

2012 LOCAL GOVERNMENT ELECTIONS

Organisation: City of Sydney
Name: Ms Clover Moore
Position: Lord Mayor
Date Received: 29/11/2013

Lord Mayor of Sydney

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13 September 2013

Mr Gareth Ward MP
Chair
Joint Standing Committee on Electoral Matters
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Ward

Council of the City of Sydney 2012 Election - Submission

As part of my presentation to the Committee today, this submission details issues about which the Committee is undertaking this inquiry.

The Committee has indicated that it is particularly interested in hearing about enrolment criteria for voting in elections for the City of Sydney, administered by the NSW Electoral Commissioner, together with issues concerning the non-residential roll.

PREPARATION OF THE ROLL BY THE ELECTORAL COMMISSIONER

Provisions relating to the eligibility of residents in the City of Sydney to enrol to vote are the same as for all other residents in New South Wales.

However, the City of Sydney has unique provisions relating to the compilation of its non-resident rolls. Key sections of the *Local Government Act 1993* regarding the compilation of the non-residential rolls do not apply to the City of Sydney.

The City of Sydney Act 1988 (the Act) requires the NSW Electoral Commissioner to prepare and confirm the roll of non-resident owners of rateable land and the roll of occupiers and rate paying lessees.

It is the NSW Electoral Commissioner who has the responsibility of administering those sections of the Act that refer to the eligibility for and compilation of the non-residential rolls. This responsibility is held by the general manager of all other councils.

The criteria for eligibility for occupiers and rate paying lessees in the City of Sydney local government area is also different from the criteria applied to these two groups in all other parts of New South Wales.

city of villages

In the City of Sydney, a person is required to be an occupier or rate paying lessee for a continuous period of only three months prior to the date on which the claim for enrolment is made. For all other parts of New South Wales, the requirement is for an occupier to have a legally enforceable right to continuous occupation of rateable land for not less than 3 years following the date on which the claim for enrolment is made. For a rate paying lessee, the requirement is that the person is jointly or severally liable to pay the whole or any part of any rates that may, during the 3 years following the date on which the claim for enrolment is made, be made or levied in respect of the land.

There is a further difference in the eligibility criteria for occupiers and rate paying lessees in the City of Sydney. There is a requirement for the rate paying lessee to pay at least \$5000 of rates per annum and a requirement for an occupier to pay at least \$5000 per annum for the right to occupy the rateable land.

The City has provided a submission to the Local Government Acts Review Taskforce and requested that, given the number and complexity of the non-resident owner, occupier and rate-paying lessee community in the City, ***the NSW Electoral Commissioner should retain the responsibility of compiling the non-residential roll of electors.***

INFORMING POTENTIAL NON-RESIDENTIAL VOTERS OF THEIR ELIGIBILITY

In order to raise the level of awareness of the ability to apply to enrol on the non-residential rolls, the City requested that the NSW Electoral Commission develop and undertake an advertising campaign prior to the 2012 local government election.

This campaign, paid for by the City, cost \$243,240.00. It involved:

- Mail outs to 80,447 individuals and business entities who may be (or have representatives who may be) eligible to enrol in the non-residential roll;
- contact with 125 Property Managing Agents, 110 of whom indicated that they would email their clients with a letter and an application form (a further 5697 potential electors);
- A video on the NSW Electoral Commission's Facebook page which remains viewable at <http://www.youtube.com/watch?v=YiJj5HVjliM>;
- a dedicated Call Centre that received 818 calls between April and August 2012 specific to the City of Sydney non-residential rolls; and
- newspaper advertising in the Australian, the Financial Review, the Sydney Morning Herald, the Daily Telegraph and Mx (Sydney Commuter Press)

The campaign resulted in 1,709 enrolments. This represents an increase of 1,313 eligible voters over the previous election held in 2008. 211 of the 1709 people failed to vote.

In 2008, the City also requested that the NSW Electoral Commission develop and undertake an advertising campaign to raise awareness amongst eligible voters of the non-residential rolls. This campaign, paid for by the City, cost \$126,028.37 and resulted in 396 voters.

Separately, the City paid the costs associated with the conduct of the local government election by the New South Wales Electoral Commission. The cost in 2008 was \$512,500 and in 2012 was \$779,719.60.

USE OF RATES ASSESSMENT NUMBER TO VERIFY ELIGIBILITY

On the application form for potential non-residential voters, the NSW Electoral Commission requested the **rates assessment number** from the person applying was the owner, occupier or rate paying lessee of rateable land.

Not all applicants were aware of the rates assessment number associated with the land they own, occupy or lease. The rates assessment number may be sent to an agent (if they are an owner) or to an agent or owner (if they are an occupier or rate paying lessee).

The NSW Electoral Commission also appears to have the view that an occupier of land would be able to obtain the Rate Assessment Number for the land from the owner. The commission stated in a letter to a former Councillor that this "is a matter for the occupier and the other party to that relevant occupation agreement."

