood that these issues were resolved satisfactorily.

The NSW Business Chamber has made suggestions regarding the following election related matters for the Sydney City Council –

- a need to provide a simplified means to assist businesses to enrol and vote
- provide that eligible electors remain on the non-residential roll for the following election unless successfully challenged
- where an elector on the non-residential roll fails to vote in consecutive elections their name is removed from the roll
- the enrolment process could be connected with rates payment.
- provide an active electronic enrolment form with explanatory notes on how to complete the form
- postal voting would be of assistance – as provided in Victoria
- improve the adequacy of candidate information prior to elections to improve its value for electors.⁹

The Taskforce reported in October 2013, [*A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*](#). Discussed in the report was the decline in electors seeking to be enrolled on the city's non-residential rolls, on one side, and on the other the significant role played by corporations in the City of Sydney, not least their financial role in providing 78.5% of the rates paid in 2011. Bearing that in mind, the Taskforce formed the view that "it would not be fair or equitable to remove them [corporations] from being entitled to appoint a nominee to vote".¹⁰

In respect to this, consideration was given to comparable voting arrangements in the City of Melbourne under the *City of Melbourne Act 2001*. The Taskforce reported:

The City of Melbourne Act provides that non-resident owners, occupiers of rateable land and corporations can apply to be on the rolls provided they make application before a certain date.

In the event that this does not occur, then certain persons are deemed to be enrolled to vote as non-resident land owners, occupiers, or in the case of corporations being occupiers of land or landowners, certain persons are enrolled on behalf of the corporation.

The significant difference between the current City of Sydney franchise provisions and the City of Melbourne is that those non-resident landowners, occupiers and corporations in the City of Melbourne area, who do not apply to enrol voluntarily, will be deemed to have voting rights. In the case of the City of Sydney, only those who have enrolled by the closing date are entitled to vote.

⁹ NSW Local Government Taskforce, *A new Local Government Act for NSW*, Discussion Paper, 4 April 2013, p 63.

¹⁰ NSW Local Government Taskforce, [*A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*](#), October 2013, p 52.

The City of Melbourne accumulates information to enact the deeming provisions as follows:

- As to residents of the City of Melbourne, they are deemed to be on the roll of electors as compiled by the Victorian Electoral Commission.
- For non-resident owners, including corporations owning land, this information is ascertained by reference to property information held by the Council.
- For corporations, the company secretaries and directors are determined from information provided by the Australian Securities and Investments Commission (ASIC) and are appointed alphabetically from such information.
- In the case of occupiers of rateable land who live outside the City of Melbourne and have occupied the rateable land for one month or more, the City of Melbourne canvasses all businesses, estimated to be 18,000 in number, before a general election to determine the occupier or occupiers of the business who can vote. The Council does this six months before that election when conducting a survey of businesses in the Melbourne City Council area to obtain statistical information in addition to determining those who shall be deemed to vote.¹¹

The Taskforce concluded that:

similar deeming principles should be adopted for the voting entitlements of non-resident land holders, occupiers and corporations holding property or operating businesses in the City of Sydney area who have not voluntarily, before the due date, enrolled to vote. It is vital that persons and entities who are very much part of the fabric of the City of Sydney be involved with the democratic process of the Council.¹²

The Taskforce recommended relevantly that:

- (6) to determine the occupiers entitled to vote, the Sydney City Council canvas the businesses within the City of Sydney six months before Council elections to determine such entitlement
- (7) the non-residential rolls be prepared and maintained by the Sydney City Council with the General Manager of the Council to certify the rolls
- (8) for the Sydney City Council election, the postal voting method be compulsory for all people enrolled or deemed to be enrolled as non-residential enrollees
- (9) that non-compulsory candidate information be required to be distributed with the ballot papers sent out as part of the postal voting procedure, limited to a photo of the candidate and 250 words
- (10) that those enrolled as non-resident enrollees shall remain on the rolls for two ordinary elections unless they sooner lose their qualification or are disqualified from being an enrollee.

4 JOINT STANDING COMMITTEE ON ELECTORAL MATTERS 2014

The [Joint Standing Committee on Electoral Matters](#) (the Committee) inquiry into the 2012 local government elections reported in March 2014, with Chapter 6 of the report dealing specifically with “non-residential voting”. One issue canvassed in the report was enrolment numbers, with Committee noting that:

Enrolment numbers had fluctuated considerably over the past few electoral cycles. While there were 2,059 enrolments on the non-residential roll ahead of the 2004 elections, this had decreased substantially to 396 for the 2008 elections. Following efforts to boost enrolment numbers, 1,709 people enrolled to vote at the 2012 elections, representing an increase of

¹¹ Ibid, pp 52-53.

¹² Ibid.

331.6%. Although it is difficult to determine what proportion of total eligible electors this figure constitutes, it is apparent that the proportion remains extremely low.¹³

As in the case of the 2013 Taskforce report, considerable emphasis was placed on comparable arrangements for the City of Melbourne. Comparing the current position for the two city councils, the Committee commented:

The significant difference between the City of Sydney and the City of Melbourne is with respect to the franchise provisions. In particular, in the City of Sydney, only those individuals who have actively enrolled by the closing date are entitled to vote. This is in contrast with the City of Melbourne in which those who do not apply to enrol voluntarily will nonetheless still be deemed to have voting rights.¹⁴

The Committee heard evidence from the Victorian Electoral Commission and from the Lord Mayor of Melbourne, the Rt Hon Robert Doyle as to the practical operation of the voting system, including in relation to the deeming provisions. Regard was also had to the 2013 Taskforce report.

