

Draft submission to Draft Report: 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) draft report for the review of local government election costs.

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

This draft submission outlines LGNSW's response to IPART's draft report for the review of local government election costs, and follows LGNSW's earlier (May 2019) submission in response to IPART's issues paper for this review.

The Terms of Reference set by the NSW Premier for the review specify that IPART is requested to provide a report to the Minister for Local Government recommending a costing methodology to be applied in determining the amount the NSW Electoral Commission (NSWEC) charges councils which use the NSWEC to administer their ordinary elections.

The purpose of the IPART's review is to ensure a robust methodology for determining costs is applied, in order to minimise the financial burden on councils and ratepayers and ensure local government elections are conducted efficiently and cost effectively.

In undertaking the review, IPART is to:

- review the NSWEC's existing methodology for determining the amount to be charged to councils which use the NSWEC to conduct their elections
- consider whether it is appropriate for the amount charged to be limited to the direct and unavoidable costs of conducting the council's election
- have regard to the market for electoral services in which the NSWEC operates
- have regard to any differences in the costs involved in conducting elections in metropolitan and regional areas
- have regard to any other matters it considers relevant.

Part 1: General comments on cost increases and methodology

LGNSW has serious concerns with the proposed recommendations and outcomes of IPART's draft report for its review of local government election costs, as outlined throughout this submission.

The Terms of Reference established by the Premier sensibly include that:

The purpose of IPART's review is to ensure a robust methodology for determining costs is applied, in order to minimise the financial burden on councils and ratepayers and ensure local government elections are conducted efficiently and cost effectively.¹

LGNSW is strongly opposed to the cost outcomes of the draft report, which recommends significant increases in costs be imposed on ratepayers and councils. LGNSW also disagrees with the methodology applied by IPART which has resulted in these costs. Taken together, the recommended costs and methodology in IPART's draft report fail to meet the purpose set out in the Terms of Reference for the review, as they do not minimise the financial burden on councils and ratepayers.

Cost increases

The recommendations in IPART's draft report would result in council bills for elections in 2020 being approximately 62 per cent higher than they were for 2016/17 elections. This is unjustified and totally unacceptable to local government.

IPART notes in its draft report:

We estimate that for the typical council, our draft recommendation represents an increase in costs per residential assessment of around \$1.65 per year. As such, we consider the impact on ratepayers to be relatively modest.²

LGNSW disputes this characterisation of the impact as modest. For larger councils, the proposed increase amounts to additional costs of hundreds of thousands of dollars (and more than \$1 million in additional costs for one council) when compared to the costs for the 2016/17 elections. For less populous councils with smaller rate bases, the increase will be proportionally larger in many instances, particularly for rural councils. LGNSW considers it inappropriate for IPART to attempt to trivialise the proposed increase in this way. Councils will view this in the context of the rate peg and the cumulative impact of cost increases across the board.

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. If these election cost increases were to be imposed on councils and ratepayers, councils may be forced to cut other services for the community. The increase would be a significant additional cost shift by the State Government onto local government, a burden already estimated to exceed \$820 million per annum.

There are also serious equity issues with the proposed model that will see those least able to pay (and particularly small and rural councils) hit with the largest cost per elector. Under IPART's proposed model, small rural councils would pay an average of \$14.37 per elector, in contrast with \$9.54 per elector for large metropolitan councils. Elections and democracy are a fundamental public good that should not be more expensive for some ratepayers than others. LGNSW would welcome a sensible approach that does not penalise ratepayers in rural and regional NSW. The need to ensure equity to overcome the economic disparities across the state justifies maintaining centralised NSW taxpayer funding of a substantial proportion of local government election costs.

¹ IPART Draft Report, p. 72

² IPART draft report, p. 53

Recommendation 1: That IPART’s proposed allocation of costs be revised to ensure that their recommendations comply with the Terms of Reference and:

- **minimise the financial burden on councils** and ratepayers and ensure local government elections are conducted efficiently and cost effectively; and
- do not result in inequities between ratepayers and communities in the price of maintaining democracy.