In fact, many applicants sought this information instead from the City, a situation the City was initially unprepared for. This information is normally treated as private and confidential. Once the City understood the purpose for the request, staff were instructed to provide the rates assessment number associated with the property address provided by the applicant.

The City received seven complaints (from a total of three complainants) relating to their inability to obtain access to rates assessment numbers. In each case the City responded expressing regret and confirming that this information would be provided on request as soon as the correct number could be determined.

The property description used by the City to apply to particular pieces of rateable land may not be the property description used by the applicant. This resulted in confusion and frustration for some people before the correct rates valuation number was able to be provided.

Some applicants were unaware of the requirement that they own, occupy or lease rateable land and, if they hadn't received the rates assessment notice, may not have known whether the land was rateable or not.

The City of Sydney property database holds 111,322 distinct property addresses which relate to approximately 109,000 properties that could potentially be rated (including stratas). Of these there are about 2,000 non-rateable properties such as churches, schools, state or federal government agencies as defined by sections 555 and 556 of the Local Government Act, resulting in 107,721 rates assessment notices being issued each year.

The NSW Electoral Commission appears to consider that provision of rates assessment numbers provides proof of eligibility for enrolment on the non-residential roll.

As the City holds rates assessment numbers for every property, regardless of whether the property is rateable, the rates assessment number is not confirmation of whether or the land is rateable.

ALTERNATIVES FOR PREPARING THE NON-RESIDENTIAL ROLL

Given that a Rate Assessment Number cannot always guarantee the eligibility of a non-resident to enrol and vote, some other means of determining eligibility may be needed. City staff would be willing to discuss possible alternatives with the Electoral Commission.

Non-residential voters could enrol in the same way as residential voters, namely completing a claim form in which they state they are eligible. There would be severe penalties for providing false information or falsely claiming enrolment. The form would also require the intending voter to acknowledge that they may be required to provide proof of their eligibility upon request.

The Electoral Commission should be given sufficient resources to conduct a random audit of the non-residential roll before the election takes place, with the authority to require voters to provide evidence of their eligibility. This may need changes to legislation to compel landlords and agents to provide the information that their tenants need to show they are eligible to enrol and vote.

This should make it easier for non-residents to enrol while ensuring that the roll is accurate and up to date.

LAPSING OF THE NON-RESIDENTIAL ROLL

Both the *City of Sydney Act 1988* and the *Local Government Act 1993* require that the non-resident rolls are to lapse after the local government election for which they are prepared. The means that people eligible to enrol need to apply to enrol before each election. Some applicants expressed the view that this is an unnecessarily onerous requirement.

Prior to the 1995 City of Sydney elections, the General Manager was required to maintain a roll of non-residential electors. All persons on this roll were automatically entitled to vote.

In 1995, the Act was amended due to real doubt as to the accuracy, and validity, of the then existing non-residential roll and advice from the Crown Solicitor that it was unsafe to hold an election for the City of Sydney in such a state of uncertainty.

One cause of the uncertainty was centred on the right of non-residents of the City of Sydney to vote at elections where they were not Australian citizens or British subjects. The 1995 amendments to the Act clarified that voters must be Australian citizens or British subjects and required the General Manager to issue an enrolment claim form to all voters then enrolled to determine their eligibility to vote. Persons who failed to return the claim form within the prescribed time, together with persons who were ineligible, were removed from the list.

In May 1998 the then Government sought to further amend the *City of Sydney Act*, which included changes to the provisions relating to the non-residential roll. Consideration of this Bill was suspended following an amendment by the Legislative Council requiring a Special Commission of Inquiry into the City of Sydney voting system to be conducted by a retired Supreme Court Judge. The Government responded to this amendment by commissioning William Fisher QC on 5 August 1998 to conduct a review of the City of Sydney's Electoral Procedures. Commissioner Fisher reported on 1 October, 1998, recommending, *inter alia*:

- The State Electoral Commissioner have the function of preparing the non-residential roll, or alternatively, 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;
- The non-residential roll lapse after each election, and that a new non-residential roll be created a reasonable period before each election, with eligible non-residential electors being 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.

These recommendations drew on the submission by the then Acting General Manager of the City of Sydney. This submission was based on an underlying philosophy which included the principle that

"The onus should be on electors to become enrolled and not on the General Manager to enrol them".

The submission recommended, *inter alia*:

- the non-residential electoral roll should lapse after each election;
- non-resident electors who wish to vote in a City of Sydney Council election to lodge an electoral enrolment should be required to lodge a claim to be entitled to vote in that particular election.

The submission described attempts to maintain a non-residential roll as "an unreasonable burden on the Council of the City of Sydney."