The Committee supports the proposition that the deeming provisions be established for the City of Sydney's non-residential roll. Given that other evidence received by the Committee is that 78.5% of ratepayer revenue is derived from the business community and other non-residents, it is imperative that the appropriate architecture is put in place to maximise business participation in City of Sydney elections. Deeming provisions achieve this by making non-residential enrolment the default position, distinct from current arrangements in which the onus is put on non-residential ratepayers to actively enrol.

The Committee recommended in this respect (Recommendation 15):

The Committee recommends that the Government introduce the model used by the City of Melbourne for the City of Sydney in all its respects including the deeming provisions and the compulsory voting aspect for electors on the non-residential roll.

Furthermore, the Government consider applying this model in City Council areas with significant economic centres such as Newcastle, Wollongong and Parramatta.

5 THE BORSAK BILL

Based on the Explanatory Note, the objects of the [Borsak Bill](#) are as follows:

- (a) to require the general manager of the Council of the City of Sydney to keep and maintain a register of all persons entitled to be enrolled (including persons who may be taken to be entitled to be enrolled) on the roll of non-resident owners of rateable land or the roll of occupiers and ratepaying lessees (the **non-residential rolls**) under the *City of Sydney Act 1988*;
- (b) to revise and update provisions relating to entitlement to enrolment on those non-residential rolls;
- (c) to provide for the general manager to automatically enrol persons onto those non-residential rolls; the "voluntary" aspect to the electoral rolls would be removed therefore making voting fully compulsory;

¹³ Joint Standing Committee on Electoral Matters, [Inquiry into the 2012 Local Government Elections](#), Report No 4/55 – March 2014, at 6.57, para 6.49

¹⁴ [Inquiry into the 2012 Local Government Elections](#), at para 6.57.

(d) to provide that if a corporation is the owner, ratepaying lessee or occupier of rateable land in the City of Sydney, the corporation may nominate 2 natural persons to be enrolled as electors instead of the corporation; [to be eligible to be nominated certain requirements must be satisfied, including that the person is entitled to vote for State general elections and federally for elections to the House of Representatives; the nominated persons cannot be entitled to vote as an elector for the City of Sydney in any other capacity];

(e) to provide that if a corporation fails to make such a nomination at least 28 days before the closing date for an election, the first 2 company secretaries or directors of the corporation (taken alphabetically) are to be deemed to have been so nominated and are to be enrolled as electors instead of the corporation;

(f) to provide that no more than 2 owners, 2 ratepaying lessees or 2 occupiers are entitled to be enrolled as electors in respect of any one parcel of rateable land;

(g) to provide that if it appears to the general manager that there are more than 2 owners, 2 ratepaying lessees or 2 occupiers of any one parcel of rateable land, the general manager is to enrol:

- (i) 2 of those owners, ratepaying lessees or occupiers in accordance with a written nomination signed by the majority of those owners, ratepaying lessees or occupiers submitted to the general manager at least 28 days before the closing date for an election, or
- (ii) if no such nomination is made, the first 2 persons from a list of those owners, ratepaying lessees or occupiers (taken alphabetically), and

(h) to provide that regulations made under the *Local Government Act 1993* may apply one or more of the above provisions to elections for such other local government areas as may be specified in those regulations.

To achieve these objects the Borsak Bill would substantially overhaul sections 16 and 18 of the *City of Sydney Act 1988*:

- Current sections 16(1)(3) and (5) would be omitted, with the insertion of proposed s 16AA “Corporations”, s 16AB “Nominations of electors by corporations”, s 16AC “Deeming of nomination of electors on behalf of corporations” and s 16B “Entitlement to enrolment where more than 2 owners, ratepaying lessees or occupiers – other than corporations”.
- Sections 18A-18E of the current Act would also be omitted, with the insertion of alternative provisions. By proposed s 18C(3), an electoral roll lapses after the election for which it was prepared. By proposed s 18D, the Council’s general manager “must ensure that the Register [the non-residential roll electoral information register] is not available for public inspection”.
- The power to extend part or all the provisions of Part 3 of the City of Sydney Act 1988 to other local government areas (with any specified modifications) would be provided by proposed s 25.

In the second reading speech for the Bill Mr Borsak stated:

This bill is not something new, nor is it the affront to democracy that we are being led to believe by those very individuals who have cleverly alienated the business vote in the City of Sydney LGA. The history here is interesting. In 2002 the Carr Labor Government, with the then Independent member for Sydney, Clover Moore, passed laws that effectively disenfranchised the business vote. Since those laws were passed, the business vote is wiped after each election and eligible non-residential ratepayers and rate-paying lessees have to re-enrol at each election. Those same individuals who now claim that this bill is an affront to democracy have, for the best part of the past decade, put in place procedures that would not

only make it difficult to re-enrol but also discourage non-residential ratepayers and rate-paying lessee re-enrolment. As a result, the business vote, not surprisingly, has plummeted.

In the 2012 City of Sydney Council election only 1,700 business votes were registered from a base of 80,000-plus eligible business voters. Central business district businesses in the city of Sydney account for 25 per cent of this State's GDP and provide 78 per cent of the council's rate revenue.

