

**Submission
No 19**

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

Name: Cr Linda Scott

Date Received: 14 July 2022

Mr Robert Borsack MLC
Chair, Select Committee on the Conduct of Elections in New South Wales
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Committee Members,

Re: Submission into the Inquiry into the Conduct of Elections in New South Wales

Dear Committee Members,

Thank you for the opportunity to make a submission to the Select Committee on the Conduct of Elections in New South Wales, on its Inquiry into the Conduct of Elections in New South Wales ("Select Committee"). The terms of reference are attached below.

I make this submission personally, as a Labor Councillor elected to the City of Sydney Council, regarding the local government elections held on 4 December 2021, and specifically address items (c), (d) and (e) of the Terms of Reference.

This submission makes a number of practical recommendations to address the considerable problems that exist in the laws which prescribe how elections for the City of Sydney are run. In summary, the applicable laws cannot be upheld, some voters are not advised of their obligation to vote (yet are fined if they do not vote) and there is a potential corruption risk.

These issues arise from recent amendments made to the City of Sydney legislation. Only by revoking these amendments and harmonising the City of Sydney's election process with that of other councils in NSW, can these significant issues be addressed.

Terms of Reference:

The Select Committee be established to inquire into and report on the conduct of elections under COVID-19 conditions by the NSW Electoral Commissioner, including

the local government elections held on 4 December 2021 and the four New South Wales by-elections held on 12 February 2022, with reference to the appropriateness of similar settings in a general election, including:

(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,

(b) the issuing of postal votes in both elections to all registered voters in the four New South Wales 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,

(c) the adequacy or otherwise of material alerting voters to the upcoming by-elections and explanatory information provided 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, and

(e) any other related matter.

I ask the Committee to consider making the following recommendations:

Recommendation 1:

That the Committee notes the City of Sydney Council's concerns about the City of Sydney Business and Non-Residential Roll.

Recommendation 2:

That the Committee notes the corruption risks in other jurisdictions, such as Victoria, and notes they may be exacerbated under the unique City of Sydney electoral roll requirements.

Recommendation 3:

That, because of Recommendations 1 and 2, the Committee calls on the NSW Government to commit to revoking amendments to the City of Sydney legislation to ensure that, prior to the next City of Sydney elections, due to be held in September

2024, the City of Sydney's local government electoral system aligns with all other NSW local government electoral systems.

Recommendation 4:

That the Committee calls on the City of Sydney to forgive all outstanding fines for those on the Residential and Non-Residential Register and Electoral Rolls, where they have the power to do so.

Key limitations currently being faced by the City of Sydney when executing its Local Government Elections

The existing legislation is stringent and has been conducive to several serious inadequacies in executing Local Government Elections within the City of Sydney.

Key issues and limitations of the current electoral voting system include:

- (a) difficulty in keeping register accurate at all times as required by legislation.
- (b) it is impossible for the City to meet legislated requirements for by-elections.
- (c) corporation entitlement is unclear.
- (d) 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.
- (e) nominees (deemed or otherwise) may not know that they are required to vote.
- (f) the NSW Electoral Commission will not give the City the age of entitled persons as it only knows their date of birth.
- (g) voting is not compulsory for all other NSW Councils' non-residents.

(h) the opportunity for vote stacking where corporations and natural persons jointly own/occupy/lease rateable properties.

(i) the City is not provided with explicit protection from breaches of privacy legislation.

(j) lack of a workable appeal process for inclusion or omission from the rolls;

(k) there is a lack of clarity regarding who should receive an enrolment letter.

(l) the maintenance of the register is complex and challenging. The legislation is impractical for the City to comply with in places; and Council 27 June 2022

(m) the City must rely on Australian Securities and Investments Commission (ASIC) data for company officer mailing addresses, which is often incorrect.

(n) The maintenance of the Register is complex and challenging. The legislation is impractical for the City to comply with in places.

(o) The City must rely on ASIC data for company officer mailing addresses, which is often incorrect.

Impact of the City of Sydney Act (NSW) 1988

The City of Sydney Council and its Chief Executive Officer are currently bound by the City of Sydney Act (NSW) 1988. The requirements of this Act requires the City of Sydney to keep and maintain an accurate register of all persons with possible entitlements to vote at City Local Government Elections as non-residents, in addition to using the register to produce up-to-date electoral rolls of entitled non-residents for verification by the NSW Electoral Commissioner.

