

Draft submission Independent Pricing and Regulatory Tribunal Review of local government election costs

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Opening

Local Government NSW (LGNSW) is grateful for the opportunity to make a submission in response to the Independent Pricing and Regulatory Tribunal (IPART) Review of local government election costs issues paper.

LGNSW is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

This is a draft submission awaiting review by the LGNSW Board. Any revisions made by the Board will be forwarded.

Purpose

The Premier has set terms of reference for the review, requesting that IPART recommend a costing methodology for determining the amount the NSW Electoral Commission (NSWEC) charges councils when it administers their ordinary elections. IPART is to have regard to:

- NSWEC's existing methodology for determining the amount to charge councils
- Whether it is appropriate for the amount charged to be limited to the direct and unavoidable costs of conducting council elections
- The market for electoral services in which the NSWEC operates
- Any differences in the costs involved in conducting elections in metropolitan and regional areas
- Any other relevant matters.

Importantly, IPART's issues paper notes that IPART will ask the NSWEC to provide a comprehensive data set covering all local government election services and the costs attributed to each service. This data will be important in more fully responding to the questions raised by this review.

This submission contains LGNSW's response to key questions of IPART's issues paper for the review of local government election costs.

2. When would a council prefer to use a private provider, rather than the NSWEC, to conduct its elections?

Reasons why some councils have preferred to use an election services provider other than the NSWEC are outlined below and largely relate to flexibility and cost savings for ratepayers.

Flexibility to improve voter experience

Councils that use a private provider may have more influence over the number of polling places and where and when the required advertising for the election will happen, informed by local knowledge and experience. Councils using private providers may also have more flexibility to make use of existing council resources, premises and infrastructure.

This flexibility also allows the council more influence over costs. Feedback to LGNSW indicates that when engaging a private provider, councils appreciated the ability to specify

inclusions and exclusions in the contract. This includes offering a greater level of service than may have been provided by the NSWEC, including services that are better tailored to local conditions and may provide a better voter experience (including though higher staffing levels, faster vote counting, and better targeted election advertising).

Councils areas across NSW vary greatly in their demography and will have divergent needs for multilingual electoral materials and advertising. A council with higher numbers of English-speaking electors will have reduced need for these multilingual options and may find that engaging a private provider means that the council is not required to subsidise the costs of developing multilingual materials of limited use in that council's local government area. These services are referred to as ancillary services in IPART's issues paper. If private providers offer councils the ability to select (and fund) only those ancillary services that are relevant and targeted to the local government area, then the use of a private provider may be preferable.

In addition, at the 2020 local government election, councils that conduct their own elections (or use a private provider) will for the first time have authority to determine the duration of the pre-poll voting period (while for NSWEC administered elections the duration of pre-poll voting will be a matter for the NSWEC). This is expanded on below but would also contribute to councils preferring to use a private provider rather than the NSWEC.

Cost

Section 8A of the *Local Government Act 1993* sets out the guiding principles for councils in NSW, including that:

Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

Councils in NSW operate in a constrained financial environment as a result of rate-pegging, cost shifting onto local government and state and federal funding arrangements that are no longer fit for purpose.

As noted in IPART's issues paper, most councils that have previously chosen to use a private provider were able to have their elections successfully conducted at a substantially lower cost than the projected cost of engaging the NSWEC for those elections.

Further, while the NSWEC provides councils with pre-election estimates of costs for an election, these estimates are liable to change based on population shifts in the local government area, voter numbers and also the number of councils that ultimately do not engage the NSWEC for their election services. This latter factor appears to reflect decreased economies of scale for the NSWEC as a result of councils taking advantage of the contestability of elections by engaging a private provider.

Conversely, private providers have greater scope to provide a more certain estimate of costs to conduct a council election, as they can quote based on a discrete local government area's election rather than on a state-wide basis.

Feedback from councils to LGNSW also indicates that the NSWEC does not provide councils with sufficiently detailed information identifying the individual elements of its cost estimates and has opted not to participate in tender processes for conducting council elections. Councils would welcome greater justification of the costs NSWEC charges.

Pre-poll voting duration

At LGNSW's Annual Conference in 2017 (and again in 2018) councils resolved that LGNSW petition the NSW Government to shorten the pre-poll voting period for local government elections. LGNSW has advocated on behalf of LGNSW members to the Minister for Local Government on this matter, noting that the cost of running an election for NSW councils is a significant burden and that for candidates who have full time employment it can be very difficult to make available the time to be present at pre-polling stations. Importantly, those who are unable to attend a polling place on election day still have the further option of postal voting available to them.