Mr Borsak continued:

Why should business get two votes and why should it be compulsory? Eligible voters are required to vote—pure and simple; that is the law. The way to ensure accountability for any government is through the protection that the ballot box brings. This is called democracy. Everyone pays rates. A household only pays one set of rates, which is substantially less than what a business pays. Yet most households have two or more eligible voters living there; they get to have a say for the payment of only one set of rates. If businesses are forced to pay rates those same businesses should have a say as to how those rates are used. Uninformed comment by those opposing this bill would have one believe that overseas investors will be able to vote in the City of Sydney council elections. They will not be able to vote. Only those entitled to vote at a State or Federal election will have that privilege. This bill is being introduced to try to give an honest reflection of what a majority of eligible voters want to see happen in the city of Sydney.

He added:

The bill also provides that regulations made under the Local Government Act 1993 may apply one or more of the provisions of part 3 to elections for such other local government areas as may be specified in those regulations. Clearly the thrust of this bill is about the city of Sydney local government area only. Any extension to other local government areas by any future government would be by regulation, which is disallowable by this House.

6 THE GREENWICH BILL

In summary, the key features of the Greenwich Bill are as follows:

- New permanent, publicly available and voluntary “registers” - the non-resident owners register and the occupiers and ratepaying lessees register – would be established by the State Electoral Commissioner;
- In the case of corporations or firms, the registers would include the particulars of a “nominated elector”;
- The electoral rolls for the non-resident owners of rateable land and for occupiers and ratepaying lessees would be prepared on the basis of these permanent registers; the electoral rolls themselves would continue to lapse after each election (s 18A(2) would continue in force);
- The Bill would omit the requirements, introduced in 2003, under ss 18A(1)(a) and (b), for the purposes of the roll of non-resident owners of rateable land and the roll of occupiers and ratepaying lessees, that eligible persons had to apply for inclusion of their names on the relevant rolls.
- It would insert instead a Note to s 18A(1) requiring the Electoral Commissioner not to include persons on the roll “if they elect not to be included, otherwise indicate they do not want to be included or fail to respond to a request to confirm particulars”.
- Voting by non-residents would be treated as postal votes, except where a person “elects” to vote in person;
- The NSW Electoral Commission would administer all aspects of City of Sydney elections, including: advising potential voters of their rights; keeping of the voluntary registers; and confirming the particulars of all non-resident voters within 90 days of

the closing date for an election (unless a non-resident has registered not earlier than 120 before the closing date for an election);

In the second reading speech for the Bill, Mr Greenwich stated:

The City of Sydney Amendment (Business Voting and Council Elections) Bill 2014 will ensure that business operators in the city of Sydney can vote in local government elections. Businesses make an important contribution to the city of Sydney, which is why they are already eligible to vote in local elections, but improvements in awareness and registration processes are needed to increase participation rates. Businesses should be able to exercise their rights to vote effortlessly in local government elections. The City of Sydney Amendment (Business Voting and Council Elections) Bill 2014 will make it easier for eligible businesses to get on the electoral roll by creating permanent registers for non-resident owners and occupiers and rate-paying lessees—that is, businesses that are entitled to vote in City of Sydney elections.

Mr Greenwich continued:

The bill does not make it compulsory for non-residential owners and businesses to be included on the registers or to vote. This is in line with comments made to the Joint Committee on Electoral Matters by Luke Aitken, senior policy manager with the New South Wales Business Chamber, who stated:

I think that there is too much focus on the compulsory aspect. I think if you make the process easier you will build up the participation without having to force people into it.

Making the process easier to increase business participation in local government elections is what my bill does. The current situation is excessively bureaucratic because non-residential electoral rolls are abolished after each local government election, requiring businesses and owners to re-enrol each term. The destruction of non-residential rolls was introduced in response to the Crown Solicitor's 1995 advice, which found that the inaccuracies in the roll created such a serious potential for fraud and corruption that it would be "unsafe to hold an election for the city of Sydney". Businesses are constantly changing yet there is no process to take those that have moved or ceased operations off the roll; hence a new roll is created before each election.

He added:

I have talked to local businesses in my electorate and to my constituents, and have worked with the City of Sydney. They all support making it easier for businesses to exercise their rights to vote. There is, however, serious concern that Sydney could adopt the Melbourne model. Melbourne has a different rating system, which does not allow direct adoption of non-residential voting. Melbourne prepares a new roll for every City of Melbourne election, with the roll based on a much broader method of charging rates. The council, not the independent Electoral Commissioner, manages the non-residential roll and non-citizens are given the vote. Melbourne allows up to two votes to each business occupying land, which would drown out the voice and vote of residents and genuine small business voters.

This does not strengthen democracy. Businesses already have greater rights to vote in the City of Sydney than anywhere else in the State. They need only operate for three months before they can enrol to vote, as opposed to three years in other local government areas. What they need is an easy way to get on the roll and stay on a permanent register.

7 PARTY POLITICAL MEDIA RELEASES

On 12 August 2014 the Premier Mike Baird the Minister for Local Government Paul Toole released the following media release titled "[Giving business a voice in local elections](#)":

NSW Premier Mike Baird and Minister for Local Government Paul Toole have today welcomed the introduction of the City of Sydney Amendment (Elections) Bill 2014 which seeks to give business a voice in local government elections.

The Bill, to be introduced by the Shooters and Fishers, acts on a recommendation made by the Joint Standing Committee on Electoral Matters, and will improve participation in local government elections.

