

**Submission
No 3**

**INQUIRY INTO CONDUCT OF ELECTIONS IN NEW
SOUTH WALES**

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To: Hon. Mr Robert Borsak MLC Chair, Select Committee on the conduct of elections in New South Wales Submission to Inquiry into the Conduct of Elections under Covid

To the Select Committee, I write to make a submission to the inquiry into the conduct of elections under Covid, namely: the COVID-19 restrictions in place for the December 4, 2021 Local Government elections.

I ran as a candidate for the Liverpool City Council local government elections as an Independent. I have been a local resident of the Liverpool LGA for 24 years and also live with a significant physical disability, and I get about in a motorised wheelchair. I acknowledge the extraordinary circumstances under which the NSW Council elections were held, and the need to respond through regulations governing the conduct of the elections.

Yet key lessons can be taken from the 2021 elections to guide future decision making. Central among them are:

1. Consult candidates when developing election rules and regulations.
2. Consider the circumstances of candidates contesting in local elections, who are more likely to be independent, resource constrained, and relatively inexperienced.
3. Guidelines may be more appropriate than one-size-fits-all regulations to accommodate differences between LGAs, pre-poll and polling stations. Co-developing rules with campaign teams may better ensure these suit local conditions, have candidate buy-in and reduce hostility between candidates.
4. All regulations and guidelines need to be easily accessible and in plain language. Additional resources (for example a NSWEC call centre) should be expended to ensure candidates can access up to date and accurate information in a timely fashion. Candidates in local elections are essential to Australia's democracy, giving voters a choice, and providing information about those choices. Respect for candidates should be a basic principle that guides the conduct of all future NSW Local Government elections.

The consensus amongst candidates for these elections including myself have been as follows: a) the impact of particular regulations, and; b) the communication and enforcement of regulations. The postponement of the election caused severe hardships The postponement of the election from September 2021 to December 2021 impacted candidates differently, depending on their level of preparedness at the time of the announcement (25 July 2021).

For candidates like myself, who were ready to contest in September, this (2nd) postponement was a blow, resulting not only in a loss of momentum, but I also suffered additional expenditure on campaign materials. All this time, work and costs only to have all incoming councillors having to unfairly face a significantly shortened term. The length of pre-poll caused hardship for many candidates Pre-polling was available to voters for 11 days requiring significant resources from candidates in time and volunteers. I and most other candidates were physically exhausted; For most of the Independents, we struggled to find volunteers (a challenge for any Independent candidate at the best of times) who could take time off work – again. These challenges were exacerbated in LGAs with more than one pre-poll station, and resourcing difficulties more acute for us independent candidates. There were 5 Pre-polls In Liverpool LGA. Compared with 2 pre-polls for 2022 Federal Election .

From my understanding, the burden of a lengthy pre-poll period on candidates, the number of people who voted on any given day was low across many pre-polls. Particularly in the first week of pre-poll, hours were spent to meet only a handful of voters. We and support teams questioned whether 11 days was necessary given other options such as iVote and postal voting. The same outcome (reducing the numbers of people voting on election day) could be achieved through one week of pre-poll, or fewer but longer days to allow people to vote before and after work. The circumstances of candidates should have been an important consideration when deciding the optimal days and times for pre-poll. In local government elections, candidates are more likely to be running as independents, with relatively limited resources and with other responsibilities needed to balance with our campaign.

The 100 metre and 6 metre rules across different polling stations led to perverse outcomes. Regulations stipulated that no candidate or their supporter could be within 6 metres of the entrance to a polling station, and that no material could be handed out within 100 metres. Yet due to the different layouts of polling and pre-poll stations, the outcomes of these restrictions were uneven, and in some cases threatened the health of campaigners and voters. Some examples: At Ermington pre-poll (Parramatta LGA), six metres from the front entrance was the top of a ramp. Some candidates stood along the ramp forcing voters to walk within 1.5 metres of them to reach the entrance. At Carnes Hill pre-poll (Liverpool LGA), the entrance was interpreted as the main doors, but voters had to reach the polling station through a gate on the side. Again, candidates and voters congregated in a confined space, within the rules. At Greystanes pre-poll (Cumberland LGA), 100 metres from the main entrance placed campaigners on a bridge on top of the M4 motorway. Candidates and their team who wished to hand out had to endure fumes and noise, with reports of headaches, running eyes and so on.

