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The Hon Paul Toole MP
Minister for Local Government



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Ms Ronda Miller
Clerk of the Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

22 OCT 2014

Dear Ms Miller

I am writing in relation to the Joint Standing Committee on Electoral Matters' Report No 4/55 entitled 'Inquiry into the 2012 Local Government Elections' published on 28 March 2014.

I enclose the Government's response to the Report.

Yours sincerely

A handwritten signature in black ink that reads "Paul Toole".

Paul Toole MP
Minister



RESPONSE TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS'

REPORT NO 4/55 2012

LOCAL GOVERNMENT ELECTIONS

The Government has considered the report "Inquiry into the 2012 Local Government Elections" tabled on 27 March 2014 by the Joint Standing Committee on Electoral Matters ("the Committee").

The Government is pleased to provide the following response to the Committee's report ("the Report") in relation to its recommendations.

Recommendations to improve the administration of Local Government elections

Recommendation 1 proposes that both the Department of Premier and Cabinet and the Joint Standing Committee on Electoral Matters review the administration of future elections.

The Government recognises the importance of accountability in the conduct of Local Government elections and will continue to support future inquiries by the Committee into local government elections.

In relation to the role of the Department of Premier and Cabinet, the *Local Government (General) Regulation 2005* ("the Regulation") requires General Managers of councils that administer their own elections to report to the Minister for Local Government on the administration of the elections. Following the 2012 Local Government elections, the then Division of Local Government (now the Office of Local Government) undertook a review of the council run elections based in part on this information. The Office of Local Government is best placed to continue this role and no change is therefore required in relation to this for council administered elections.

However, it is proposed to amend the Regulation to also require the NSW Electoral Commissioner to report to the Minister on the council elections he has administered.

Recommendation 2 proposes that each council that administers its own election be required to submit information relating to candidate participation and voter turnout to the Office of Local Government.

The Office of Local Government currently collects statistical data on candidates at all ordinary council elections through the completion of statistical information sheets contained in the prescribed nomination paper. The Office reports on this data following the election.

It is proposed to add to the data currently collected by the Office, information about candidate membership of registered political parties for the purpose of identifying candidate participation trends to inform future policy development. This information is already provided in Candidate Information Sheets but is not available for evaluation after the election. This will apply to all council elections including those administered by the NSW Electoral Commissioner.

The Government will also amend the Regulation to include information on voter turnout at council administered elections in the information General Managers of councils that administer their own elections are required to report on to the Minister for Local Government following ordinary elections and to include this in the information the Electoral Commissioner will be required to report on to the Minister under the new reporting requirements that will apply to him.

Recommendation 3 proposes that each council that resolves to administer its election in-house be required to prepare a report for the Office of Local Government at least 15 months prior to the 2016 elections in which it demonstrates its capacity to conduct a successful election including access to suitably qualified returning officers and possible substitutes.

Recommendation 4 similarly proposes that the Department of Premier and Cabinet take steps to ensure that councils not utilising the services of the Electoral Commission or that are conducting their elections in-house, have secured contracts with an electoral service provider at least 15 months prior to the 2016 elections.

The Government agrees that it is important that councils that make the decision to administer their own elections should only do so where they can demonstrate the capacity to do so successfully. However, the Government considers that it would make little sense to return the power to councils to administer their own elections if the responsibility for ensuring that councils that decide to administer their own election have the capacity to do so successfully remains with the State. It is the Government's view that this responsibility should remain with those councils who decide to administer their own elections.

Under section 296 of the *Local Government Act 1993* ("the Act"), the last time councils can resolve to engage the Electoral Commissioner to conduct their elections is 18 months prior to the election. The Government therefore considers that it would

be more prudent to require councils to take the necessary steps to demonstrate the capacity to successfully administer their own election prior to this time. To these ends, the Government proposes to seek amendments to the Act to provide that where a council does not intend to enter into an arrangement with the Electoral Commissioner to administer its elections, it must, at least 18 months before the next ordinary election, demonstrate to its community that it has the capacity to successfully administer its own elections by way of a resolution of the council that provides the following information:

1. That it proposes to administer its own ordinary election
2. Whether it proposes to administer the ordinary election itself or through a contracted electoral service provider and if so, the name of the provider
3. If it proposes to administer the ordinary election itself, whether it has access to a suitably qualified returning officer to oversee the election and at least one appropriately qualified substitute returning officer.

