

**Submission  
No 6**

## **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 am an Associate Professor and Australian Research Council Future Fellow at the Australian National University. I am currently conducting research on diversity and representation in local government in NSW. As part of this research, I followed 11 aspirants in the months leading up to, and including the 2021 local government elections. All candidates were women, with 7 contesting elections in regional or rural Local Government Areas (LGAs), and 4 in Greater Sydney. I campaigned alongside candidates in Greater Sydney and undertook participant observation in several pre-poll and polling stations. The research generated data as to how candidates experienced the regulations issued by the NSW Electoral Commission (NSWEC) pertaining to COVID-19, the various and differential impact of these rules, and the nature of their communication and enforcement.

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.

I now present key findings of the research project related to a) the impact of particular regulations, and; b) the communication and enforcement of regulations.

### **Impact of regulations to govern conduct of local government elections**

#### ***The postponement of the election and shortened term had uneven impacts***

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). Some candidates appreciated the additional time to find running mates, build their support team, or save money. For candidates who were ready to contest in September, however, the postponement was a blow, resulting in a loss of momentum, then exhaustion, as they ran very long campaigns. Some candidates faced additional expenditure on campaign materials (with the new date) or had to find work/ renegotiate leave, to cover the extended period to the election. Several candidates withdrew from contesting during this period, although not always as a direct consequence of the postponement. Councillors who were looking forward to stepping down from their position had to endure an extended term due to the postponement. Some were in poor health, and unable to undertake the full suite of council duties by the end of their term.

All incoming councillors face a shortened term. New councillors had to undertake an even steeper learning curve than usual due to the compressed timeframes, and have had to deal with major mandatory council matters due by 30 June 2022. Many candidates made significant sacrifices in terms of time and money in order to contest the elections, and find that now they are elected, they have a short term to achieve their objectives. Candidates/councillors already juggling various responsibilities (employment, childcare/elderly care) or on low-incomes, make considerable sacrifices in terms of time and money to run a successful campaign. They are poorly served by a shortened term and the need to do it all again in less than three years. The timing of the election, and the announcement of election results as late as 23<sup>rd</sup> of December, disrupted the holiday period and came at an inconvenient time for candidates with school-aged children.

***There was a lack of voter awareness about the election***

Many voters were unaware of the date of the election. Unlike in Federal elections and previous local government elections, there were no letterbox drops in many LGAs to inform citizens of the upcoming election and provide updated information as to how they could vote. Such information was particularly important given the uncertainty that surrounded these elections, the two postponements and the additional measures to protect public safety. Many candidates took their own actions to raise awareness, but could not achieve the blanket coverage required.

***The length of pre-poll caused hardship for many candidates***

Pre-polling was available to voters for 11 days (Monday to Saturday 22 November to 3 December 2021) to prevent large gatherings of people on election day. Pre-poll required significant resources from candidates: time and volunteers. Opportunity costs included having to take time off work or business during this period. Some reported being physically exhausted; others struggled to find volunteers. These challenges were exacerbated in LGAs with more than one pre-poll station, and resourcing difficulties more acute for independent candidates.

For 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. Candidates and their support teams questioned whether 11 days

was necessary given other options such as iVote and postal voting. Others suggested 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.

Candidates' circumstances should be an important consideration when deciding the optimal days and times for pre-poll. In local elections, candidates are more likely to be running as independents, with relatively limited resources and responsibilities that they need to balance with their 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 campaign teams, under the guidance of a Public Health Officer to ensure buy-in from all.

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. In a large

number of polling stations, the 100-metre rule effectively meant that no campaign material could be handed out. We now turn to the consequences of this.

### ***Limitations on handing out 'HTV' led to voter confusion and disadvantaged some 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. Independents, including seasoned campaigners, felt that the 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. Research shows that when voters have limited information (for example that which is communicated through corflutes/posters), they make information 'short-cuts' based on stereotypes, advantaging 'white men' (Deason et al. 2015).