Methodology

IPART’s methodology for allocating the efficient costs of local government elections includes use of IPART’s impactor-pays funding hierarchy, as set out below.

Across a range of industries, we typically apply the following funding hierarchy when allocating costs between different entities:

1. **Preferably, the impactor should pay** – the entity that creates the costs, or the need to incur the costs, should pay the costs.
2. **If that is not possible, the beneficiary should pay** – the entity that benefits from the service should pay the costs of the service. In some cases, the impactor and the beneficiary are the same entity.
3. **As a last resort, taxpayers should pay** – taxpayers may be considered as a funder of last resort where impactors or beneficiaries have not been clearly identified, or where it is not administratively efficient or practical to charge them (ie, it is too difficult or costly).³

IPART’s draft report suggests that for local government elections, councils would be viewed as both the impactor and beneficiary, as councils create the need for the NSWEC to incur expenditure and are also using the services of the NSWEC.

However, it is arguable whether councils are indeed the impactor. Councils exist under State Government legislation and are part of the governance system of state. They do not exist in isolation as individual entities. They play an integral part in delivering state priorities, plans and programs. Councils do not control the conditions under which elections are conducted, and cannot, for example legislate to amend the Local Government Act’s electoral provisions to change terms of office or introduce iVote as an option to reduce costs. In this sense, the NSW Government is the impactor which creates the costs and service standards that council elections are required to meet⁴.

Furthermore, the third category of IPART’s impactor pays funding hierarchy, ‘taxpayers’, should logically encompass ratepayers. However, IPART’s draft report appears to draw an artificial distinction between the two, allocating costs to ‘councils’ to ensure that ‘taxpayers’ do not pay for the costs of elections. This of course makes little sense, with IPART’s proposed allocation of costs being shifted from taxpayer to ratepayer – who are often the same person. Rates are simply a land tax that happens to be paid directly to councils under State Government legislation.

³ IPART draft report, p. 40

⁴ A case in point is Central Darling Shire Council, which has been under NSW Government administration since December 2013. Central Darling Shire Council did not hold council elections in 2016 as a result of the then NSW Minister for Local Government’s decision to place the council under administration. As a result, Central Darling Shire did not incur costs for conducting an election, owing to decisions of the NSW Government, which is clearly the impactor in this situation. LGNSW would welcome the return of democracy and elected councillors to Central Darling Shire.

LGNSW considers IPART's interpretation of impactor to be flawed and this has therefore distorted analysis under the impactor pays model. LGNSW is of the view that the State Government, if not the impactor, should at least be considered as a co-impactor. This again supports the argument for maintaining the level of centralised State Government funding for local government elections.

Conversely, if councils are to be considered the impactor in this situation – with the argument that local government elections only take place because councils exist – then it is inconsistent for the substantial non-voting fine revenue that results from local government elections to be allocated to the NSW Government's consolidated revenue, rather than used to offset the costs of local government elections. It is disappointing that IPART did not address this issue in its draft report despite this matter being raised in LGNSW's submission in response to IPART's issues paper (further discussion of this matter is below).

LGNSW has already raised concerns with other aspects of IPART's methodology in the response to IPART's issues paper. These concerns are repeated in this submission:

- LGNSW questions the inclusion of a return on assets in pricing between government entities.
- LGNSW questions the inclusion of 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.

Taken together, the methodology and cost outcomes presented in IPART's draft report (which would result in significant cost increases for councils) do not adequately address the Terms of Reference provided by the Premier to IPART, which specify that the purpose of the review is to minimise the financial burden on councils and ratepayers. IPART's recommendations are based on a disputed interpretation of the impactor under the impactor pays model.

Recommendation 2: That IPART recognise that that councils are not the sole impactor in relation to the costs of local government elections and include state government to a larger degree in the impactor pays analysis.

Fine revenue

LGNSW is disappointed to note the absence of any reference in the draft report to the matter of significant fine revenue for non-voting in local government elections, given this matter was raised in a number of submissions made to IPART in response to its issues paper. LGNSW has long called for the significant fine revenue from non-voting at local government elections to be used to offset the costs of local government elections, rather than being returned to NSW Government consolidated revenue.