On 14 December 2018, the NSW Government amended clause 326 of the Local Government (General) Regulation 2005, giving the 'election manager' the authority to determine the days and hours of operation of pre-poll voting offices for local government elections – being any days between the twelfth and first days before election day. For elections administered by the NSWEC, the election manager is the NSW Electoral Commissioner. For elections administered directly by a council, the election manager is the general manager of that council.

As noted by IPART, in recent years almost all councils have entered into arrangements to have the NSWEC administer their elections. In these circumstances, the days and hours of operation of pre-poll voting offices would be a matter for the NSWEC. It would be open to a council to make a request to the NSWEC with respect to the council's preferred duration of pre-polling. However, the NSWEC retains ultimate control over whether to accede to this request and thus controls the cost of providing for pre-poll voting.

Councils that seek flexibility around pre-poll duration to best meet the needs of their community (including savings for ratepayers through reduced expenditure) may engage a private provider rather than the NSWEC as this would afford the council control over pre-poll duration.

Recommendation 1: That the NSW Government amend the Local Government (General) Regulation 2005 to shorten the pre-poll voting period to the period including the Saturday to Friday of the week before Election Day.

Capacity and expertise

As local government general elections are (usually) only held every four years, it can be challenging for a council to retain the expertise and personnel required to successfully conduct an election, or alternatively to have confidence that a private provider is suitably resourced and experienced to do so. Where a council has the required personnel available, it may be more likely to engage a private provider rather than the NSWEC.

Perception of independence and public confidence

For all councils (whether they engage the NSWEC or a private provider), the perception of independence and the importance of maintaining public confidence in the electoral process has been a key consideration. Private providers that are well-established, transparent and able to demonstrate the capacity to reliably conduct local government elections are more likely to be engaged by councils.

Supporting local economic development

Councils that have conducted an election other than through engaging the NSWEC have also indicated that support for local economic development is an important consideration, whether through printing ballot papers or hiring election staff locally – including as negotiated with a private provider.

3. What scope is there for private providers to offer councils the full range of election services currently provided by the NSWEC, or a more limited range of election services?

As summarised by IPART, the NSWEC provides a range of services to councils that engage it to conduct their elections. This includes:

- *Recruiting and training election staff*
- *Arranging polling places, ballot papers and equipment (such as polling booths)*
- *Managing the count and publishing election results.*

In addition, there are some services that NSWEC provides for all councils, including those that choose to conduct their own elections. For example, NSWEC is responsible for maintaining the NSW electoral roll (in conjunction with the Australian Electoral Commission). It also supplies all councils with electoral roll products for their elections, including a list of voters registered to automatically receive postal votes.¹

Conducting elections is an administratively complex task, and it is difficult for a private provider or council to provide the full range of election services currently provided by the NSWEC. This is particularly the case given the difficulty retaining specialised expertise required for elections that take place only once every four years.

Council feedback to LGNSW supports private providers offering councils at least some of the range of election services currently provided by the NSWEC. In particular, some of the less specialised components of conducting elections such as printing, advertising, arranging polling places, polling booths, ballot boxes and coordinating voting services should be more contestable to enable councils to reduce costs.

Managing the count and preference allocation

Councils report that managing the count of ballot papers can be complex, particularly the distribution of preferences – and will be made more complex as a result of the introduction of the weighted inclusive Gregory method (WIGM) of preference counting for the 2020 local government elections.

LGNSW supported the announcement that the WIGM of fractional transfer of preferences would be introduced for local government elections in NSW, which will ensure all votes are counted equally and that the results of the 2020 local government elections will be fair and accurate.

¹ IPART, Review of local government election costs issues paper, April 2019, p.15

Councils have noted that this method of preference counting will require significant investment in systems and technology that may be beyond some future private providers. During October 2017 hearings of the Inquiry into preference counting in local government elections in NSW, a representative of the Australian Election Company noted that although significant amendment to systems would be required, the Australian Election Company would nonetheless be able to adapt to the new counting system.²

If the NSWEC were to offer a limited service related to managing the count, then there may be greater scope for private providers to offer councils most of the remaining election services, promoting competition and reducing costs.

Electoral roll

Given the responsibility of the NSWEC to jointly (with the Australian Electoral Commission) maintain the residential electoral roll, there is no scope for a private provider to offer councils services related to updating or maintaining the residential electoral roll.