The bipartisan Committee recommended introducing the same model of “non-residential” voting used by the City of Melbourne in the City of Sydney.

Under the changes, non-resident owners and occupiers are automatically enrolled, with up to two persons eligible to be enrolled.

In contrast to current practice, they will also remain on the non-residential roll between elections.

“The current arrangements effectively disenfranchise a large proportion of those who pay the rates of the City of Sydney, and are most directly impacted by the Council’s decisions,” Mr Baird said.

“This is a fundamental flaw in the democratic system of local government elections which is denying many businesses a say in how their council is run, and one I intend to fix.

“Arrangements that have worked successfully in Melbourne should be able to be implemented effectively here, without excessive cost or inconvenience.

Mr Toole said eligible voter turnout at the 2012 election highlights the flaws with the current system.

“At the last election, only 1709 businesses enrolled to vote out of an estimated 80,000 that were eligible. This is despite business contributing 78.5 per cent of the Council’s rates.

“It is essential that we work together to remove any obstacles that get in the way of people exercising their democratic right,” Mr Toole said.

On 12 August the NSW Greens issued a Media Release titled “[Liberals and Shooters combine to give money a vote in the City of Sydney](#)”, stating:

If it's not bad enough that the NSW Liberal Government is in Bentleys with developers, now they are directly linking money and votes through business voting, and getting back in bed with the Shooters Party to do so.

NSW Greens MP and Local Government spokesperson David Shoebridge said: "This is a direct step back to Victorian England where voting rights were based on wealth.
"The idea of enfranchising money is seriously retrograde and anti-democratic.

"The proposed system will result in an effective gerrymander for those political parties that place corporate interests over communities, and the residents of the City of Sydney will lose out.

"The NSW Coalition has consistently shown that they follow the money wherever it takes them and that they believe developers and businesses should control the political process.

"With this proposal the Coalition is directly handing political control to corporate interests.

"The idea that corporate interests are currently alienated from decision making in NSW is frankly laughable.

"The Government getting back in bed with the Shooters Party can only be bad for NSW, and questions need to be asked about what deals have been done to get this legislation through.

"Following the State Election the Greens will be bringing a bill to repeal these changes. There is no guarantee these anti-democratic policies will still be on the books at the next City of Sydney Council election.

"This is a cynical move by Premier Baird to target a political rival and to benefit Coalition corporate mates, it is unsupportable at every level.

"Residents of the City of Sydney will be heavily disenfranchised by these changes, and those in Glebe, Pyrmont, Surry Hills and surrounds have every reason to be worried about what this will mean for their community," Mr Shoebridge said.

A further media release was issued on 14 August 2014, which can be accessed [here](#). More detailed commentary from the NSW Greens on the Borsak Bill can be found [here](#).

On 13 August 2014 a joint media release was issued by the Shadow Minister for Local Government Sophie Cotsis and Linda Scott, a City of Sydney Labor councillor, titled "[NSW Labor opposes 'Melbourne model' business voting for Sydney](#)". The Media Release stated:

NSW Labor opposes the 'Melbourne Model' to make business voting compulsory for the City of Sydney. Local Government Minister Paul Toole yesterday claimed that Labor "agreed" with a proposal by the Baird Government to make business voting compulsory for the City of Sydney.

Minister Toole's claim is false – the minutes of the Joint Electoral Matters Committee clearly show that Labor members voted against this proposal.

"Paul Toole has misrepresented Labor's position – he should have read the report he was referring to and he should retract his incorrect statement," Shadow Minister for Local Government Sophie Cotsis said today.

"While Labor has not yet seen the details of this Bill, we do not support the introduction of the 'Melbourne model' of compulsory business voting.

"Compulsory business voting would give sectional interests a new means to influence political decisions.

"Given everything that is being revealed at ICAC, it is unthinkable that the Liberals and Nationals are proposing these changes.

"The Liberals' priorities are all wrong – at a time when Tony Abbott has cut \$288 million in funding for local councils across NSW, Mike Baird's top priority is pursuing an ideological vendetta against councils that are not of the same political colour.

"The details of this proposal are unclear, and it is possible that non-citizens will be given a compulsory vote."

Labor Councillor for the City of Sydney Linda Scott condemned the proposed changes.

"Labor has a vision for Sydney's future with democracy and transparency at its core," Ms Scott said.

"Labor has introduced community preselections which enfranchise all local residents to select Labor's Lord Mayoral candidate. We are also advocating for local wards which would allow for better representation across our City.

"The Liberals are only focussed on introducing a gerrymander with one aim — to get a Liberal politician elected Mayor.

“The Liberal Government’s vague plan for business voting in Sydney is bad for both residents and businesses – and risks taking us back to the bad old days of big business and developer corruption in Town Hall.

“Mr Baird must explain why businesses will get two votes when nurses, teachers, police and fire-fighters and council workers who live in the City of Sydney will only get one. “There has been no consultation about these changes.

“They will set a dangerous precedent for other councils, and Minister Toole has already said he wants to roll this out to other local government areas.”

8 SELECTED STAKEHOLDER COMMENTARY

On 12 August 2014 the Sydney Business Chamber issued a media release titled, “Business voting a win for the city”, which stated:

Patricia Forsythe, Executive Director of the Sydney Business Chamber, says news that businesses will be automatically enrolled to vote in the 2016 City of Sydney council elections is a win for business advocacy.