Many candidates felt the restrictions on handing out created or exacerbated an unequal playing field in which they were disadvantaged relative to others. Further, there was frustration at the lack of respect shown to candidates. 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 logistical problems***

Candidates had to position their 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. They 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 mobility impaired candidates, and for candidates with more than one pre-poll, these logistical challenges were greater. The rationale for these regulations was unclear for candidates and often breached.

### **Communication and enforcement of regulations**

Beyond the impact of particular regulations are the general impacts of being a candidate in an election where rules change rapidly, lack a clear rationale, and are enforced unevenly.

#### ***Delay of the release of the Handbook caused anxiety and disrupted the preparation of candidates***

Candidates were anxious to have accurate information about the regulations for campaigning well in advance of the elections. First time candidates found the delayed release of the Candidate Handbook particularly difficult, as they were planning and establishing their campaigns 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 March that the release of the Handbook was imminent. The delay had flow-on effects in producing election material and planning campaigns.

#### ***The rationale for many regulations was not clear***

As noted above, many of the regulations for the 2021 local government elections caused significant inconvenience for candidates, with the potential to create an unequal playing field. Candidates and their supporters mostly understood the need for rules that protected the health and safety of voters and campaigners, yet were frustrated that many regulations seemingly made no sense, or the impacts on public health were very small at significant inconvenience 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 (Direction under 356TB). Officials enforcing the rules could not explain, or at times, understand the rationale for many regulations. Clearly explaining why such rules were necessary would show respect for candidates, and likely lead to better compliance. The need for a strong rationale would also keep decision-makers accountable, ensuring that improvements in safeguarding health and safety outweigh the problems caused by regulations.

***Frequent rule changes 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. One pre-poll provides an illustration of the confusion and frustration caused by changes to how campaigners were allowed to interact with voters. At first, candidates could hold a laminated HTV card, but this was deemed ‘handing over election material’. When candidates attached these to corflutes, the corflutes no longer conformed to what had been approved by the Electoral Commission, and candidates were ordered to remove them. Pins were then used to attach these to campaigners’ 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, candidates had to make quick adjustments, get supplies, inform campaigners, and think creatively as to how they could get information to voters. Across many pre-polls, officers-in-charge were unclear about the rules at any given time, leading to inconsistent and arbitrary decisions about what was permitted.

Changes to rules also resulted in wasted resources, or caught candidates under-resourced. One candidate had to throw out the 5,000 flyers she had printed before the regulations changed about handing out election material. Another was at a disadvantage as she had not printed leaflets for election day, wrongly assuming that people would not be handing out. These different experiences also speak to the inconsistency of enforcing NSWEC rules (see below)

Often candidates could not find the rules that they 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, candidates 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 their



questions. The inability to get accurate and timely information was in relation to many regulations, not only those related to Covid-19. The confusion and frustration were 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 six 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, 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. Candidates with a legal background were able to challenge the rules as having no legal basis.

***Disputable rules created a tense and hostile environment at pre-poll and polling stations.***

At some pre-poll stations, candidates came to implicitly agreed-upon rules that governed their conduct during the campaign. While behaviour did not always follow NSWEC regulations, they arguably created a safer environment in which all candidates felt comfortable. At others, 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. While hostility is not unusual at polling stations, 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 are less able to display aggression, and if they do so, are more likely to be socially sanctioned. Other candidates feel uncomfortable with breaking rules, putting them at a disadvantage.

## **In summary**

Candidates for the most part understood and appreciated the objective of the NSWEC to ensure the 2021 Local Government elections would be as safe as possible. Health advice and what we knew about Covid-19 created challenges for all policy makers, as they responded to a fast-changing world. Nonetheless, the circumstances of candidates in local elections—more likely to be independent, relatively new to politics, and with limited resources—did not seem to be factored into decision-making. Frequently changing, poorly communicated and inconsistently enforced rules, created practical 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.

Sincerely

Tanya Jakimow

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