

**Submission  
No 12**

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

**Organisation:** Kempsey Shire Council

**Date Received:** 15 July 2022

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Ref: D21/22495

15 July 2022



The Director

Select Committee on the Conduct of Elections in New South Wales

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Dear Sir/Madam,

**RE: INQUIRY INTO THE CONDUCT OF ELECTIONS IN NEW SOUTH WALES  
SUBMISSION FROM KEMPSEY SHIRE COUNCIL**

Kempsey Shire Council welcomes the opportunity to make a submission to the select committee on the conduct of elections in New South Wales.

As a local council in New South Wales, Kempsey Shire Council's ratepayers went to the polls on 4 December 2021, in an election significantly disrupted by the impacts of the COVID-19 pandemic.

During and since this time Council has heard from its community, candidates and councillors regarding their experiences participating in this election, and this submission reflects that feedback which Council has received.

Council also understands that Local Government NSW (LGNSW), as the peak body for local government in NSW, will be making a submission to the inquiry and would like to express its support for LGNSW's position.

Deferral of Elections

In response to the COVID-19 pandemic the planned local government election was deferred twice, first from 4 September 2020 to 4 September 2021, and then a second time to 4 December 2021.

This had several impacts for Council, and incumbent councillors at that time.

Firstly, some of Kempsey Shire Council's councillors had already determined they would not stand again at the elections to be held 4 September 2020. The deferral of the election unilaterally extended their appointments without consultation. Whilst there was the opportunity for such councillors to resign without the necessity of a by-election under these circumstances, individuals who were committed to the local community were reluctant to do so, and harboured concerns about the position that it would leave Council in if several councillors chose to do the same.

Secondly, this extension saw councillors facing community criticism that their ongoing tenure was in some way illegitimate, that they no longer held moral authority to make decisions, and that Council should operate in a caretaker mode for an extended period avoiding making decisions with any significant consequences.

Thirdly, the deferral of elections had significant impact on Council's integrated planning & reporting (IP&R) processes. The IP&R cycle is geared to operate around the term of an elected Council,

including review of the community strategic plan, adoption of a four-year delivery program, and then operational plans for each year within that delivery program.

Council is still required to undertake the usual four-year planning cycle around what is now a term of less than three years. Due to the timing of a December election, with a requirement for adoption of these plans by the end of the following June, newly elected councillors are left feeling particularly disengaged by the process.

#### COVID-19 Restrictions at Polling Places

Two significant restrictions were placed upon candidates and their campaign workers at polling places. These were the direction that how-to-vote material may not be handed out within 100m of polling places, and the restriction that posters and signage could only be erected well outside of polling place hours and could not be removed or adjusted until well after closure.

Council was approached for advice by many candidates who were unable to understand either the application of COVID-19 restrictions at polling places, or the rationale for them.

Whilst significant effort was made to communicate these changes to candidates and council's many voters seemed unaware of these changes until they attended a polling place.

Council has received feedback from both voters and candidates that the lack of ability to hand-out how-to-vote material significantly disenfranchised certain voters who were expecting the material to be available, and voters who were older, disabled or who had literacy challenges were particularly impacted by this decision. Council has also received reports that at some polling places this resulted in particularly strong approaches from campaign workers looking to secure votes for their candidates.

Candidates reported not understanding how the 100m was measured, whether it was from the entry to the polling place, the property boundary, or some other point.

#### Postal Voting

Council supports the use of postal voting to offer greater convenience and accessibility to voters to ensure that all eligible voters can participate in the electoral process whilst recognising that there needs to be adequate protection of the integrity of our elections.

However, the impact of delayed postal deliveries substantially impacted the timeframes for declaration of the December 2021 local government elections increasing the period of uncertainty for Councils, candidates and voters.

It is important to recognise that the *Local Government Act 1993* includes a number of powers that an elected body may not delegate to the Mayor, General Manager or any other person. During the period between an election and its declaration a council is unable to exercise these powers.

Every effort should be made to minimise the amount of time between election day, and the declaration of that election.

#### iVote

Kempsey Shire Council was significantly impacted, financially and operationally, by the issues experienced with the iVote platform during this election.

On 5 April 2022, the NSW Supreme Court decided to void the elections of Kempsey Shire Council, Singleton Council and the City of Shellharbour Council (Ward A). This followed a significant period of

upheaval for Council, those councillors that were purported to have been elected on 4 December 2021, and the other candidates.

Council acknowledges that the New South Wales Electoral Commission had already been seeking additional funding for the iVote platform.

The impact on those councillors named as defendants in the proceedings was significant. Some candidates faced unwarranted accusations and harassment that they had in some way been involved in commencing these proceedings or were attempting to tamper with the electoral process.

Furthermore, those candidates elected at that election questioned their own eligibility to participate in Council's decision making, and the validity of any decisions that they made.

The Supreme Court proceedings, whilst necessary, diverted Council's limited resources from the usual day to day business of Council.

Council had undertaken a substantial induction program for the elected councillors. This represented a substantial investment of ratepayers' funds. Two of the candidates elected on 4 December 2021 have chosen not to stand in the upcoming election to be held on 30 July 2022. Others may not be re-elected. This induction effort will need to be undertaken a second time at further cost.

The withdrawal of the iVote platform for elections conducted by the NSW Electoral Commission in the immediate future represents a serious step backwards for the enfranchisement of some voters, in particular the vision impaired.

Council supports the use of Technology Assisted Voting (TAV), including Internet voting, however, there needs to be sufficient resourcing and safeguards in-place to protect the integrity of the electoral process.

Council would also support regulatory reform in this area to avoid the need for similar court action in future elections where other councils to find themselves in similar circumstances.

### Conclusion

Once again, Council thanks the committee for the opportunity to make a submission to the enquiry.

Council consents to the committee publishing this submission.

Yours faithfully

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Craig Milburn  
GENERAL MANAGER