Submission No 38

INQUIRY INTO LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2025

Organisation: Australian Labor Party (NSW Branch)

Date Received: 7 July 2025

Level 9, 377 Sussex Street, Sydney NSW 2000
PO Box K408 Haymarket NSW 1240
T: [02] 9207 2000 **F:** [02] 9264 2574
E: nswlabor@nswlabor.org.au
www.nswlabor.org.au ABN 36 192 855 036

7 July 2025

The Hon Emily Suvaal MLC
Chair
Standing Committee on State Development
Parliament House
SYDNEY NSW 2000

By email: state.development@parliament.nsw.gov.au

Dear Chair

Inquiry into the Local Government Amendment (Elections) Bill 2025

Thank you for the opportunity to contribute to the Inquiry into the Local Government Amendment (Elections) Bill 2025.

NSW Labor supports the *Local Government Amendment (Elections) Bill 2025*, which is designed to ensure that private electoral services providers can no longer administer an election, poll or constitutional referendum of a council in New South Wales.

The previous Liberal-National Government changed the law to allow NSW councils to contract private providers for election services instead of the NSW Electoral Commission (NSWEC). This was part of an ideological push by the Liberal-National Government to privatise as many government functions as possible, with complete disregard for the public policy implications.

It is imperative that the Parliament and political participants work to strengthen our democracy and reaffirm the integrity of public office elections. A well-resourced public elections provider is critical to this.

The conduct of elections in New South Wales should be the sole responsibility of the NSW Electoral Commission (NSWEC). The NSWEC is an independent statutory authority with a clear mandate to conduct elections impartially and transparently.

Entrusting private, for-profit providers with public office electoral processes poses significant risks to the integrity, transparency, and public trust in democratic institutions. Private providers operate under commercial imperatives, which, at the very least, creates a perceived conflict with the principles of electoral fairness.

Even the appearance of bias or profit-driven motives may erode public confidence. The NSWEC is subject to public oversight, parliamentary scrutiny, and freedom of information laws—safeguards that do not apply to private companies. This creates a significant accountability gap. Contracts with private providers may be commercial-in-confidence, limiting public scrutiny. There are inherent limitations on the perception of independence only reinforced by the discrepancies that exist in the manner in which private providers deliver public reporting of their election processes and outcomes.

Relationships between providers and their clients, elected councillors, provide a clear conflict of interest. The interest of the incumbent is aligned with the financial interest of the provider. This could be perceived to lead to outcomes with reinforce incumbency. Conversely the NSWEC staff receive no direct benefit from the provision of elections.

The effect of any adverse feeling about the functions of democracy has a corroding effect on the populous willingness to participate in civil society and broader impacts on societies willingness to progress difficult reform. As observed by the Organisation for Economic Co-operation and Development (OECD):

> *"[T]his is a critical priority, since public trust is a good indicator of the evolution of the relationship between institutions and the people they serve; moreover, the erosion of trust undermines governments' ability to implement effective policies."*[1]

As witnessed in the USA both through the Dominion Voting Systems fiasco during the 2020 US Presidential Election and 2000 United States presidential election hanging chad controversy, the effect of improperly and non-uniform election processes can have broader civil impacts and erode trust.

Whilst local government does not contain the multitudes and stakes of a US presidential election; it does have a direct impact on the lives of every New South Welshman. 213,500 workers are employed in local government in NSW. It provides infrastructure, public health amenities, aged and child care, community development programs, tourism and of course property development.

Elections is also a specialisation, one which our public elections providers like the NSWEC have decades of experience in. As the Northern Beaches Council 'Submission on Review of Local Government Election Costs' to IPART notes:

> *"As local government elections are infrequent, this limits the opportunities for private providers to gain experience and test their processes, systems, technology and in particular human resources, as there are particular skill sets required to manage complex functions like elections."*[2]

---

[1] https://www.oecd.org/en/publications/drivers-of-trust-in-public-institutions-in-australia_28a876c2-en.html

[2] https://www.ipart.nsw.gov.au/sites/default/files/documents/online-submission-northern-beaches-council-anonymous-19-jul-2019-154326812.pdf

Experience during the 2024 NSW Local Government Election

From NSW Labor's own experience, the internal processes of for-profit providers are ambiguous, poorly defined, and lacking clarity. They appear to be ad-hoc and not always based in law. Where errors or misconduct occur, recourse and redress is limited. We observed procedural irregularities, and perceptions that the company's commercial interests may conflict with the impartial administration of elections.