“This has been an issue that has angered the business community for decades and it is good news for business owners across the city,” Mrs Forsythe said.

“It is the business owners who contribute the vast majority of council rates, yet after each election they had to re-apply to be put on the roll in order to have a say on how that money was spent.

“It’s why business turnout on elections has been so low over the years – making them go through the red tape burden of applying each time meant it was put in the „too hard basket” by thousands of business owners.

“It’s important to acknowledge that the Shooters and Fishers Party took up this issue earlier this year.

“There’s no doubt the next City of Sydney council elections will take on a different look with a much more engaged business voice playing an active role in the result.

On 13 August the NSW Local Government Association issued a media release titled, [“Councils not privy to ‘secretive’ Bill on compulsory business voting in Local Government elections”](#), which stated (in part):

Not a single NSW council has been consulted on the ‘secretive’ Shooters and Fishers Party Bill, scheduled to be rushed through Parliament tomorrow, making business voting compulsory in Local Government elections.

While the current Bill is solely aimed at the City of Sydney, Local Government NSW (LGNSW) is deeply concerned about the lack of transparency and non-existent consultation on the proposed legislation, and the potential for these new voting rules to be rolled out to all NSW councils.

President of LGNSW, Cr Keith Rhoades AFSM, said he is outraged at the NSW Government’s support of this Bill, which has not been made public to the 152 NSW councils it may impact.

“Thanks to the Government’s chosen method of informing councils via the media on the new voting rules, we now have a situation where the entire Local Government sector in NSW is in the dark about the changes slated to go before Parliament.

“How can a government justify ramming through changes in Parliament without any consultation whatsoever with the industry set to be significantly impacted?”

“While the word ‘democracy’ has been bandied around in support of making business voting compulsory at Local Government elections, it appears a key component of democracy – transparency – is missing in this politically-motivated move by those parties involved.

“If the reforms in the Bill are fair and reasonable, then why has Local Government NSW and our member councils not been included in the process and why all the secrecy and haste in getting the Bill passed?”

“These new rules have the potential to affect processes, procedures and results in some council areas across the state and yet the only detail we have been provided is what was announced in the media.

“In the spirit of democracy, I call on all parties involved in developing and supporting this Bill – the Shooters and Fishers Party and the Liberal/National coalition – to make the proposed legislation public and open for comment,” said President Rhoades.

On 13 August 2014, written by Felicity Wilson the following article was published on the Property Council of Australia’s website under the title “[Ensuring business voting rights](#)”:

The Property Council welcomes the NSW Government’s announcement that it will reform business voting in local government elections, following our campaign to restore the franchise to property owners.

The Government has listened to the voice of businesses in Sydney and other commercial centres, recognising that they contribute an enormous share of the rates base and underpin the economic prosperity, vibrancy and appeal of our cities.

Commercial property owners are long-haul investors in our CBDs and have a strategic interest in seeing them thrive. They deserve a say in how their council is run. The creation of a permanent electoral roll for commercial property owners and businesses fulfils a basic democratic principle. The right to vote already exists but needs to be respected with a standing electoral roll – the same as afforded residential owners.

The current process of cleansing the roll after each council election is irrational and forces re-registration through a process that is narrow, complex and discourages participation.

The Property Council fully supports this reform, and will also urge the State Government to ensure it is extended beyond the City of Sydney to other council areas.

The same problem occurs elsewhere and the same policy solution should be implemented across all local government areas, particularly major commercial centres.

We look forward to seeing the draft Bill, along with the Government’s response to the Independent Local Government Review Panel’s report.

9 SELECTED MEDIA COMMENTARY

Note that a few articles have been extracted, in full or in part, to provide some guide to the content of the debate. Note, too, that some hyperlinks will only be accessible to users of the Parliament’s intranet.

The Daily Telegraph, 9 June 2014, “[Shooters and Fishers Party takes aim at Clover Moore: ‘No leadership coming out of Town Hall’](#)”

The Daily Telegraph, 10 June 2014 ["Fair play for city businesses: Support for council election alerts"](#):

Sydney Morning Herald, 23 June 2014 ["Clover Moore accused of hating democracy during City of Sydney debate over business votes"](#).

Sydney Morning Herald 12 August 2014, ["Clover Moore hits out at move to force businesses to vote in City of Sydney elections"](#).

Daily Telegraph, 12 August 2014, ["Election change spells the end for Clove no Moore"](#)

Daily Telegraph, 12 August 2014, ["Giving the city's small businesses a bigger voice"](#)

Daily Telegraph, 12 August 2014, ["Clover and out"](#)

Sydney Morning Herald, 12 August, ["Changes to force businesses to vote in council elections to be rolled out across state"](#).

AAP, 12 August 2014, ["Sydney CBD businesses to get more say"](#)

The Daily Telegraph, 13 August 2014, ["Lord Mayor Clover Moore no fan of the business city vote"](#).

Australian Financial Review, 13 August 2014, ["Shooters & Fishers back business growth in Sydney"](#). This stated (in part):

The Shooters & Fishers Party has left the country for the city, championing legislation that will increase the voice of business in the City of Sydney. "We're not just about guns and bloody fishing," Robert Borsak MLC, of Shooters & Fishers, told *The Australian Financial Review*, stressing he wanted to see more cranes in the Sydney skyline.

A bill will be introduced into the NSW Parliament on Thursday that will automatically enrol businesses in the Sydney CBD. The number of votes business cast is forecast to grow from 1709 in 2012 to 80,000, which would drastically remake the complexion of the council.