Requiring councils to notify their communities of this information by way of a council resolution will ensure that the governing body of the council is provided with all the information necessary to make an informed decision on their council's capacity to do so at a time when it is still possible to change its mind and enter into an arrangement with the Electoral Commissioner for the administration of its ordinary election.

Recommendation 5 proposes that the Office of Local Government provide guidance to the Electoral Commissioner with respect to the extent and mode of electoral roll data that can be disclosed to councils that administer their own elections and that particular weight should be given to ensuring councils are granted sufficient access to roll data while safeguarding elector privacy.

The Government agrees with the Committee's view that the Electoral Commissioner has a democratic obligation to provide soft copy access to rolls so that councils can exercise their right to undertake their own elections should they decide to do so. However, the Government also agrees that it is important to safeguard elector privacy.

To this end, the Government proposes to seek amendments to the Act to require the Electoral Commissioner to provide councils that administer their own elections with access to such soft copy information contained in the electoral roll reasonably necessary for the effective administration of their elections and to allow councils to provide access to this information to their contracted electoral service providers for this purpose. Councils and their contractors that are provided with access to such information are to use it solely for the purpose of administering their elections.

Recommendations to improve candidate participation

Recommendation 6 proposes that the Government raise the threshold for a candidate to open a campaign account to \$2,500, indexed annually to inflation.

Recommendation 7 proposes that the Government remove the mandatory requirement for a candidate to appoint an official agent but retain the option to appoint an official agent if they wish to do so.

Recommendation 8 proposes that the Government remove the requirement that a candidate information sheet is made in the form of a statutory declaration.

The Government agrees with the Committee that the current requirements for candidates to open a campaign account where they receive political donations or incur electoral expenditure that exceeds \$1,000 and to appoint an official agent are unduly onerous in the context of Local Government elections and serve as a disincentive to participation by candidates in Local Government elections.

The Government supports in principle amendments to the *Election Funding Expenditure and Disclosures Act 1981* to address this, but considers that any proposed amendments should be deferred pending the completion of the work by the Expert Panel on Political Donations so that this issue may be considered in the context of the outcomes of that review.

The Government does not support the proposal to remove the requirement for candidate information sheets to be made in the form of a statutory declaration. Candidate information sheets are an important accountability mechanism and the requirement for candidates to attest to the accuracy of the information they provide in them serves as an important reminder of this. The Government considers that the need for electors to have confidence in the integrity of the information provided in candidate information sheets outweighs any inconvenience of having them witnessed.

Recommendation 9 proposes the introduction of a countback system, modelled on the one currently operating in Victoria, as an option for councils when casual vacancies arise within 18 months of the original election in lieu of a by-election.

The Government acknowledges the resource impacts on councils of having to conduct by-elections and agrees that where vacancies arise within 18 months of an ordinary election, councils should have the option of being able to avoid the cost of a by-election through use of a countback system to fill the vacancy. It is proposed to amend the Act to allow for this.

The use of a countback system will not be available however where the vacancy arises in the office of a popularly elected Mayor. The Government considers that it is important that the community has an opportunity to directly elect a replacement for

popularly elected Mayors at a by-election, given the important community leadership role of that office.

The use of a countback system will also not be available where the original election of the councillor to the vacated office was uncontested meaning that there are no alternative candidates to replace the departing councillor.

Where, as is proposed, the use of a countback system is to be optional and at the discretion of the council, there is a risk that councils will make a decision on whether to use a countback system to fill a vacancy based on knowledge of the outcome this will yield.

To safeguard against this, it is intended to require councils to decide by resolution at the start of their term whether vacancies that arise in the 18 months following the election are to be filled by way of a countback system. Councils will not be allowed to change this decision.

Recommendations to improve voter participation

Recommendation 10 proposes that the Government abolish the existing eligibility requirements with respect to whether an elector is qualified to cast a postal vote.

Recommendation 11 proposes that that each council be granted the option to conduct its elections via a postal ballot in lieu of attendance voting on a designated polling day.

Postal voting provides a potentially cheaper alternative to attendance voting and makes it easier for electors to participate in Local Government elections. The Government therefore supports councils being given the option of offering postal voting as an alternative to attendance voting and giving individual electors the choice to exercise their vote in this way where a council decides to conduct their election by way of an attendance vote.

However, before this can be implemented, further work needs to be done to ensure systems are in place to support universal postal voting. It is unlikely that this will occur before the September 2016 Local Government elections.