However, it is the responsibility of councils across NSW to prepare and keep updated a non-residential roll and a roll of occupiers and ratepaying lessees. Other than for the City of Sydney, enrolment on these rolls is not mandatory, and for most councils the number of electors on these rolls is negligible.³

It is important that the NSWEC retains responsibility for its centralised and efficient electoral roll functions.

5. What are the barriers to competition in the provision of election services to councils?

There are a number of barriers to competition in the provision of election services to councils, as follows.

Bundling of election services by the NSWEC

At present, councils can choose to engage the NSWEC to provide a bundle of election services. However, a council cannot select particular services for the NSWEC to provide from within this bundle. As noted above, some election services (for example managing the count and preference allocation) are more complex than others and require greater expertise or more sophisticated systems. If the NSWEC were to unbundle its election services to enable councils to procure only some of the election services from the NSWEC, then private providers could better compete with the NSWEC, particularly for election services with lower barriers to entry.

² Joint Standing Committee on Electoral Matters, Report of the Inquiry into preference counting in local government elections in NSW, November 2017.

³ The City of Sydney is required by the *City of Sydney Act 1988* to engage with the NSWEC in the production and review of its non-residential rolls. While s18F of the *City of Sydney Act 1988* allows for the City of Sydney to engage service providers to assist with preparing and maintaining the electoral rolls and register, this assistance cannot replace the legislated role of the NSWEC in this process. The City of Sydney faces additional costs as a result of its unique electoral requirements.

Councils could also potentially undertake some of the tasks in-house, or together with neighbouring councils, to reduce costs.

Recommendation 2: That the NSWEC unbundle its local government election services to enable councils to engage the NSWEC for particular services only.

Complexity of election services

At present, there appears to be an absence of training, capacity building options or guidance materials available to councils to better understand what is involved in successfully delivering a local government election. If such training or guidance materials were available, councils may be more likely to develop the expertise to manage an election or may be more confident in understanding what is required of a private provider.

Advance decision to engage an election services provider

Section 296AA of the *Local Government Act 1993* requires councils to determine 18 months in advance of an election whether to engage the NSWEC to conduct that election, or whether the general manager of the council will administer that election (either independently, or by engaging a private provider). This long lead time poses risks for councils that engage private providers, as during the 18-month period a private provider may potentially terminate a contract or face insolvency.

Recommendation 3: That the NSW Government consider delaying the date by which a council must have resolved to engage the NSWEC to administer its election.

Near monopoly of NSWEC

As the IPART issues paper notes, the NSWEC is the dominant provider of election services in a highly concentrated market (with just one private provider). This position is reinforced by government ownership and its position as sole provider of electoral services to the NSW Government. However, as a consequence of this dominance, the NSWEC may not experience sufficient competitive pressures to ensure its costs are efficient.

Legislative amendments

In late June 2016, the NSW Parliament passed the *Local Government and Elections Legislation Amendment (Integrity) Act 2016*, which in part amended provisions related to eligibility and disqualification criteria for election to local governments. The Act commenced on 1 July 2016, less than three weeks before the opening of nominations for the 2016 local government elections. Any nomination materials that had been already printed had to be reprinted to reflect the amended legislation.⁴ It is likely that the NSWEC, as a NSW Government agency, would have known that these amendments were likely, and may indeed

⁴ See for example: Australian Election Company, Kempsey Shire Council 2016 local government elections returning officer's report, 19 September 2016 (www.kempsey.nsw.gov.au/council/election/pubs/returning-officers-2016-election-report-kempsey-shire-council.pdf)

have been involved in the policy development or legislative drafting for the legislation. This prior knowledge of any potential changes confers on the NSWEC a competitive advantage over private providers of election services in terms of planning for elections and potentially avoiding costs in circumstances such as these.

NSWEC control of electoral roll required by private providers

As noted above, the NSWEC maintains the residential electoral rolls that private providers require to deliver election services. Councils that have engaged a private provider previously have reported challenges in ensuring the NSWEC provides timely access to electoral rolls in a format that is suitable for the private provider. Subsection 298(3) of the *Local Government Act 1993* only provides that the residential electoral roll is provided to a general manager 'as soon as practicable after the closing date for an election'. Where the NSWEC maintains the electoral roll, it is far easier for the NSWEC to access this roll when providing electoral services – which represents a competitive advantage for the NSWEC. More clearly legislated and reasonably prompt timeframes for the NSWEC to provide the residential electoral roll to councils would lessen this competitive advantage.

Recommendation 4: Subsection 298(3) of the *Local Government Act 1993* should be amended to require the NSWEC to provide residential electoral rolls to general managers of councils within a clearly legislated and reasonably prompt timeframe.