....

The changes are inspired by council reforms made in Melbourne in 2001, which more closely aligned voting power and municipal rates. Mr Baird said the change was an important democratic reform that would enfranchise businesses which currently contribute 78.5 per cent of Sydney council's rates.

Business and property groups are on side. The Sydney Business Chamber, Urban Taskforce and Property Council of Australia all expressed their support. NSW executive director of the Property Council of Australia Glenn Byres said future candidates would need to be mindful of the commercial property sector and business community. "That needs to be non-negotiable," he said.

Sydney lord mayor Clover Moore disputed the concerns. "The idea that the city is not supporting development is nonsense. Over the past 10 years we've approved \$25 billion worth of development," Ms Moore said. The planning committee she chairs has approved development valued at \$1.9 billion, she said, "with more than \$600 billion under assessment".

Stephen Mayne, an independent councillor at the City of Melbourne, said the change would lead to a "more pro-development, pro-growth council". Mayne questioned whether now – with the "stench around ICAC" – was the moment to introduce the changes. "This is probably the worst time to enfranchise developers around the Sydney CBD," he said.

Sydney Morning Herald, 13 August 2014 "[I'm all for equal democratic vote, but not with a brown paper bag](#)" (Clover Moore)

Daily Advertiser (Wagga Wagga), 13 August 2014, "[Business to gain in council vote bill](#)"

Wentworth Courier, 13 August 2014, "[Clover: its' sneaky business](#)"

Sydney Morning Herald, 13 August 2014, "[Business vote possible for all councils](#)"

Daily Telegraph, 13 August 2014, "[Mayor no fan of the business city vote](#)"

Daily Telegraph (Editorial), 13 August 2014, "[Votes do add up, Clover](#)". The editorial stated:

Only in Clover Moore's world could adding thousands of new voters be seen as antidemocratic. Yet that is exactly what the Lord Mayor of Sydney claims, as she struggles to cope with looming plans to allow business voters to have their say in future council elections.

According to the Lord Mayor, the plans amount to "an attempt to manipulate democracy and take control of the City." Warning to her apparent conspiracy theory, Moore continued: "It's not fair or democratic to give businesses two votes and residents just one."

Moore may be a skilful gatherer of votes from gullible inner-city types, but her mathematics could use some work. At the previous election, which saw Moore returned to office for yet another pointless and asinine term, around 100,000 votes were cast. Because businesses need to go through a complicated registration process at every single election, only 1700 or so of those 100,000 votes came from the business sector.

To paraphrase the Lord Mayor: "It's not fair or democratic to give residents 98,300 votes and businesses just 1700." This is especially unfair and undemocratic when one considers that businesses provide the overwhelming majority of council rates. As matters stand, city businesses are suffering a form of taxation without representation.

Newcastle Herald, 14 August 2014, "[Business stands to gain influence](#)"

Sydney Morning Herald, 14 August 2014, "[Sham companies could influence City of Sydney election, MP warns](#)".

Sydney Morning Herald, 14 August 2014, "[Cites are for us all, not just those in suits](#)" (Elizabeth Farrelly)

Ben Raue, The Tally Room, 14 August 2014, "[City of Sydney Business Voting – Bill Revealed](#)".

The Daily Liberal (Dubbo), 15 August 2014, "[Councillors divided by vote system](#)"

The Daily Liberal (Dubbo), 15 August 2014, "[Concern for Council election changes](#)"

The Daily Telegraph, 15 August 2014 "[A better business vote is good business](#)" (Glen Byres).

Sydney Morning Herald, 15 August 2014, "[Jones steered Baird call on business vote, say Shooters](#)"

Sydney Morning Herald (Editorial), 16-17 August 2014, "[Operation get Clover: Baird must back off](#)". The editorial stated (in part):

The basis of the Shooters' bill lies in a parliamentary committee report suggesting the money used to encourage the business vote would be better spent by council management compiling and updating a non-resident roll, as is done in Melbourne City Council.

The cost in Sydney would be much larger, as pointed out by repeated reports in the 1990s that prompted the laws prescribing the current voluntary process in Sydney. Those reports also raised the problem of determining who is actually eligible to be a non-resident.

Under the Shooters' bill, people who never set foot in Sydney would get a vote. That's OK: given they pay rates, they deserve a say.

But without safeguards, representatives of sham companies will be able to vote. What's more, under the Shooters' bill every corporation or investment company that owns a unit in a strata building would get votes, as well as the residents. Some buildings will have hundreds of corporate votes versus far fewer for residents. These are major concerns.

As such a clear definition is needed for what constitutes an eligible enrolling business or ratepayer. Mr Greenwich's bill sticks with the existing definition of an entity that owns rateable land or pays at least \$5000 rent each year. That's a good start.

Then there is the issue of whether those eligible business should be deemed to have a compulsory vote, even if they do not apply to enrol. The current law does not have this but the Shooters' bill does.

Australia has compulsory voting. Deeming makes sense providing all businesses know they have to vote and, crucially, pay a fine if they do not.

Of course, ratepayers and businesses will also have to handle more paperwork under the Shooters' bill because the electoral roll will have to be updated. They will also have to answer whether they want to nominate a representative to vote or accept the nominees as deemed by the law.