In 2014 the Joint Standing Committee on Electoral Matters also supported the concept of returning fine revenue to councils for electors that fail to vote in elections, stating:

Councils currently use the State Debt Recovery Office for fines issued by Councils for breaches of local by-laws and receive the corresponding revenue. Given that

councils are paying for the conduct of their elections, they should similarly receive any corresponding fine revenue that accrues from this exercise.⁵

Recent annual reports of the NSWEC indicate that:

- 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.

Even noting that a substantial proportion of fines appear to remain unpaid, paid fine revenue for the 2016 and 2017 local government elections appears to amount to \$9 million, which would represent more than 16 per cent of the sum identified by IPART as the total efficient cost of local government elections in 2020 (\$54 million).

Recommendation 3: That the significant fine revenue from non-voting at local government elections be used to offset the costs of local government elections, rather than returned to NSW Government consolidated revenue.

Part 2: Steps to facilitate competition into the future

IPART's draft report recommends reforms to encourage greater competition from private election services providers and give councils more choice in election services. Councils welcome choice in election services as an option to reduce costs for ratepayers.

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.

LGNSW's response to measures to facilitate competition into the future are outlined below.

Unbundling of election services

IPART has recommended that it be mandatory from 2024 for the NSWEC to 'unbundle' each of its individual election services and provide councils with binding quotes for each individual election service so that councils can decide which election services the NSWEC will provide them with. Councils welcome increased choice and an opportunity to obtain value for money for ratepayers.

⁵ Joint Standing Committee on Electoral Matters, Report on the 2012 Local Government Elections, March 2014 p. 27.

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

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

Recommendation 4: That the NSWEC’s election services be unbundled, with the NSWEC providing councils with binding quotes for each of its individual election services so that councils can decide which election services the NSWEC will provide them with.

However, IPART’s report notes that councils would pay higher costs for 2020 elections, in part to encourage more private providers to enter the market in the medium term. It is inappropriate for councils to bear the costs of remedying a near monopoly market that is the result of NSW Government policy and legislative settings. It appears that IPART is seeking to stimulate the growth of a competitive market by artificially inflating costs (and potential profit margins) at the expense of councils. LGNSW considers this to be totally inappropriate and beyond the scope of the Terms of Reference of the review.

It is particularly inappropriate for increased costs to be proposed for 2020 when the unbundling which is intended to spur competition and lower costs would not come into effect until the 2024 elections. Given the barriers to competition of election services outlined in IPART’s issues paper and draft report, it is reasonable to expect that it would take a significant period of time before a more competitive market is able to drive down the costs of elections. Given elections only take place every four years, it is also plausible that a more competitive market will not emerge in the foreseeable future.

Under these circumstances, it is appropriate for the NSW Government to assume responsibility and costs for rectifying market imbalances, particularly as these imbalances result from NSW Government legislative and policy settings. As noted in recommendation 1 above, LGNSW does not accept the unreasonable cost increases proposed in IPART’s draft report. However, if these increases are to be introduced then the NSW Government must fund any increase in the costs of council elections until such time as effective competition is in place to drive down costs.

Recommendation 5: That if increased election costs do result from IPART’s final recommendations, these additional costs must be met by the NSW Government until such time as effective competition has driven costs below the level of the 2016/17 elections.

iVote

LGNSW would also be supportive of the introduction of iVote as an alternative option for electors in council elections in addition to regular voting at polling places and postal voting. However, LGNSW does not support mandatory use of iVote or councils conducting elections exclusively by iVote. LGNSW’s support for iVote is contingent on iVote operating reliably and resulting in reduced costs for council elections.

Recommendation 6: That iVote be offered to councils as an alternative option for elections (alongside but not instead of regular voting at polling places and postal voting) where it may result in reduced costs for council elections.

Duration of period by which a council must resolve to engage the NSWEC

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 an election services provider will administer that election. 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.

IPART's report also recommends legislative change to reduce from 18 months to 9 months the period before an election by which a council must resolve to engage the NSWEC. LGNSW supports this proposal.

