

**Submission
No 11**

INQUIRY INTO CONDUCT OF ELECTIONS IN NEW SOUTH WALES

Organisation: NSW Labor

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15 July 2022

The Hon Robert Borsak MLC
Chair
Select Committee on the Conduct of Elections in NSW
By Email: elections@parliament.nsw.gov.au

Dear Chair

Thank you for the opportunity to make this submission to the Inquiry into the conduct of elections in New South Wales.

In making this submission, NSW Labor acknowledges the unprecedented challenges involved in conducting an election during a global health pandemic.

We recognise the efforts of the NSW Electoral Commission in working to protect the health and safety of all involved in the 2021 local government elections and the February 2022 state by-elections for Bega, Monaro, Strathfield and Willoughby.

Our submission makes a number of recommendations with a view to ensuring that the conduct of future elections, especially the 2023 state election, are conducted in the most efficient, fair and safe manner possible.

Once again, thank you for the opportunity to make this submission.

Yours sincerely

Dominic Ofner
Assistant General Secretary

Recommendations

Recommendation 1: NSW Labor recommends that the restrictions implemented during the 2021 local government elections on candidate and volunteer activity not be implemented in future elections.

Recommendation 2: NSW Labor recommends that postal ballot packs are only sent to registered postal voters and those who have applied for a postal vote, not to all enrolled voters as was the case at the February 2022 by-elections.

Recommendation 3: NSW Labor recommends that the NSW Electoral Commission increase the volume of translated materials they publish and advertise, particularly relating to polling place locations and opening hours, and formal voting requirements.

Recommendation 4: NSW Labor recommends that the NSW Electoral Commission increase their advertising spend focused around notifying people that elections are being held, particularly in the digital space, and particularly in languages other than English.

Recommendation 5: NSW Labor recommends that iVote not be utilised for future elections until the Electoral Commission and the Parliament are confident that the operational issues with the iVote system are resolved.

(a) The COVID-19 restrictions that were in place for the conduct of these elections and any implications that had for the conduct of the elections

At the 2021 NSW Local Government Elections, the NSW Electoral Commission implemented a number of restrictions on the volunteers of candidates and parties to curb the spread of COVID-19. We recognise and appreciate the extensive efforts the NSWEC went to in order to protect the health of candidates, volunteers, voters and election staff through these restrictions.

A number of operational issues arose during the course of the campaign from these restrictions.

Firstly, these rules, and in particular the 100m handing out rule, were applied differently from LGA to LGA and even from booth to booth within LGAs.

Secondly, with the distribution of material by volunteers being prohibited within 100m of the entrance to the voting premises, there was no allowance for parties and candidates to leave a pile of their How-to-Votes at or near the entrance to the voting location, to allow voters to take one in a COVID-safe manner.

Finally, there was the restriction on touching or moving any signage between 7am and 7pm. This restriction placed a significant burden on candidates and volunteers, particularly during the early voting period when booths were only open between 9am and 5pm. It meant that candidates and volunteers had to arrive more than two hours before voting began, and leave more than two hours after it ended.

Another very practical consequence of this rule was that signage that fell down or was blown over, on a strict reading of the rules that was applied in several LGAs, was unable to be put back up leading to the creation of tripping hazards.

NSW Labor notes that these restrictions did not apply to the four state by-elections in February 2022.

Recommendation 1: NSW Labor recommends that the restrictions implemented during the 2021 local government elections on candidate and volunteer activity not be implemented in future elections.

(b) The issuing of postal votes in both elections to all registered voters in the four by-elections and the rationale for doing so, the administrative arrangements and processes employed to support this, and any implications for the conduct of the elections

NSW Labor recognises the rationale for the issuing of postal voters to all registered voters in the February 2022 state by-elections, especially as the campaigns coincided with the peak of the Christmas/New Year Omicron outbreak.

At the same time, such a significant change to the conduct of an election required far greater consultation with affected parties, candidates and other relevant stakeholders than what took place. This is necessary to work through potential unintended consequences and challenges.

Likewise, we were concerned at the prospect that an unprecedentedly high number of voters could have ballot papers in their possession after 6pm Saturday 12 February. While there is always a possibility that a postal voter could fraudulently complete their postal vote after an election, the nature of this by-election posed unique risks in this regard. There is no reason or evidence to suggest this concern was founded, but we believe it is something that should be considered if the number of people voting by post continues to increase in future elections.

The high number of people voting by post in the by-elections created a significant time lag between the close of voting and the counting of votes. Postal votes were not counted until Saturday 21 February and even then, they were counted in increments of 10,000 votes. While we again accept the significant logistical challenges involved in running this kind of election, waiting such a long period of time for 40-50 per cent of votes to be counted should be avoided as much as possible.

Recommendation 2: NSW Labor recommends that postal ballot packs are only sent to registered postal voters and those who have applied for a postal vote, not to all enrolled voters as was the case at the February 2022 by-elections.

(c) The adequacy or otherwise of material alerting voters to the upcoming by-elections and explanatory information provided in languages other than English

While attempts were made to alert voters to the upcoming by-elections, it is our experience that this notification could have been better.

This was particularly true in the case of the Strathfield by-election, perhaps influenced by the diversity of the electorate's languages and the lack of a strong media market. This compares to the regional by-elections in Monaro and Bega that respectively have various widely circulated local papers, television and radio channels.

As a result, many Strathfield electors were unaware that an election was being held at all, and even fewer having a strong understanding of when and where to vote, and how to vote formally.

These challenges about voter education were then exacerbated by limited translated voting instructions included in the postal voting packs that were sent to all electors.

It is our experience that there was widespread confusion in the electorate of Strathfield, particularly among those with lower levels of English proficiency, about why they had received a postal voting pack, and what they had to do to vote formally.

The onus then fell onto political parties and candidates to play a critical education role about voting procedure. While political actors will always play some role in educating the public about voting procedure, the limited official instructional information for the public to rely upon should be avoided in future.

Recommendation 3: NSW Labor recommends that the NSW Electoral Commission increase the volume of translated materials they publish and advertise, particularly relating to polling place locations and opening hours, and formal voting requirements.

Recommendation 4: NSW Labor recommends that the NSW Electoral Commission increase their advertising spend focused around notifying people that elections are being held, particularly in the digital space, and particularly in languages other than English.

(d) The use of the iVote system in the local government elections, the performance of that system and its implications, and future arrangements for use of the iVote system, including the possibility of a replacement software system

iVote has now been in use in NSW State and Local Government elections since 2015. Since the inception of iVote we have been broadly supportive of the use of technology to facilitate access to voting.

In every election that it has been used, it has been hampered by operational issues including access problems for voters and temporary outages of the system at peak periods. During recent Local Government elections, these problems became so severe that the NSW Supreme Court ruled that Singleton, Shellharbour and Kempsey local government elections be declared void.

These operational issues now risk diminishing the public's confidence in the conduct of elections in NSW.

NSW Labor welcomes the decision of the NSW Electoral Commission to suspend the use of iVote for the upcoming state election.

Recommendation 5: NSW Labor recommends that iVote not be utilised for future elections until the Electoral Commission and the Parliament are confident that the operational issues with the iVote system are resolved.