Then there is the basic problem: how many votes should those eligible businesses get? Under the cabal's plan, based on the Melbourne system, it would be two. There is no reasonable justification for that. It's like a gerrymander. If you accept the logic, you could argue that every business in every town or council area should get twice the vote of the local schoolteacher or bricklayer. But why not three or four times, based on how many jobs they create or the rateable value of their land? The more money, the more votes.

One vote one value must be a given.

But who oversees the new system? Mr Greenwich and Cr Moore would prefer the NSW Electoral Commission, even if the council has to pay. It's a big and costly job. The Victorian Electoral Commission says that just identifying who moves from resident to non-resident status on its roll covers only 12.5 per cent on enrolments but makes up 80 per cent of processing effort.

The extra costs in Sydney or other councils as the cabal rolls out its plan will be carried by ratepayers and businesses faced with more red tape and potential fines.

If the business community wants a greater voice in city councils, it will have to carry that greater burden.

If the government wants to give developers and its political allies more power, it should remember that every local council area lies within an electorate whose voters will pass judgment on corruption in March.

It may just be that the extreme reforms proposed for the City of Sydney Council and beyond will not be as popular as the anti-Clover cabal might like. Then again, there is always room for compromise.

ABC News, 19 August 2014, "[Concerns businesses could have more power in rural local govt elections](#)".

Daily Telegraph, 12 August 2014, "[Sydney Lord Mayor Clover Moore says business voting Bill is a State Government ploy to take over the city](#)"

Daily Telegraph, 12 August 2014 "[Moore under fire: It's Clover and out as businesses to get vote](#)"

Sydney Morning Herald, 16 August 2014, "[Sydney vote plan a 'rort': analyst](#)"

Illawarra Mercury, 19 August 2014, "[MP opposes extra votes for business](#)"

Illawarra Mercury, 20 August 2014 "[Debate builds on voting rule](#)". The article states (in part):

The Illawarra's state Labor politicians have voiced concerns, with Keira MP Ryan Park calling them a "complete undermining of democracy" and Shellharbour MP Anna Watson asking the government for assurance that the changes would not be introduced at Shellharbour council.

However, the government has argued the bill – introduced by the Shooters and Fishers Party last week and based on recommendations from a committee headed by Kiama MP Gareth Ward – is "fair" to businesses, which contribute a large share of rates to economic centres such as Sydney.

Crikey, 20 August 2014, "[Poll Bludger: Liberals try again to weed out Clover](#)" (William Bowe) Bowe stated (in part):

...the Baird government opened a new front against Moore last week by declaring its support for a bill that would make life much harder for her should she run again for lord mayor in 2016. The bill is the initiative of Robert Borsak of the Shooters and Fishers Party, and in its second reading speech Borsak commended Alan Jones and The Daily Telegraph as the "driving force" behind its proposals (if it isn't immediately apparent why the administration of central Sydney should be of particular concern for Shooters and Fishers, opponents of the bill are keen to point to Moore's advocacy of gun control during her time as a parliamentarian).

"Stacking the deck in favour of businesses—while depriving them of their right to abstain from an election they might not care about—makes it very hard to believe the bill's motivations are anything other than crudely political."

The aim of the bill is to radically tilt the electoral balance from residents to businesses by granting a second vote to the latter and compelling them to exercise them both through a combination of automatic enrolment and compulsory voting.

Its sponsors have not been so brazen as to propose measures for which some manner of a plausible case cannot be made, at least when considered in isolation. Certainly there is room for philosophical debate as to how the famous principle of "no taxation without representation" should apply where most of the rates are paid by people who live elsewhere, as is generally the case in big city municipalities.

At one end of the spectrum is Queensland, which allows no provision for non-residents to vote in council elections. This doesn't present much of a problem in the unusual case of the City of Brisbane, which covers nearly half of Brisbane's entire metropolitan area. It's quite a different matter in the compact City of Sydney, where nearly 80% of rates revenue is derived from city businesses. In this the bill's proponents have a useful precedent in the City of Melbourne, where a similar regime has long been in place.

Clover Moore's response that businesses "already have greater rights to vote in the City of Sydney than anywhere else in New South Wales" is true enough as far as it goes, but the fact

is that those rights aren't being exercised. Of the roughly 70,000 votes cast at the 2012 lord mayoral election, only 1700 were from non-residential voters, which is plainly influenced by the laborious requirement that such voters re-enrol for every quadrennial council election. That fact makes life difficult for progressive opponents of the bill, who might normally argue that compulsory voting and automatic enrolment are essential for a democratic mandate. The point has been conceded by Moore's parliamentary ally Alex Greenwich, who is working on an alternative bill to institute a permanent electoral roll for non-residential voters.

Things get quite a bit murkier with the granting of a second vote to businesses. The arbitrariness of this measure is emphasised by the automatic enrolment provision for corporations that fail to nominate their designated two voters in the prescribed four-week period. The obligation to vote will then be conferred upon "the first two company secretaries or directors of the corporation, taken alphabetically".

Stacking the deck in favour of businesses—while depriving them of their right to abstain from an election they might not care about—makes it very hard to believe the bill's motivations are anything other than crudely political. So far as issues of governance are concerned, one might have thought a government with the recent track record of the O'Farrell-Baird administration would have found other fish to fry.