Limited market

The market for private election services providers is limited to local government, companies, clubs and associations, with no access to state and federal elections. Further, council elections are periodic, only being held every four years, limiting the level of potential business.

6. What factors might lead to changes in the costs incurred by the NSWEC, and over what time period are these changes likely to occur?

Numerous factors may lead to changes in costs. These could include:

- changes to election regulations and processes, for example the introduction of WIGM, changes to the required pre-poll period, new communications requirements etc.
- increases in elector numbers
- council amalgamations
- the introduction of electronic voting
- changes in service levels
- wage cost movements.

The changes would be typically introduced for the following election, giving a time period of up to four years for adjustments to costs to be made.

7. Is a base level of service provision to all councils appropriate? For what types of election services offered by the NSWEC might councils opt for a different level of service?

A one-size-fits-all approach to election services for councils does not adequately account for councils' differing demographics and circumstances. Councils have expressed interest in opting for differing levels of service for a variety of election services, and the ability for a council to select which election services it provides itself and which it outsources to the NSWEC (or a private provider).

Differing levels of service should allow councils to have greater input into operational decisions based on local expertise, including:

- location of polling booths
- selection of dual booths (allowing electors from two or more electoral areas to vote)
- staffing numbers
- length of pre-poll
- communications (including statutory advertising campaigns)
- use of councils owned premises, systems and infrastructure to save on costs.

8. How should we assess the efficient costs of providing election services to local councils? Do stakeholders support our use of a 'building block' approach to calculate the NSWEC's efficient costs and revenue requirement? If not, what alternative method would be appropriate?

If conducting NSW local government elections were a genuinely contestable market, the standard building block may be considered appropriate. However, as noted in the the Issues Paper, the sole competitor, the Australian Election Company only captured 8.7% of the market when it entered in 2012 and this subsequently declined to 4.7% in the 2016-17 elections. It may be expected that its share will decline further, and may even disappear in the next elections in 2020. Given the absolute dominance of the NSWEC and the likely absence of any real competition in future, the use of the building block approach may not be necessary or appropriate.

LGNSW has always questioned the inclusion of a return on assets and tax obligations in pricing between government entities.

Given that the NSWEC does not have substantial capital assets, LGNSW recommends that the alternative 'cost build up' approach be investigated and that a comparison of the outcomes be presented in the draft report.

9. What firms or industries are comparable to the NSWEC in terms of their exposure to market risk? What percentage of debt rather than equity would an efficient provider of election services be able to sustain to finance its assets (i.e. the gearing level)?

It would seem that there are few firms or industries comparable to the NSWEC in terms of exposure to market risk. The only real comparisons would be other state electoral commissions. As a government agency operating in a virtual monopoly, market risk would be very low.

10. Do you agree that NSWEC's direct costs should be allocated between the State Government and councils using the impactor pays principle (i.e., those that create the need for the cost to be incurred should pay the cost)?

IPART proposes to classify costs as direct or indirect as follows:

- **Direct costs** are all the capital and operating costs incurred by NSWEC which are directly and exclusively traceable to managing council elections. They may include venue procurement, ballot paper printing and election staffing costs.
- The remaining costs are **indirect costs**. They include overheads (e.g. administration or legal costs) and costs that are common to State and local government elections (e.g. registration of voters on the electoral roll).⁵

Councils broadly support the allocation of the NSWEC's direct costs using the impactor pays principle where this can be reasonably identified – such as through accounting for direct services provided to a local government area or to direct numbers of electors within a local government area. However, the NSWEC should provide councils with itemised cost estimates or should tender for council election services well in advance of an election to better enable councils to make informed decisions on engaging the NSWEC.

Allocation of direct costs on the impactor pays principle is generally supported.

Recommendation 5: That the NSWEC provide councils with itemised cost estimates well in advance of an election to better enable councils to make informed decisions on engaging the NSWEC.

11. Should NSWEC's indirect costs be allocated:

- **Using the impactor pays principle**
- **With a focus on putting NSWEC on an even footing with private providers (i.e. ensuring its indirect costs are**

⁵ IPART, Review of local government election costs issues paper, April 2019, p. 31

- **allocated to councils where they would be incurred by an efficient competitor to the NSWEC), or**
On some other basis (and if so, what)?

LGNSW does not support the adoption of the impactor pays principle for the allocation of indirect costs. Allocation on a marginal cost basis would seem more appropriate given that the NSWEC primarily exists to conduct state government elections and that a large proportion of the indirect costs would be incurred in supporting this service.