Designing rules for each polling station rather than a one size fits all approach would better safeguard the health and well-being of voters and candidates. Ideally, this would involve the Officer-in-charge and candidates/campaign teams, under the guidance of a Public Health Officer to ensure buy-in from all parties. The rationale behind prohibiting handing out campaign material within 100 metres was poorly communicated, at best. It was difficult for candidates to understand why a brochure carried less of a threat of transmitting Covid-19 when given 100 metres from a polling station, than within it.

Despite the unclear health benefits, the rules had a significant impact on campaigning. The 100-metre rule effectively meant that no campaign material could be handed out. Limitations on handing out 'HTV' led to voter confusion and disadvantaged candidates. How to Vote (HTVs) and other leaflets assist voters in making informed decisions and help them cast a valid ballot. Without such campaign material, voters were often confused, and some indicated that they had voted for the wrong person when they got into the polling booth. Voters had to remember the name/order of their preferred candidate on the ballot paper: particularly challenging if there are a large number of independents.

HTVs are helpful for first-time voters and new Australians from non-English speaking backgrounds. Scrutineers had concerns at the high rate of spoiled ballots, and the extent to which preferences did not match candidate instructions. Without HTVs handed out at polling stations, voters relied more on party recognition, letterbox drops, and corflutes, dis/advantaging different types of candidates. These regulations strongly favoured parties, as people could remember a party name in a way they could not remember an individual candidate or unfamiliar group. Campaigns with the financial resources for multiple letterbox

drops benefited getting their campaign material to more voters, advantaging more affluent candidates. The restrictions on handing out HTVC's created and exacerbated an unequal playing ground in which smaller parties and independents were disadvantaged. I felt a complete lack of respect shown to candidates, like we were a nuisance and just had to be tolerated.

Speaking to voters over a HTV card is a community service that builds democratic institutions through education and informing voters of their choices. Restrictions on the positioning of corflutes/A-Frames caused huge logistical problems. Candidates had to position our corflutes by 7am in the morning two hours before pre-poll opened, and were not able to remove these until 7pm at night, one hour after pre-poll closed. Once they were in place, they could not be moved unless they fell down and created a trip hazard.

In some LGAs, council staff removed unattended A-frames, meaning that candidates or supporters needed to stand with A-frames for hours before pre-poll opened. These restrictions caused logistical problems for many candidates and in particular for myself. I (as most others) had to organise people to erect and take down corflutes beyond the hours of pre-poll, and in some council areas, waste hours standing with them. For myself, as a mobility impaired candidate, and with 5 pre-polls, these logistical challenges were catastrophic to my campaign.

The rationale for these regulations was unclear and often breached, although I complied with every rule. Delay of the release of the Handbook caused anxiety and disrupted the preparation of candidates. We as candidates were anxious to have accurate information about the regulations for campaigning well in advance of the elections. I found the delayed release of the Candidate Handbook particularly difficult, as I was trying to plan and establish my campaign without up-to-date information about what was permitted. The Handbook was released in July, for an election originally scheduled for early September, despite assurances from as early as the beginning of the year that the release of the Handbook was imminent.

What was the delay? The rationale for many regulations was not clear. As noted above, many of the regulations for the 2021 local government elections caused significant hardship for candidates, with the potential to create an unequal playing field. Candidates and our supporters understood the need for rules that protected the health and safety of voters and campaigners, but we were frustrated that many regulations made no sense, or the impacts on public health were very small at a great cost for candidates. NSWEC public documents on regulations contained only vague rationales, such as "to reduce the risk of infection from COVID-19" to justify the 100-metre rule.

