

**Submission  
No 9**

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

**Organisation:** City of Sydney Council

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NSW Legislative Council  
Select Committee

### **Inquiry on the Conduct of Elections in NSW - City of Sydney Submission**

Thank you for the opportunity to make this submission to the NSW Legislative Council Select Committee's Inquiry on the conduct of the elections in NSW.

Under provisions introduced in 2015 into the [City of Sydney Act 1988](#), the City of Sydney (the City) is required to establish and maintain a register of electoral information of those with potential entitlement to vote as a non – resident in City of Sydney elections.

This requirement is unique to the City and this submission addresses the City's experience in developing non-residential electoral rolls for the 2021 local government election. It also reiterates previously raised concerns in relation to the legislation and recommends amendments to enable the City to fully comply with its obligation in relation to the non-residential register.

#### **Covid 19 Response**

1. Overall, the City credits the NSW Electoral Commission (NSWEC) with how it responded to Covid 19 restrictions and constraints.
  - a. Specifically, all voters (both residential and non-residential) on the City of Sydney rolls were granted special provisions to enable them to request postal votes whatever their circumstances. This was unlike other local government areas in NSW, where postal votes could only be requested under certain circumstances.
2. Difficulties faced by the City included:
  - a. Notice of the second election postponement in July 2021 created significant practical challenges for the City. In order to meet the City's legislative unique legislative obligations, we were required to immediately produce and issue enrolment letters to all eligible non-residential voters. This took significant staff effort and resources. While the urgent nature of the situation was understood, the City would have appreciated more notice of the likely postponement of the election to enable it to better prepare for the consequent significant workload impact.
  - b. The NSWEC did not immediately clarify with councils the final estimate cost for running the election or what additional costs would be occurred as a result of the election's postponements, leaving some level of uncertainty as to the financial impacts of these events.
  - c. The NSWEC chose not to use the Sydney Town Hall as an early voting centre. Sydney Town Hall has traditionally been one of the state's largest polling places, offering voters from across all NSW LGAs the opportunity to vote early in person. Minimal messaging was created by the NSWEC to communicate this change. This City chose to create its' own promotional materials to ensure voters who attended Town Hall were directed to venues

where NSWEC had established polling places nearby. Members of the public attended Sydney Town Hall throughout the pre-polling period and on the day of election, indicating confusion in the community and subsequent inconvenience for voters.

- d. The failure of iVote on election day impacted the City's non-resident voters. The City had encouraged its' non-residents to use iVote as a more efficient option than postal voting. All non-residents are by definition enrolled to vote outside the City of Sydney LGA, so they needed a means of voting remotely.

### **City of Sydney Non-Residential Voters**

1. Whilst it is compulsory for all City enrolled non-residents to vote, there is no legislative clarity on how the NSWEC should exercise its discretion in relation to the issue of fines for failure to vote in relation to the City's non-residents.
2. In the lead up to the election, the NSWEC serviced the City's non-residents in the same manner as non-residents from other LGAs who are not compelled to vote.
3. NSWEC offers services to residents to reduce the likelihood of not voting, yet not for non-residents.
  - a. The automatic election reminder service did not include non-residential details. Therefore, a non-resident of the City was reminded of their local election, but not of their obligation to vote as a non-resident in the City's election.
  - b. Existing silent and general post voters (who receive postal votes automatically) had to request their non-resident postal votes.
4. As a result, non-residents may have been unaware they had to vote because:
  - a. The requirement to vote in elections as a resident has been well socialised over decades, in contrast to the compulsion to vote as a non-resident of the City, which has only existed for the past two City elections. Well over 50% of the City's non-residents had not been required to vote as non-residents before 2021.
  - b. The City is required to include entitled non-residents on its draft rolls for verification by the NSWEC whether or not we hold accurate contact details.
  - c. Contact details for company officer nominees, sourced from ASIC, can be outdated.
  - d. Any non-residents enrolled and/or living outside NSW, if they did not receive or read the City's communications, would be unlikely to know a NSW local government election was happening as the NSWEC media campaign was exclusively directed at NSW residents.
5. After the election, non-residents were treated in the same manner as residents, in many cases less leniently (we believe) in relation to the issuing of failure to vote notices and fines. Issues identified by the City in relation to these processes include the following:
  - a. Inconsistency by the NSWEC in the enforcement of failure to vote provisions.
    - i. Residents who were overseas were excused as the NSWEC assumed they would be unaware they had to vote, yet non-

residents who also indicated that they were unaware they had to vote were fined.