NSW Labor observed in the recent Local Government elections a lack of transparency, poor engagement with political participants, clear conflict of interests and poor conduct of pre-poll and polling day where lines were excessive, polling locations were under resourced and closed.

Local Government NSW in their 2019 submission to IPART in support of private providers like Australian Election Company acknowledged that *"Complexity of election services"* made it difficult for private providers, stating that there are not the resources available for private providers to *"successfully [deliver] a local government election."*[3]

During the 2024 Local Government elections it was revealed that the Australian Elections Company, a private provider contracted to run the Liverpool and Fairfield local government elections, may have breached NSW electoral laws.

These two councils were the only ones in Sydney to opt out of using the NSW Electoral Commission, instead engaging the private contractor to manage their elections.

Multiple electors reported being able to obtain ballot papers in ways that appear to contravene electoral regulations. Specifically, voters who indicated they would be overseas on polling day were able to collect postal vote applications—and were then handed ballot papers directly, rather than having them sent through the mail as required.[4]

Under the NSW local government regulation, postal vote packages must be delivered or sent to the elector's nominated address. For non-resident voters, the law explicitly states that these materials must be sent to the residential or preferred postal address listed in the application.

The Australian Elections Company has admitted fault, acknowledging that its "original applied interpretation" of the regulation was incorrect. The company confirmed that postal voting materials should only be issued via the postal service, not handed out in person.

The risk to reward is too great to consider that private for-profit providers have any

---

[3]https://lgnsw.org.au/common/Uploaded%20files/Submissions/IPART_review_of_the_costs_of_local_government_elections_-_issues_paper_-_DraftSubmission.pdf

[4] https://www.smh.com.au/politics/nsw/this-private-company-is-running-two-council-elections-it-may-have-breached-the-law-20240903-p5k7j4.html

place in conducting elections. They lack infrastructure, expertise, and public trust to conduct elections efficiently and securely, when compared to the NSWEC or Australian Electoral Commission. The conduct of elections must remain a public function.

The NSW Electoral Commission is best placed to ensure elections are free, fair, and trusted. Outsourcing to private providers like the Australian Elections Company introduces unacceptable risks to electoral integrity, transparency, and public confidence.

As the Northern Beach Council put succinctly:

> *"If Councils choose a private provider, the General Manager wears the risk and responsibility of delivering a valid election outcome. Given there is one private provider currently available to deliver election services… If a commercial provider becomes unviable, and ceases operation, how will councils be able to conduct count back elections"*[5]

NSW Labor strongly supports amendments to relevant legislation to prohibit private providers from conducting public elections in NSW and ensure all local government electoral processes are managed by the NSWEC.

Yours Sincerely

Dominic Ofner
General Secretary

[5] https://www.ipart.nsw.gov.au/sites/default/files/documents/online-submission-northern-beaches-council-anonymous-19-jul-2019-154326812.pdf

Case studies

Case Study 1 - 2023 Local Government Election – Fairfield City Council

NSW Labor had issues relating to authority to distribute material in the Fairfield local government area. The electoral material in question was issued a registration certificate as required.

NSW Labor was informed by the General Manager (GM) of Fairfield City Council that Mayor Frank Carbone contacted the (GM) complaining about the material.

Subsequently, NSW Labor received a copy of the correspondence sent by the GM to Milan Kuban, the Returning Officer (RO) for Fairfield City Council, from the Australian Elections Company.

NSW Labor spoke with the Executive Assistant to the GM, who confirmed that the request had originated from the Mayor.

The RO, in a conversation with NSW Labor, confirmed that the GM was the reason a Notice of Intention was being issued. The candidate received the Notice at 2:25 pm on Sunday, 8 September. This notice prohibited distribution of the material in question.

NSW Labor spoke with the RO, whose primary concern was the use of the Council's logo without permission.

The RO informed us that there was no avenue for appeal.

Due to further correspondence from NSW Labor, the RO agreed to receive an appeal. The RO said it would be for the CEO of Australian Election Company to adjudicate the allowability of the material in question.

On Monday, 9 September, NSW Labor received a new correspondence from the RO stating that the new reason for the rejection was based on the use of the word "memo" on the material.

NSW Labor was informed that the RO had now determined that that the use of a publicly available PowerPoint presentation prepared by Fairfield City Council was not an issue, however the suggestion that it was a memo from Fairfield City Council was misleading. Therefore, the phrase had to be removed for the material to retain its registration certificate.