In the meantime, it is proposed to abolish the current postal voting eligibility requirements for all electors for the City of Sydney. This is discussed further in the response to recommendation 15 below.

This will support the likely significant expansion in the numbers of enrolled non-residential electors that automatic enrolment will give rise to by reducing red tape requirements for non-residential and other voters who wish to cast their vote by post instead of attending a polling place on election day. If successful, it is proposed to expand this change to all council areas in the future.

Recommendation 12 proposes that the Government retains the existing two week pre-poll period but abolish the existing eligibility requirements with respect to whether an elector is qualified to cast a pre-poll vote.

The Government supports any measure that maximises voter participation and agrees that maintaining a pre-poll voting alternative is an important voting option. The Government agrees that the best way to achieve this is to maintain the existing 2 week pre-polling period and to abolish the criteria electors must meet before being able to cast a pre-poll vote.

However, as with the recommended abolition of the current postal voting eligibility requirements, further work needs to be done to prepare for implementation. The Government proposes to do this first for the City of Sydney before extending it to all councils in the future.

Recommendation 13 proposes that the Government extend technology-assisted voting (or iVote) to be available to all electors ahead of the 2016 Local Government elections and subsequent State Elections and that there be an independent software review and report on the integrity of iVote systems prior to implementation.

The Government acknowledges the potential benefits of extending the availability of iVote to all electors at Local Government and State elections in promoting greater voter participation at elections. However before iVote can be made available for use at Local Government elections, a number of logistical questions need to be settled, including the feasibility of its use for individual council elections, the likely costs, and its availability and cost to those councils that are administering their own elections.

Considering councils need to make a decision on the conduct of the 2016 Local Government elections by March 2015 at the latest, it is unlikely that these questions can be settled in time for iVote to be available to councils at the 2016 elections. However, the Government will explore the feasibility of making iVote available for use at the 2020 Local Government elections.

Recommendation 14 proposes that the Government amend the Act to provide for the permanency of the non-residential rolls (i.e. the roll of non-resident owners of rateable land and the roll of occupiers and ratepaying lessees) across all NSW councils, so that electors are not required to re-apply for inclusion prior to each election.

The Government acknowledges the frustration and red tape burden of non-residential electors having to re-enrol ahead of every election in order to vote at Local Government elections. The Government agrees that this is also a potential deterrent to participation by non-residential electors at Local Government elections.

The Government proposes to address this by seeking an amendment to the Act to make the non-residential rolls permanent.

Recommendation 15 proposed that the Government introduce the model for non-residential elector enrolment 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 rolls. It was also proposed that the Government consider applying this model in local government areas with significant economic centres such as Newcastle, Wollongong and Parramatta.

The Government agrees that where, as is the case for the City of Sydney, 78.5% of ratepayer revenue is derived from the business community and other non-residents, electoral architecture needs to be put in place to ensure equity and fairness.

For this reason, the Government supported the Bill introduced into the Parliament by the Shooters and Fishers' Party to amend the *City of Sydney Act 1988* which gave effect to the Committee's recommendation.

The *City of Sydney Amendment (Elections) Bill 2014 (the Bill)* passed the Parliament on 17 September 2014 including additional amendments to address issues of fairness and to improve the operation of the Act.

The Government responded to concerns raised through the parliamentary process and made a number of important amendments to the Bill to ensure that in future City of Sydney Council elections businesses would not be disenfranchised and that the elections would be administered effectively. These amendments included:

- ensuring businesses operating in shopping centres retain eligibility to vote;
- a provision allowing the City of Sydney to request help to run the election; and
- the model would only apply to the City of Sydney.

Key features of the legislation as passed through Parliament include:

- Making the rules for non-residential voters consistent and fairer for different kinds of businesses, setting a maximum of two eligible persons to be enrolled per business, including for each business operating in shopping centres;
- Non-residential electors will only be able to vote once in the City of Sydney elections;
- To be eligible to vote, a non-residential elector will need to be an Australian citizen who lives in NSW;
- Non-residential electors will now be automatically enrolled to vote;
- The City of Sydney, consistent with all other councils in NSW, will be responsible for preparing and maintaining the non-residential roll and will be able to engage an appropriately skilled service provider to assist it in doing so;
- The electoral roll will be regularly updated, available for public inspection and verified by the Electoral Commissioner to ensure transparency and integrity;
- The changes will only apply to the City of Sydney. Possible extension to other economic centres may be considered in the future.