Recommendation 7: That the NSW Government reduce from 18 months to 9 months the period before an election by which a council must resolve to engage the NSWEC.

Pre-polling 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 to one week.

In addition to the reduced costs of shorter pre-poll periods, it is worth noting 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, electors who are unable to attend a polling place on election day still have the further option of postal voting available to them to ensure voting is accessible.

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 NSW Electoral Commission, the election manager is the NSW Electoral Commissioner. For elections administered directly by the general manager of a council, the election manager is the general manager.

Almost all councils have entered into arrangements to have the NSW Electoral Commissioner administer their elections in recent years. In these circumstances, the days and hours of operation of pre-poll voting offices are a matter for the NSW Electoral Commissioner.

While the December 2018 changes are a step in the right direction, LGNSW supports a reduction in the pre-poll voting period to one week (Saturday to Friday in the week before election day) for all local government elections, whether the election is administered by the NSW Electoral Commission or by a private election services provider.

Recommendation 8: That the pre-poll voting period be reduced to one week (Saturday to Friday in the week before election day), for all local government elections whether the election is administered by the NSW Electoral Commission or by a private election services provider.

Assistance and training for councils to develop election management capability

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 with the assistance of a private provider. 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.

IPART's draft report recommends the provision of assistance to councils to further develop their election management capabilities through a training program delivered by the Office of Local Government. LGNSW supports the provision of resources and training to promote

competition, as they would assist councils to understand what is involved in conducting an election, particularly given the four-year period between elections which may make it difficult to retain relevant knowledge within a council.

Recommendation 9: That councils be provided assistance by the NSW Government to further develop their election management capabilities.

Part 3: Timing of this review and the 2020 local government elections

IPART is due to report to the Minister for Local Government on its review by 30 August 2019. However, councils are required to resolve whether to engage the NSWEC by 1 October 2019. This leaves just one month for the Minister to respond to the report and for a council to subsequently decide whether to resolve to engage the NSWEC.

This does not allow sufficient time for a council to consider options and make an informed decision in light of any government response which may affect the administration or cost of elections. It also does not account for council meeting schedules which will likely not align with these deadlines.

Finally, this timing is also insufficient for any private providers to consider their election services offerings in light of any changes and offer these to councils.

Recommendation 10: That the NSW Government must ensure that councils have adequate time to make informed decisions about the administration of their elections following any policy or legislative changes.

Recommendation summary

In summary, LGNSW recommends:

Recommendation 1: That IPART's proposed allocation of costs be revised to ensure that their recommendations comply with the Terms of Reference and:

- **minimise the financial burden on councils** and ratepayers and ensure local government elections are conducted efficiently and cost effectively; and
- do not result in inequities between ratepayers and communities in the price of maintaining democracy.

Recommendation 2: That IPART recognise that that councils are not the sole impactor in relation to the costs of local government elections and include state government to a larger degree in the impactor pays analysis.

Recommendation 3: That the significant fine revenue from non-voting at local government elections be used to offset the costs of local government elections, rather than returned to NSW Government consolidated revenue.

Recommendation 4: That the NSWEC's election services be unbundled, with the NSWEC providing councils with binding quotes for each of its individual election services so that councils can decide which election services the NSWEC will provide them with.

Recommendation 5: That if increased election costs do result from IPART's final recommendations, these additional costs must be met by the NSW Government until such time as effective competition has driven costs below the level of the 2016/17 elections.

Recommendation 6: That iVote be offered to councils as an alternative option for elections (alongside but not instead of regular voting at polling places and postal voting) where it may result in reduced costs for council elections.

Recommendation 7: That the NSW Government reduce from 18 months to 9 months the period before an election by which a council must resolve to engage the NSWEC.

Recommendation 8: That the pre-poll voting period be reduced to one week (Saturday to Friday in the week before election day), for all local government elections whether the election is administered by the NSW Electoral Commission or by a private election services provider.

Recommendation 9: That councils be provided assistance by the NSW Government to further develop their election management capabilities.

Recommendation 10: That the NSW Government must ensure that councils have adequate time to make informed decisions about the administration of their elections following any policy or legislative changes.

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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.

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