These obligations are continuous, and the Chief Executive Officer must maintain and regularly revise the register to ensure it is accurate. The City of Sydney reviewed the establishment of the non-residential register and the delivery of the non-residential rolls for the Local Government Election on the 10th of September 2016, noting a large range of significant difficulties with the implementation of these obligations. In short, the City resolved that the legislation was not able to be upheld, in particular the obligations relating to continuous obligations to keep and maintain an accurate register of all persons with possible entitlement

to vote at City local government elections as non-residents as well as use the register to produce up-to-date electoral rolls of entitled non-residents for verification by the NSW Electoral Commissioner.

In 2020, the City of Sydney it was deemed that the production of non-resident electoral rolls on the 4th of September 2020 was a new requirement following changes to the Electoral Funding Act (NSW) 2018. In 2020, the City of Sydney conducted a review to identify good practice and potential improvements to determine a strategy to maintain an accurate Register as required by State legislation.

In November 2021, the NSW Electoral Commission requested a meeting with the City and the Office of Local Government post-election to review current issues with the legislation, and a range of key issues of concern were identified, where multi-corporation groups with limited eligible company officers have added new directors and company secretaries prior to the election, possibly to maximise their voting rights.

The City has notified the Australian Securities and Investments Commission (ASIC), the Office of Local Government and the NSW Electoral Commission of this practice, but it remains a possible and outstanding risk to the integrity of the current City of Sydney Act (1998) and, importantly, the integrity of City of Sydney elections.

Under this legislation, the City can issue penalty notices to persons who do not respond to requests for information. Currently, the position of entitled non-residents who live outside NSW remains unresolved and, given the significant numbers of people on the register who live outside NSW and, indeed, overseas, this inequity is unresolved.

Despite the City of Sydney's best efforts, and several million dollars of public funding each year, maintaining this an up-to-date and accurate register is extremely difficult and proves challenging due to the limitations created by the legislation.

Non-residential voters

The City of Sydney can issue penalty notices to persons who do not respond to requests for information. Additionally, residents who own properties within the City of Sydney but are not told about these elections and still can receive fines for failing to vote.

In May 2021, the NSW Electoral Commission confirmed that some services they provided to residents would not be offered to the City's non-residents, despite both groups having the same compulsory voting

requirements. Similarly, election reminder services would not include non-resident details. Feedback to City staff received during the 2016 election suggested that non-residents were surprised and frustrated by this different level of service.

As of May 2021, the issue remained that the first time some non-residents who were enrolled outside NSW would learn of their obligation to vote when they received an Apparent Failure to Vote notice. I have personally received many complaints about this lack of notice, with overseas and interstate Australians first learning of their obligation to vote in City of Sydney elections when receiving a fine.

Currently, the position of non-residents who live outside of NSW and their rights within this system remains unresolved and highly problematic for the City of Sydney, considering the stringent expectations to maintain the registry correctly.

Based on data provided in 2020 by the NSWEC they verified non-residents who are enrolled outside of NSW, with this data contributing to an increase in the non-resident rolls by 8.5 percent. As of November 2020, non-residential electors now represent over 27 percent of the total roll.

This lack of transparency regarding the voting obligations of City of Sydney property owners, many of whom live interstate or overseas, is unreasonable and has caused significant financial impositions on unaware property owners due to the stringency of the City of Sydney Act 1988 and its obligations that are exclusive to this Council and its local government area.

Concerns From Other Jurisdictions

Furthermore, a range of concerns from other jurisdictions may also apply to the City of Sydney voting system.

For example, the Victorian Government has identified a significant corruption risk in their Victorian local government elections, conducted via postal vote only, whereby real estate agents are voting on behalf of tenants (see <https://www.lgi.vic.gov.au/autumn-2022-local-government-integrity-matters/twenty-real-estate-agents-get-post-election-warning>).

This risk is exacerbated under the current City of Sydney electoral provisions, as large numbers of non-residential electors do not know they are on the City of Sydney Electoral Register, or the Electoral Roll, and are therefore unaware someone may be voting on their behalf.

Currently, it is impossible to understand to what extent this possible corruption risk is a factor in voting in the City of Sydney elections.

Thank you for your consideration of these matters. Please do not hesitate to contact me at
should you have further questions or wish to seek further detail about this
submission.

Kind regards,

Councillor Linda Scott.
Labor Councillor, City of Sydney Council
14th July 2022