Officials enforcing the rules did not explain, or could themselves not understand the rationale for many regulations. Clearly explaining why such rules were necessary would show respect for candidates, and more than likely lead to better compliance. Frequent changes to rules and a lack of timely verifiable information caused confusion and hardship. The regulations governing what was permitted in the campaign, particularly during pre-poll, changed frequently. There was confusion and frustration caused by changes to how campaigners were allowed to interact with voters. At first, we could hold a laminated HTV card, but this was deemed 'handing over election material'. When we attached these to corflutes, the corflutes no longer conformed to what had been approved by the Electoral Commission, and we were ordered to remove them. Pins were then used to attach these to our clothing, with the

perverse outcome that voters had to come close and gaze at the belly of campaigners, until this too was deemed as contravening the rules.

At each stage, we had to make quick adjustments, get supplies, inform campaigners, and think creatively as to how we could get the information to voters. Changes to rules also resulted in wasted resources. I had to throw out the 40,000 HTVC's as well as thousands and thousands of flyers that I had printed before the regulations changed about handing out election material. For another candidate I know it was 5,000 flyers. All gone to waste. More often than not, we could not find the rules that were being made to follow in any verifiable document. They were communicated either directly by NSWEC officials, or indirectly through Officers-in-charge, but information on the NSWEC website was sparse and/or difficult to find and/or full of jargon.

Further, I (and many others) faced long delays in getting through to the candidate hotline, received conflicting information and/or spoke to someone who did not know the answer to my questions. The inability to get accurate and timely information was in relation to many regulations, not only those related to Covid-19. However the confusion and frustration was nonetheless exacerbated by the frequent changes to rules due to Covid-19. Rules were open to interpretation and enforcement was inconsistent. Due in part to the lack of verifiable information of fast changing regulations, the interpretation and enforcement of rules was inconsistent. Each of the five pre-poll stations I campaigned at had different permissible practices (the ability to hand out election material, ability to show laminated cards, the distances enforced in the 100 metre and six metre rules, and so on). NSWEC officials visited each of these stations, bringing in a short period where rules were enforced according to their interpretation.

Once they left, other candidates often returned to following the informal rules that had developed between them, and at times with the blind-eye of the Officer-in-charge. Disputable rules created a tense and hostile environment at pre-poll and polling stations. From what I have heard first-hand, at some pre-poll stations, the existence of rules open to debate with limited oversight created tension and hostility.

Candidates played the largest role in enforcing the rules, leading to frequent confrontations and aggression. Intimidation, physicality or the threat of physicality, and raised voices, created a distressing environment, particularly for female candidates and also for voters. And while hostility is not unusual at polling stations (from previous experiences), it was exacerbated by the nature of the rules in this election (lacking in rationale, fast-changing and disputable) and their enforcement (inconsistent, but with authority from the NSWEC). Further, candidates who felt emboldened to break the rules, or to enforce their interpretation of the rules on to other candidates, were at an advantage.

Due to gender norms, women (like myself) are less able to display aggression, particularly when they have a further disadvantage of a disability - like myself. And if they do so, are more likely to be socially sanctioned. Other candidates including myself, felt uncomfortable with breaking rules, putting them at a disadvantage. In summary As a woman living with a physical disability and running as an Independent, I felt that any chances I may have had for a better outcome of my results have been destroyed, by the utter incompetence of the NSWEC. There was not an even playing field afforded to candidates not in major parties and particularly those with disabilities.

Representation from the community of someone living with a disability getting on council have been done and dusted by the NSWEC by driving the final nail in my coffin. The circumstances of candidates in local elections—more likely to be independent, like myself, and others who were relatively new to politics, and with limited resources—did not seem to be factored into any decision-making. Frequently changing, illogical, poorly communicated and inconsistently enforced rules, created unfair and desperate challenges for candidates, and a hostile environment at polling stations. The important community service that candidates undertake by standing for election was underappreciated. Respect for candidates needs to be at the heart of how the NSWEC responds to future elections held in challenging circumstances.