The submission continued:

"It was also unrealistic in the light of the significant volume of changes of occupancies of properties within the boundaries of the City of Sydney. As qualification as an elector, in part, arises from various forms of occupation of premises, that is owner, rate paying lessee or occupier, it is extremely resource intensive and therefore expensive to attempt to keep track of occupancy changes and update the List of Eligible Electors.

"In an attempt to achieve this, regular surveys of occupancies within the boundaries of the City of Sydney were conducted. However, the information gathered was often out of date by the time a survey had been completed. Moreover, the information gathered during the survey was often incomplete or inaccurate as the Council officers doing the survey frequently were not able to speak to the owner, rate paying lessee or occupier and had to rely on information provided to them by such people as a sales assistant or reception staff. For these reasons, ongoing surveys are not currently being carried out.

"There seems no good purpose as to why the General Manager is required to keep an inadequate List when legislative provision could be made requiring eligible non-resident electors to enrol prior to a four yearly Council election or prior to a by-election whose date is known well in advance. The Council administration would be able to assist eligible electors to become enrolled through such means as advertising, mail outs and visits to each business establishment to leave and collect electoral enrolment forms. This would then provide an accurate and up to date roll at the time of each Council election rather than one which is based on elector information provided up to four years ago."

Following the Inquiry, the *City of Sydney Act* was amended to transfer responsibility for preparing the non-residential electoral roll to the NSW Electoral Commissioner. In 2002, the *City of Sydney Act* was further amended to clarify the procedure to be used by the Electoral Commission in preparing the non-residential roll, and to clarify that the non-residential roll would lapse after every election, as is the case for all other local government elections in NSW. The Opposition did not oppose these amendments.

THE NON-RESIDENTIAL FRANCHISE

The non-residential voting franchise for the City of Sydney is broader than for other councils in NSW. The current arrangements provide an appropriate balance with a significant opportunity for people conducting business in the City to be on the roll. Despite this, many eligible voters have chosen not to take up their right.

Should you wish to speak with a Council officer about the conduct of the 2012 election or the compilation of the non-residential rolls, please contact Elizabeth Wall, Manager Governance on [REDACTED] or at [REDACTED].

Yours sincerely


[REDACTED]
Clover Moore
Lord Mayor

ATTACHMENT 1 – Summary of complaints and information requests received by the City in relation to the Non-Residential Rolls.

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Complaints were received from three people; Correspondent A, Correspondent B and Correspondent C (wife of Correspondent A)

Received Date	Summary of Complaint	Author
11/06/2012	Council refusing to supply rates assessment numbers to business occupiers who wish to apply to vote.	Correspondent A
11/06/2012	Lack of advertising of the application process for the non-residential rolls, provision of the rates assessment number, inclusion of postal vote application forms in correspondence with electors	Correspondent B
14/06/2012	Further correspondence seeking a reply to correspondence of 11/06/2012	Correspondent B
21/06/2012	Further instance of inability to obtain a rates assessment number	Correspondent A
05/07/2012	Lack of business voting information on the City's website and request for information from the City on assisting the business vote	Correspondent A
16/07/2012	Advice of continuing complaints from business owners unable to obtain rates assessments numbers	Correspondent A
16/07/2012	Inability to obtain rates assessment notices from the City on behalf of clients	Correspondent C

Information requests received by Customer Service

Received Date	Note Text
24/08/2012	Hi there, I understand there is an election on 08 September. I have just moved from Victoria. Can you let me know if I need to register or just show up? I live in Cook Rd Centennial Park. Thanks!
29/08/2012	Dear Sir/Madam, I have just received an email from a neighbour saying Council Elections are planned for Sept and there is a fine for not voting. My wife and I are in Germany until November, would that cause a problem for us?
30/08/2012	Question - How do I vote as a registered organization in Sydney? I am from the Church of Scientology and there are 2 Churches in Sydney LGA to vote.
3/09/2012	Question - i will be away on the date of elections (?) I would like to know how I can vote. please let me know
6/09/2012	Do people over 80 have to vote in this council election?
10/09/2012	Question - I am enrolled for the mail federal and state election, which meaning that I would be automatically be enrolled for the local government elections, but I have not received a voting paper through my mail, so therefore could not vote in time. What are the alternatives for this problem?

10/09/2012	Hello, I am a strong advocate for public participation in any changes to the planning system & always make a conscious effort to vote on these important occasions, however I assumed, like many that I would have been able to vote absentee like we do in state elections but was disappointed after turning up at a polling booth outside my local government area, that I could not lodge a proper vote & that I would have to pay a fine.
10/09/2012	Question - I am currently overseas and was unaware that there was an election until only a moment ago. I have missed the opportunity to vote. Does this mean I will be fined even though I was not informed that I would need to vote before I left Australia
10/09/2012	The voting station I went to refused to take my vote and told me to go to my local area but I could not find out WHERE the voting station is.