Daily Telegraph 20 August 2014, "[Melbourne councillor Richard Foster says Sydney's proposed council business voting amendments will be "catastrophic"](#)"

Sydney Morning Herald, 22 August 2014, "[MPs Robert Borsak, Alex Greenwich lock horns over business voting changes in the City of Sydney](#)" (the article can also be accessed [here](#))

The Saturday Paper, 23 August 2014, "[How to kill off a Lord Mayor](#)" (Mike Seccombe)

Daily Telegraph 25 August 2014, "[Giving business a voice in building a better city](#)" (Robert Doyle, Lord Mayor of Melbourne). The article stated:

Greetings from the world's most liveable city (for the fourth consecutive year)! I know there's been a lot of discussion recently about the proposed changes to the governance model for election to the Sydney City Council and for the Sydney lord mayor.

While not suggesting Melbourne has got it 100 per cent right, since 2001 we have had a system similar to the one proposed for Sydney. This system was devised by former Victorian Labor premier Joan Kirner, former Liberal minister Alan Hunt and Reverend Tim Costello in a document called A Way Forward.

A Way Forward proposed the governance changes which have been in place now under the City of Melbourne Act for more than 10 years.

The central question which the report tackled is: is the capital city, the core city, different from other local government authorities? I would argue that of course we are. Melbourne and Sydney generate half of the nation's gross domestic product. We get a million people on Melbourne's streets on a busy day. Major capital cities are our economic engine rooms. In Melbourne, 70 per cent of our rates are paid by businesses, small and large.

The bedrock of the system outlined in A Way Forward was that we needed the voices of business to participate in elections in the City of Melbourne. While certainly it is open to businesses to participate, I believe there are too many obstacles in the way of business participating in Sydney. Like having to re-enrol every four years: they just won't do it.

Remember also a couple of basic principles: first that the local government franchise is based on a property right; it was the connection to property which gave rise to the ability and right to vote. Secondly, remember you need to make a choice between being inclusive or exclusive. I believe in today's pluralist and diverse society that as many voices as possible need to be heard and therefore the city electoral roll should be as inclusive as possible.

For us, that includes people who lease, rent or own business in the city, businesses themselves and anybody else who occupies a business space in the City of Melbourne. I believe that has led to more voices being heard in city elections in the City of Melbourne and that's a positive thing.

While change is always uncomfortable, I believe capital cities are different from other municipalities and certainly the central city model — such as Sydney's and Melbourne's — is a powerful economic driver that needs to be recognised in the governance model for election for the city.

Finally, whether you adopt the model or not is a matter for you in Sydney and in NSW but I would point out that in the last 10 years, Melbourne has gone from Clown Hall to a position of great strength and an influential and respected voice in the community conversation that characterises Melbourne.

Daily Telegraph, 26 August 2014, "[Clover's fighting fund for survival](#)".

Daily Telegraph (Editorial), 26 August 2014, "[Vote has Moore running scared](#)".

Daily Telegraph, 27 August 2014, "[Stop the hysteria and give business a vote](#)" (Edward Mandla)

Daily Telegraph, 28 August 2014, "[Vote reform is inspired by malice](#)" (Clover Moore)

10 REPORTS

Australian Centre of Excellence for Local Government, [Local Representation in Australia: a review of the legislation and literature](#), November 2013 (See the comparative table "Voting at local government elections" at Appendix 3)

Australian Centre of Excellence for Local Government, [Local Representation in Australia: a view from Victoria](#) (companion to Local Representation in Australia: a review of the legislation and literature), November 2013

11 JOURNAL AND CONFERENCE LITERATURE

Nick Economou, [Democratising local government: the Victorian experience](#), Paper to the Challenges of Electoral Democracy Workshop, The University of Melbourne, July 2011

Colin Hearfield and Brian Dollery, "[Representative democracy in Australian local government](#)" *Commonwealth Journal of Local Governance*, Issue 2, January 2009

Chris Aulich, "[From citizen participation to participatory governance in Australian local government](#)", *Commonwealth Journal of Local Governance*, Issue 2, January 2009

Marian Sawyer, "[Property voting in local government: a relic of a pre-democratic era?](#)" *Representation*, vol 43, 2007. Sawyer basically argues that "the retention of property votes at all appears to violate the basic democratic values of political equality and popular control of government" (p 51).

N Burdess and K O'Toole, "Elections and representation in local government: a Victorian case study". *Australian Journal of Public Administration*, Vol 63(2), 2004

H Waldrauch, "[Electoral rights for foreign nationals: a comparative overview of regulations in 36 countries](#)" *Paper presented at the Challenges of Immigration and Integration in the European Union and Australia*, University of Sydney, February 2003

12 OTHER SELECTED WEBSITES

NSW Electoral Commission [website](#)
Electoral Council of Australia and New Zealand [website](#) – see this [comparative table](#)
City of Melbourne [website](#)
[City of Melbourne Act 2001](#) – authorised version
Electoral Commission Queensland [website](#)
South Australia, Office for State/Local Government Relations [website](#)
Tasmanian Electoral Commission [website](#)
Western Australian Electoral Commission [website](#)
Western Australian local government [website](#) (and [here](#))
New Zealand Electoral Commission [website](#)
New Zealand local government [website](#)
British Columbia [website](#)

If Mayors Ruled the World: Dysfunctional Nations, Rising Cities by Benjamin R Barber (Yale University Press, 2013 – Z 320.8 BAR 942567) is a lively addition to the body of literature on the governance of major cities around the world.

Author: Gareth Griffith

Last updated: 3 September 2014

For further information please contact the Research Service on 9230 2356

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