NSW spoke with the RO again, who explained that his decision was based on legal advice, which determined the document was not a memo.

NSW Labor requested a copy of this legal advice twice without response from the Australian Election Company.

NSW Labor heard from the RO again, who reiterated that the decision was based on the interpretation that a PowerPoint slide is not a memo. He stated, "Remove the

phrase MEMO FROM FAIRFIELD CITY COUNCIL on the flyer," but refused to clarify the distinctions used or provide the definition of a memo that informed the decision. The RO again stated there was no avenue for appeal.

As part of NSW Labor's correspondence with the Australian Election Company, we provided a detailed legal rationale supporting the eligibility of the material for distribution. At no point did the Australian Election Company engage with the substance of our argument. It was not until 11 September—four days later and just three days before the election—that the company, after seeking legal advice, reversed its decision.

Case Study 2 - Penrith City Council

Penrith City Council, having previously contracted the same private provider for their 2012, 2016, 2018 by-election, and 2021 elections, decided to engage the NSWEC for the local government elections in September 2024 due to cost concerns. In a report presented to the Ordinary Meeting of Penrith City Council on February 27, 2023, it was noted that:

> *Beyond the identified inherent risks associated by Council engaging an electoral services provider compared to the NSWEC, the report also highlighted the cost difference in contracting either provider. The estimated cost of contracting the NSWEC was $1,276,230 ex. GST, while the cost of the private provider was $1,475,387.02.*

Case Study 3 - Liverpool City Council

On March 1, 2023, Liverpool City Council made a decision to engage a private provider for its upcoming elections, bypassing the NSW Electoral Commission (NSWEC). This decision was taken without any community consultation and was made in a confidential session.

In contrast, Penrith City Council conducted its determinations in an open session only after a report detailing the costs and associated risks of a private provider compared to the NSWEC was provided. No such report was made public in the case of Liverpool.

The impact of the lack of consultation and public involvement in this significant decision should be carefully considered. It is worth noting that there is a general lack of awareness among the public regarding the possibility of local government elections being conducted by a private provider.

Appendix

Below are a list of publicly reported incidents involving the Australian Election Company

Example (a)

> *“At Liverpool, there was confusion over which polling booths were open. On Facebook, the council listed four "polling booths no longer proceeding", while also reporting long lines "at most polling booths due to demand".*
>
> *Of all 34 councils in Sydney, Liverpool and Fairfield councils are the only ones to have used a commercial election company rather than the NSW Electoral Commission to run their elections.*
>
> *Liverpool MP Charishma Kaliyanda, who is also a local councillor, described the situation as "completely unacceptable".*
>
> Sydney Morning Herald 15 September 2024

Example (b)

> *“[R]eports of three-hour delays at last Saturday's poll were unacceptable…. two- and three-hour delays at polling booths across Liverpool were not good enough and undermined efforts to make compulsory voting as seamless as possible. Voters also experienced confusion over the location of polling booths.”*
>
> Sydney Morning Herald 21 September 2024

Example (c)

> *“A private company handling two council elections in Sydney's south-west has conceded it may have breached NSW electoral laws, delivering Liverpool Council another headache as it grapples with the threat of suspension…*
>
> *The Australian Election Company has been engaged by Liverpool and Fairfield councils to run their September 14 polls, the only two councils in Sydney to use private contractors rather than using the NSW Electoral Commission.*
>
> *Labor Leppington MP Nathan Hagarty relayed "multiple reports from constituents" who were provided with methods of completing ballots for the September 14 poll which were "contrary to the [Local Government] Act"….*
>
> *Australian Election Company principal Richard Kidd said the company's returning officer had advised of two electors who were "provided personally delivered ballot material" to provide "the best possible service to the particular electors"…*

The returning officer had conceded that the "original applied interpretation ... was incorrect" and "no postal voting material is to be issued other than through the postal service", Kidd said."

Sydney Morning Herald, 4 September 2024

Example (d)

"A BATTLE is looming over Newcastle council's lord mayoral byelection after Labor councillors moved to have it run by the electoral commission rather than the private company that ran the 2012 poll.

Labor councillors confirmed yesterday afternoon they had lodged a notice of motion asking for the NSW Electoral Commission rather than the privately owned Australian Election Company to run the byelection. Greens and Labor councillors said they were unhappy at how the company ran the 2012 poll.

Council general manager Ken Gouldthorp said the council had an option from its 2012 contract to hire the company for any byelections but the final decision rested with the elected council."

The Newcastle Herald 21 August 2014