

2012 LOCAL GOVERNMENT ELECTIONS

Organisation: City of Botany Bay
Name: Ms Lara Kirchner
Position: General Manager
Date Received: 27/02/2013

Our ref: 11/140

22 February 2013

Mr Jai Rowell MP
Joint Standing Committee on Electoral Matters
Parliament House
Macquarie Street
SYDNEY NSW 2000

General Manager's Office

Administration Centre
141 Coward Street
Mascot NSW 2020
PO Box 331 Mascot
Telephone: (02) 9366 3666
Facsimile: (02) 9667 1793
DX 4108 Maroubra Junction

ElectoralMatters.Committee@parliament.nsw.gov.au

Dear Minister

Botany Bay City Council notes the Terms of Reference of the Joint Standing Committee on Electoral Matters Inquiry into the conduct of the September 2012 Local Government elections:

- The costs of the elections;
- The experience of Councils that conducted their own elections;
- Possible legislative changes to improve the efficiency of, and participation in, Local Government elections;
- Non-residential voting in local government elections;
- The impact of requirements under the *Election Funding, Expenditure and Disclosures Act, 1981* on participation by candidates in local government elections and possible legislative changes to remove any barriers to participation; and
- Any other related matters.

We provide the attached submission to assist the Committee in its deliberations.

Yours sincerely



Lara Kirchner
GENERAL MANAGER

Att. 1



SUBMISSION

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

LOCAL GOVERNMENT ELECTION

SEPTEMBER 2012

Introduction

Following the passing of the Local Government (Amendment) Elections Act 2011 enabling councils to conduct the 2012 local government elections independent of the NSW Electoral Commission, the City of Botany Bay initially resolved:

THAT:

- 1 The report be received and noted.*
- 2 The matter be deferred.*
- 3 Council affirm its policy that it supports all Local Government elections being conducted by the Electoral Commissioner.*
- 4 Council notes that it was the Council's Mayor, who negotiated, with much opposition, the inclusion of the Electoral Commissioner's conduct at council elections in the 1993 Local Government Act.*
- 5 Council notes that, since 1980, prior to the 1993 Local Government Act, Council always appointed an independent Returning Officer, rather than the Town Clerk; a Returning Officer nominated by the Electoral Commissioner to conduct elections.*
- 6 Council notes the conduct of the Electoral Commissioner, in conducting elections, was effected smoothly and efficiently until the 2008 Local Government Elections when in the Council's opinion, the Electoral Commissioner unreasonably gouged excessive fees from Councils and conducted himself in an arrogant and high-handed manner in a number of respects.*
- 7 Council notes, with independence and tenure comes responsibility which requires independent functions to be conducted fairly and properly.*
- 8 Council notes the amount of \$41,000, gouged from this Council, when no election was required in 2008, is an obscene overcharging by the State, when the Electoral Commissioner even failed to provide electoral roles to candidates as he was required to do so.*
- 9 Council notes the approach taken by the Electoral Commissioner to Councillor Kondilios' nomination, which was subject to a submission to the New South Wales Parliamentary Committee was disgraceful conduct by the Electoral Commissioner who the Council regards as having acted with abuse of power.*
- 10 Council notes the use of polling booths outside the city boundaries, with multiple Councils going to multiple booths, is not conducive to democracy; but causes confusion and cannot be supported by the Council.*

- 11 *Council considers the estimated cost of over \$200,000 for the Electoral Commission to conduct an election to be excessive; whilst it acknowledges the price of democracy is always value for money, a full cost recovery is an excuse to gouge. Council has in the past, been able to absorb much of its administrative support for the Returning Officer. For example, if a Council clerk provides envelopes to a Returning Officer, there is no cost. If an Electoral Commission Clerk provides it; it costs \$200.*
- 12 *Council notes, in any Local Government Election, Council requires polling booths to be identical to the polling booths at every State and Federal Government election and that the polling booths should be contained within the city and consistent with those other elections; and such polling booths shall be:*
- a Matraville Public School*
 - b Banksmeadow Public School*
 - c J.J. Cahill Memorial High School*
 - d Mascot Senior Citizens Centre*
 - e Mascot Public School*
 - f King Street Church, Eastlakes*
 - g Eastlakes Public School*
 - h Daceyville Public School*
 - i Pagewood Public School*
- 13 *Council agrees to engage the Electoral Commissioner only if he is able to implement Council's decisions and policies*
- 14 *Council would agree to have the Electoral Commissioner conduct the election on a written undertaking by him that he would agree to the polling places listed and that they would be used exclusively for this City's Election*
- 15 *In undertaking the Council's Elections, the Electoral Commissioner will not seek to unreasonably gouge Council's funds and will conduct the elections in a manner that enhances democracy in this City*
- 16 *The election system in the City of Botany Bay is by preferential counting in each Ward and the ballot should be counted at appropriate premises within the boundaries of the City of Botany Bay*
- 17 *The approach taken by the Electoral Commission to provide a deadline to all Councils in New South Wales by the end of this month has been subject to criticism by the Local Government Association and highlights the attitude of the Electoral Commissioner*
- 18 *Failing any written assurances from the Electoral Commissioner, the Council will seek to approach the Commonwealth Electoral Commissioner for suitable Returning Officers and any former Returning Officers regarding their availability to conduct our Elections*