- ii. There was little consistency relating to which excuses were accepted and not accepted by the NSWEC, in some cases fines were even re-funded, without apparent clarity as to the reason.
- b. The process generated significant in-bound communications to the City (up to 400 contacts) as the NSWEC continued to refer any City non-residents who contacted them to the City, even though we were not able to excuse them. This only frustrated the customers. The City is aware of at least one complaint has been escalated to the NSW Ombudsman and the City is assisting that agency with information as it is requested.
- c. The NSWEC informed the City they were holding fast to [section 286 of the Local Government Act 1993 \(NSW\)](#) stating voting is compulsory for all eligible Australian citizens in Local Government elections. The NSWEC chose to interpret as: 'it is up to the individual to know their responsibility and to understand their voting requirements'.
- d. Our understanding is that non-voters can be excused [under section 314 of the Local Government Act](#) where the Electoral Commissioner is satisfied that they were '*unable to vote for any other reason acceptable to the Electoral Commissioner*'.
- e. To ensure a consistent approach the City would welcome greater clarification of what these other reasons might be.
- f. In any reasonable person test, we would hope that the reasons given above, such as stating they did not know their responsibility or understand their voting requirements, would be acceptable excuses.

### **Cost for Maintaining the Non-Residential Register**

To meet its obligation to produce a non-residential roll for each local government election, the City has to build and continues to maintain a bespoke customer database. The operational maintenance of the Register is significant, and the City is the only local government authority required to maintain such an operation, between and leading to each election.

The total estimated operational cost for maintaining the non-residential register is \$1.063M per financial year where there is no election and \$1.467M in the year prior to an election. This includes staff, system support, stakeholder engagement and data verification costs.

Due to the election's postponement the City incurred an additional \$120k costs to cover additional staff, engagement, and communications costs.

### **Legislation Changes**

The City has identified a number of issues and limitations with the legislative provisions of the [City of Sydney Act 1988](#) relating to the obligations to maintain a register of electoral information of those with potential entitlement to vote as a non – residents.

These issues include a lack of clarity around information which can and should be provided to the City by the NSW Electoral Commissioner.

Recommended changes to the legislation have been raised on multiple occasions with the Minister of Local Government and the Office of Local Government.

Below (Appendix 1) are the City's recommended legislative changes that would enable the City to fully comply with its legislative obligation in relation to the non-residential register under the City of Sydney Act 1988.

Should you wish to speak to a Council officer about this submission, please contact Maria Pavlides, A/ Manager Council Elections, by telephone on \_\_\_\_\_ or by email at \_\_\_\_\_

Yours sincerely

**Monica Barone**  
**Chief Executive Officer**

**APPENDIX 1:****City of Sydney Non-residential Register  
Required Legislative Changes***(All issues have been raised with the Office of Local Government)*

	Issue	Change required to resolve	Impact/outcome of change
1	It is impossible to keep the Register accurate at all times as required in the legislation.  Note that there is no such obligation on the CEO of the City of Melbourne under the City of Melbourne Act 2001 (VIC) or on the NSW Electoral Commissioner under the Electoral Act 2017.	Accuracy of register and rolls should be subject to a <i>best endeavours or genuine efforts</i> test and not absolute.  [City of Sydney Act 1988 s 18D(4)]	This would enable the City to meet its obligations under the legislation. All past & planned activities are considered the City's best endeavours to maintain the Register.
2	It is impossible for the City to meet legislated requirements for by-elections.	Timing requirements for a City of Sydney by-election are amended to ensure the City can meet its obligations under both the City of Sydney Act 1988 and the Local Government Act 1993. A minimum of six months would be required from a casual vacancy occurring to the by-election. Alternatively, change enrolment letter and occupier/ratepaying lessee requirements for by-elections.	The City would be able to meet its obligations in terms of notifying applicants about the election date and of their requirement to vote at the upcoming election.
3	Corporation entitlement is unclear.	Include a definition of a corporation within the Act.  [City of Sydney Act 1988 s 14]	There would be clarity in relation to the entitlement status of entities such as incorporated associations, trade unions, statutory corporations etc.
4	In the case of occupiers and ratepaying lessees, the current wording of the requirement to answer questions can only be applied to persons who the City already knows are occupiers or ratepaying lessees.  The City cannot penalise persons who it believes are occupiers or ratepaying lessees if they do not respond to requests for information because, under the existing legislation, the City cannot know whether persons meet the criteria to be ratepaying lessees or occupiers until they have responded.	That the City can require any person whom it believes <u>may be</u> a ratepaying lessee or an occupier of rateable land within the City of Sydney to answer enrolment questions.  [City of Sydney Act 1988 s 18D(6)(b)]	The City will be able to issue penalty notices to those potential occupiers and ratepaying lessees who do not respond to requests for information.
7	References to <i>parcels</i> of land are meaningless and confusing.	Replace instances of <i>parcels</i> of land with <i>rateable</i> land.  [City of Sydney Act 1988 section s 14(4)(a)].	Certainty around entitlement.