Recommendation 6: That the NSWEC's indirect costs should not be allocated using the impactor pays principle, as allocation on marginal cost basis would appear to be more appropriate.

13. How should indirect costs (e.g. centralised locations for collating ballots ready for data entry and councils' share of the costs that are common to State and local government elections) be shared between councils? For example, should they be allocated on a 'per elector', or some other basis?

The cost of providing electoral services for different council electoral arrangements (e.g. councils with wards or with directly elected mayors) should be reviewed by IPART to better understand the cost impacts of these arrangements. In some circumstances, a per-electoral calculation of shared costs may not accurately reflect the costs of providing an election service. For example, councils with directly elected mayors will require additional resources for vote-counting and this added complexity would not be reflected if costs were allocated on a per-electoral basis.

Certain indirect costs of the NSWEC such as awareness campaigns and maintaining the electoral roll should be viewed as non-commercial in nature and unlikely or unable to be conducted by a private provider as part of its arrangement to run a council election. Allocating these costs to councils that have engaged the NSWEC would skew competitive neutrality as private providers would be able to tender for election services at a lower rate than the NSWEC. As such, these indirect costs should be allocated to the State Government.

Recommendation 7: That IPART review the costs of providing electoral services for differing council electoral arrangements.

Recommendation 8: Certain indirect NSWEC costs such as awareness campaigns and maintaining the electoral roll should be allocated to the State Government.

Cost recovery and impact of fine revenue

The NSWEC conducts local government elections on a full cost recovery basis. IPART's issues paper notes that the combined costs of the 2016 and 2017 local government elections was \$50.9 million. However, over this same period the NSWEC issued and collected substantial sums on behalf of the NSW Government in fines for failure to vote.

- In 2017-18 the NSWEC issued almost \$26 million in fines for failure to vote and received almost \$5 million in paid fines.⁶
- In 2016-17 the NSWEC issued almost \$24 million in fines for failure to vote and received more than \$4 million in paid fines.⁷

While the NSWEC Annual Reports do not elaborate on which elections resulted in these fines, given there were no State Government general elections during this period, it is reasonable to assume that the bulk of this revenue was generated from the 2016 and 2017 local government elections.

IPART's issues paper notes that non-voting services (i.e. fine administration services) are provided by the NSWEC at no cost to councils.⁸ Given the substantial fine revenue received by the NSW Government in non-voting fines, there is merit in IPART considering the NSWEC's costs of administering non-voting services and whether this source of revenue could be used to offset the costs of local government elections.

Recommendation 9: As part of its review IPART should consider the NSWEC's costs of administering non-voting services and the extent to which significant fine revenue collected by the NSW Government could be used to offset the costs of local government elections.

Recommendation summary

In summary, LGNSW recommends:

Recommendation 1: That the NSW Government amend the Local Government (General) Regulation 2005 to shorten the pre-poll voting period to the period including the Saturday to Friday of the week before Election Day

Recommendation 2: That the NSWEC unbundle its local government election services to enable councils to engage the NSWEC for particular services only.

Recommendation 3: That the NSW Government consider delaying the date by which a council must have resolved to engage the NSWEC to administer its election.

Recommendation 4: Subsection 298(3) of the *Local Government Act 1993* should be amended to require the NSWEC to provide residential electoral rolls to general managers of councils within a clearly legislated and reasonably prompt timeframe.

Recommendation 5: That the NSWEC provide councils with itemised cost estimates well in advance of an election to better enable councils to make informed decisions on engaging the NSWEC.

⁶ NSW Electoral Commission, Annual Report 2017-18, p. 105

⁷ NSW Electoral Commission, Annual Report 2016-17, p. 89

⁸ IPART Review of local government election costs issues paper, April 2019, p. 7

Recommendation 6: That the NSWEC's indirect costs should not be allocated using the impactor pays principle, as allocation on marginal cost basis would appear to be more appropriate.

Recommendation 7: That IPART review the costs of providing electoral services for differing council electoral arrangements.

Recommendation 8: Certain indirect NSWEC costs such as awareness campaigns and maintaining the electoral roll should be allocated to the State Government.

Recommendation 9: As part of its review IPART should consider the NSWEC's costs of administering non-voting services and the extent to which significant fine revenue collected by the NSW Government could be used to offset the costs of local government elections.

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LGNSW would welcome the opportunity to assist with further information during this review to ensure the views of local government are considered. LGNSW also looks forward to reviewing and providing comment on IPART's draft report for this review.

To discuss this submission further, please contact Damian Thomas, Strategy Manager on 02 9242 4063 or at damian.thomas@lgnsw.org.au.