- 19 *Council notes that by making this decision it may offend the NSW Electoral Commissioner and thereby will be required to conduct its own Election, under the circumstances, it may well be a far more economic result*

Subsequent meetings held with the NSWEC indicated that minimal assistance would be provided by the NSWEC should Council choose to conduct its own election. Council was also advised of the non-negotiable intention of the Commission to share a Returning Officer to service both the City of Botany Bay and Marrickville Council.

Council was strongly of the view that shared polling places with neighbouring local government areas causes confusion for voters and creates inefficiencies. Representations were made to the NSWEC seeking a commitment that polling places within the City would be exclusively for the City of Botany Bay elections. Council also considered it important that the count be conducted locally (not centrally by NSWEC staff), to ensure minimal delay between close of poll and declaration of the poll.

The NSWEC responded that the issue of polling place locations and other issues would only be considered and negotiated after Council had formally appointed the NSWEC to conduct the elections. They indicated that their primary responsibility was to the electors, regardless of boundary issues. They did not envisage that the counting of ballot papers would occur centrally, however no firm commitments were made to enable Council to make a considered decision.

As the NSWEC did not guarantee to comply with Council's preferences, Council determined to proceed with the independent conduct of the 2012 elections.

Response to Terms of Reference

a) Cost of the Election

Council was one of fourteen (14) councils in NSW that conducted its own election. Eleven (11) of those councils engaged the services of the Australian Electoral Company to conduct the election on their behalf. Only Botany Bay, Sutherland Shire and Lane Cove councils independently conducted their own election.

As the NSW Electoral Commission was not required to conduct elections in the City of Botany Bay in 2008 (due to all candidates being elected unopposed), costs attributed to other Councils with similar enrolments were reviewed in an effort to estimate the likely cost to the City of Botany Bay for a fully contested election.

The NSW Electoral Commissioner provided a cost estimate for the conduct of our 2012 election by the Commission that was based on the estimated 2008 charge with the following adjustments:

- Wage cost increases reflecting increases in cumulative public sector wage costs over the intervening 4 years (+17%);
- Other operational cost increases, based on cumulative CPI (12.8%)
- Number of electors being serviced (the % increase in registered voters reflected by a similar increase in cost); and
- An anticipated reduction in 'economy of scale' benefits through a reduction in the number of Councils utilising the services of the NSWEC.

Based on this assessment, indicative costs for the NSW Electoral Commission to conduct the 2012 elections amounted to some \$213,000.

The actual cost to the City of Botany Bay of conducting our own election was \$157,039, a saving of \$55,961 or 26% on projected costs provided by the Commission.

As an issue for consideration, we note that Clause 393A of the Regulation imposes reporting requirements for an election administered by the General Manager of a council that far exceed the requirements of councils where the NSW Electoral Commission conducted the election. We suggest that the Minister give consideration to imposing similar requirements on all councils to enable an accurate comparison regarding cost effectiveness of administering the elections.

b) Experience of Councils that conducted their own election

Council ensured that a successful, efficient and transparent election was conducted in the City of Botany Bay.

Factors that contributed to a positive election experience include:

- An experienced Returning Officer and Substitute Returning Officer;
- Experienced election staff;
- The support and resources of a collaborative network involving other non NSWEC councils; and
- Direct access to expert legal assistance on election matters and Outstanding support from the Division of Local Government in terms of participation and advice.