	Issue	Change required to resolve	Impact/outcome of change
8	The NSW Electoral Commission is required to give the City the <i>age</i> of entitled persons but it only records their dates of birth.	Replace <i>age</i> with <i>date of birth</i> in the City of Sydney Act 1988 s 18D(8)(a)	This change would enable the NSW Electoral Commission to comply with the intent of the legislation and supply dates of birth where required.
9	The opportunity for vote stacking where corporations and natural persons jointly own/occupy/lease rateable properties.	Insertion of an overriding clarifying provision that a maximum of two natural persons (whether individuals or corporation nominees) can ever be enrolled in relation to ownership, leasing or occupation of the same piece of rateable property.	This will give clarity and ensure there can be no vote stacking as the City will not be required to deem an unlimited number of natural persons where they own, lease or occupier jointly with one or more corporations and no nomination has been made.
10	The City is not provided with explicit protection from breaches of privacy legislation.	Exemption from the provisions of the Privacy and Personal Information Protection Act 1998 by insertion of a provision equivalent to s 44(3) of the Electoral Act 2017.	This would bring City provisions into line with those applying to the NSW Electoral Commission.
13	Lack of a workable appeal process for inclusion or omission from the rolls.	Amend Local Government Act 1993 s 303(1) and Local Government (General) Regulation 2021 s 281 to enable an appeal process with a practical outcome.	A useful appeal process.
14	There is a lack of clarity regarding who should receive an enrolment letter.	Replace: <ul style="list-style-type: none"> <li>believes <i>is entitled</i> with believe <b>will be entitled</b> in City of Sydney Act 1988 s 18E(2)(e) and</li> <li>believes <i>are entitled</i> with believe <b>will be entitled</b> in City of Sydney Act 1988 s 18E(3)(d)</li> </ul>	Clarity regarding who should receive an enrolment letter.
15	The NSW Electoral Commission is unable to verify any silent electors enrolled outside NSW. The Australian Electoral Commission will not share details of silent electors with NSWEC. In addition, the NSW Electoral Commission send apparent failure to vote notifications to the entitlement address of non-residents enrolled outside NSW which are unlikely to be received by the non-resident within the time constraints (if at all). The outcome of this process is unknown.	Remove <i>or an election of members of the Commonwealth House of Representatives</i> from the City of Sydney Act 1988 ss 15(2), 16AB(1)(e), 16AC(4)(b), 16B(2)(c), 18B(2)(b), 18B(3)(a), 18D(8)(c) or add that interstate silent electors cannot be included	Improved compliance by NSW Electoral Commission and the City.

	Issue	Change required to resolve	Impact/outcome of change
16	There is lack of clarity regarding the information that can be provided to the City by NSWEC.	<p>Electoral Act 2017 s 50 Provision of enrolment information to other persons</p> <ul style="list-style-type: none"> <li>• <b>Add a section:</b></li> </ul> <p>Council of the City of Sydney. The Electoral Commissioner must provide to the Council of the City of Sydney, free of charge, a list specifying enrolled persons and their particulars for the State of New South Wales in an electronic form determined by the Commissioner</p> <ul style="list-style-type: none"> <li>(a) once a month</li> <li>(b) particulars of each elector to include enrolled given name, enrolled family name, date of birth and enrolled address and any other particulars as determined by the Electoral Commissioner.</li> </ul> <p>Electoral Act 2017 s 51 Use of enrolment information</p> <ul style="list-style-type: none"> <li>• <b>Add a section:</b></li> </ul> <p>The permitted purposes in relation to the Council of the City of Sydney are:</p> <ul style="list-style-type: none"> <li>(a) any purpose in connection with ensuring the City of Sydney non-residential register remains accurate as required in section s 18D of the City of Sydney Act 1988.</li> </ul>	Ensures sufficient information is provided to the City to enable accurate and efficient maintenance of the register and clarifies the level of information that can be provided by NSWEC.
17	Corporation groups can exploit loopholes in the legislation by appointing secretaries and directors just prior to an election	Include a definition of secretary and director of corporations registered with ASIC to capture only genuinely appointed corporate officers.	Will limit the capacity for attempted or actual stacking of the non-residential roll.