This resulted in:

- Positive feedback from the community on the electoral experience;
- Timely completion of the preliminary count and final declaration of the poll; and
- Delivery of the election process to the community of the City of Botany Bay at a substantial saving.

NSWEC staff and representatives of the Election Funding Authority (EFA) and Division of Local Government (DLG) conducted an information session hosted by Sutherland Shire Council on 21 March 2012 in preparation of the upcoming elections. In attendance were representatives of councils taking responsibility for conducting their own elections. The approach taken by representatives of the EFA and DLG was positive and genuinely collaborative; however the approach adopted by the NSWEC was aggressive and bordered on offensive with the Electoral Commissioner leaving attendees in no doubt that the NSWEC's assistance would be both minimal and reluctant in nature.

A further issue arose when confirming polling places to ensure their availability on 9 September. Despite Council's clearly expressed preference to not have joint voting booths with other LGAs, the NSWEC exercised its existing arrangements with the Department of Education and Communities and hired facilities at two schools within the City of Botany Bay (Daceyville and Matraville Primary Schools) for use as polling places for the neighbouring Randwick City Council elections. We note the cooperation of the Randwick Council Returning Officer in negotiating use of the largest hall at Daceyville for use by City of Botany Bay electors, who have historically formed the majority of voting at that particular location. Matraville did not have suitable options for a shared polling place and Council was forced to relocate its polling place to a community centre several hundred metres away. Council bore additional costs to actively inform the community of these forced changes.

c) *Possible Legislative Changes*

We support the early review of relevant legislation and the consolidation of principal and supplementary legislation, Regulations and Directions to allow appropriate pre-planning of all subsequent ordinary local government elections. In particular, we suggest review of the following matters:

- Consistency in applying Clause 393A of the Local Government (General) Regulation 2005 for General Manager's reporting requirements OR deleting it from the Regulation altogether.
- Requirement for the NSWEC to submit a fixed tender price PRIOR to councils determining who should conduct their election
- Requirements as to the level of assistance to be provided by the NSWEC should be clearly spelt out and include provision of combined rolls and the provision of relevant forms or templates of forms to assist voters in enrolling, postal voting and the like.
- The timeframes identified in Section 296 (2 and 3) of the Local Government Act relating to the entering into arrangements with the NSWEC for an election are unachievable and unrealistic.
- Legislation relating to the acceptance of content of how-to-vote material and associated advertising for both pre-poll and election day materials need to be standardised. Requirements for both should be consistent.

d) *Non-residential voting in local government elections*

Our experience is that very few non-resident owners know of their ability to vote or make a conscious decision not to enrol as non-resident voting is not compulsory. The fact that the process for registration is somewhat convoluted and must be revisited every four years is also likely to contribute to a lack of registrations. Only two applications were approved for the 2012 elections.

e) *Impact of the 'Election Funding Expenditure and Disclosures Act, 1981' on participation by candidates in local government elections and possible legislative changes to remove any barriers to participation'*

No comment is offered in relation to the impact of this Act on candidates.

We appreciated the information and support provided by the Electoral Funding Authority during the election period. It is our observation however that the requirements on candidates and elected Councillors are onerous and complicated. The Act, in its current form, may be a potential deterrent to people wishing to stand as Councillors.

f) Other Matters

At the 2012 elections, the City of Botany Bay sought to elect one Councillor for each of the six Wards and a popularly elected Mayor. This superseded Council's previous system of two Councillors for each of the three Wards and a popularly elected Mayor.

Council is strongly of the view that, the community is best represented by single member wards. This system ensures that Councillors have the support of the majority of voters, which is the system that prevails at all other levels of government. This system ensures clear accountability and, by minimising the size of each ward, ensures new candidates can contest elections with minimal expense. The method of optional preferential voting for a single position delivers significantly lower informal voting than the list voting systems required for multiple councillor wards. In the 2012 elections the City of Botany Bay's informal vote was 5.65% and voter participation was 83.5% across 4 Wards and the Mayoral election (2 Wards were uncontested). This very low level of informal voting compared to neighbouring LGAs is, in itself, a significantly pro-democratic outcome.

In addition it should be noted that, the timing of the NSW State By-election for the seat of Heffron (2 weeks prior to the local government election) impacted the community by requiring a significant portion of the LGA to vote on two occasions within two weeks. This timing led to significant confusion among voters and a significant proportion of time was spent by Council responding to enquiries and providing information on both elections.