

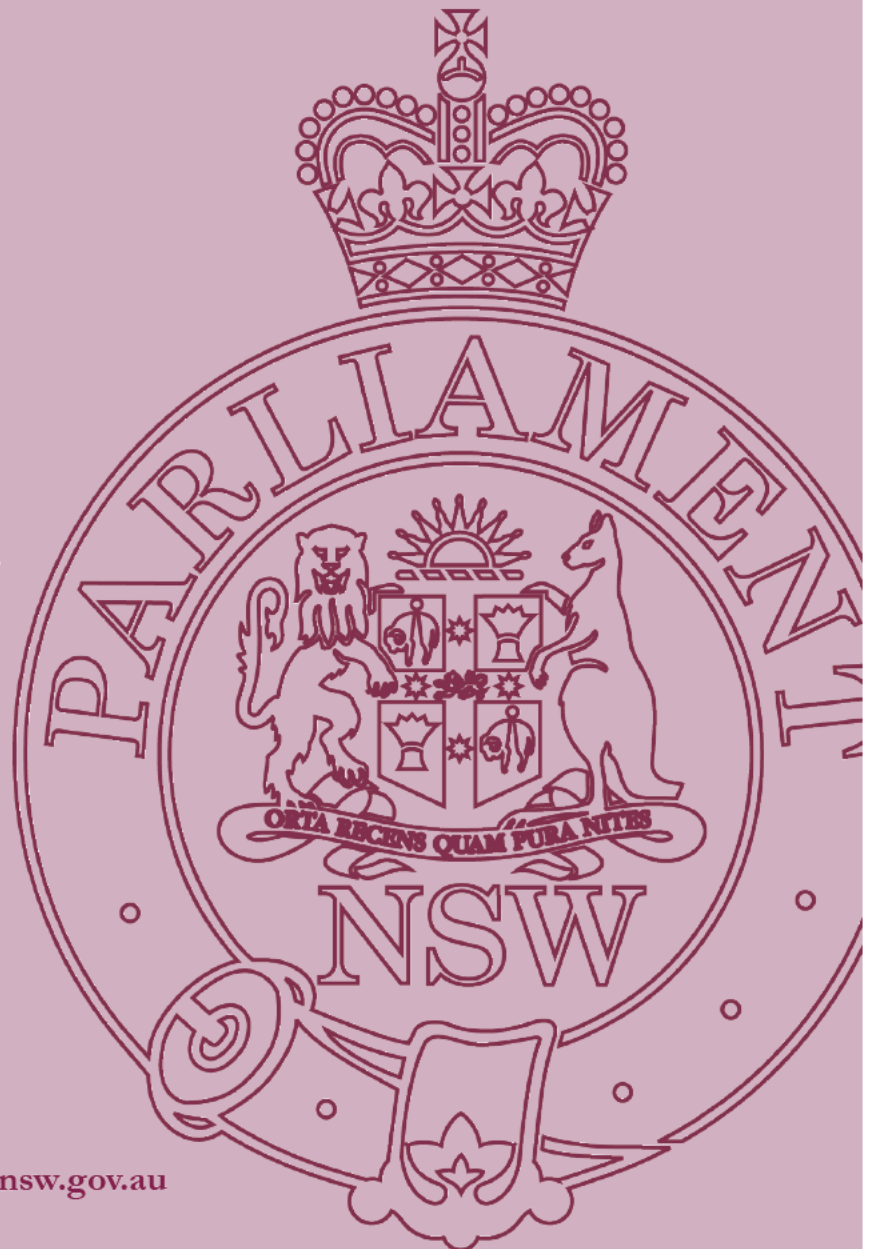


LEGISLATIVE COUNCIL

SELECT COMMITTEE ON THE CONDUCT OF ELECTIONS IN NEW SOUTH WALES

Conduct of elections in New South Wales

October 2022



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Select Committee on the conduct of elections in New South
Wales

Inquiry into the conduct of elections in New South Wales

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Report no. 1

Chair: Hon Robert Borsak MLC



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Terms of reference

1. That a 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 particular 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.

The terms of reference were referred to the committee by the Legislative Council on 11 May 2022.¹

¹ *Minutes*, NSW Legislative Council, 11 May 2022, pp 3283-3285.

Committee details

Committee members

The Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	<i>Chair</i>
The Hon Courtney Houssos MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Cate Faehrmann MLC	The Greens	
The Hon Wes Fang MLC	The Nationals	
The Hon Scott Farlow MLC	Liberal Party	
The Hon Peter Primrose MLC	Australian Labor Party	

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Gareth Perkins, Administration Officer

Stephen Frappell, Clerk Assistant – Committees

Chair's foreword

This report provides a brief summary of the commencement of the inquiry into the conduct of elections in New South Wales, before the inquiry was discontinued in late September 2022. The evidence received during the Budget Estimates hearing of Portfolio Committee No. 1 – Premier touched on many aspects of the inquiry, particularly how future state and local government elections will be conducted by the NSW Electoral Commission, obviating the need for this inquiry.

On behalf of the committee, I would like to thank the stakeholders who made submissions to the inquiry, as well as my fellow committee members and the secretariat staff for their work throughout the inquiry process.



Hon Robert Borsak MLC

Committee Chair

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 11 May 2022.

The committee received 22 submissions.

These submissions are available on the committee's website.

Chapter 1 Background

This chapter provides an overview of the inquiry into the conduct of elections in New South Wales, including issues raised by the terms of reference and evidence received from the NSW Electoral Commissioner during the Budget Estimates hearings in September 2022.

Conduct of the inquiry

1.1 On 11 May 2022 the Legislative Council established a select committee 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 particular 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.²

1.2 Submissions to the inquiry closed on 15 July 2022, with 22 stakeholders providing submissions.

1.3 The terms of reference cited above raised various issues, including:

- legislative changes to local and State electoral laws throughout 2021 and 2022, in response to the COVID-19 pandemic
- the expansion of postal vote eligibility in local government elections in 2021 to include electors who were self-isolating or electors who believed that attending a venue on election day would pose a risk to health and safety
- the use of iVote in local government elections for the first time and the disruption to the system on election day
- the subsequent proceedings brought by the NSW Electoral Commissioner in *NSW Electoral Commissioner v Kempsey Shire Council (No 2)*³

² Minutes, NSW Legislative Council, 11 May 2022, pp 3283-4.

³ *NSW Electoral Commissioner v Kempsey Shire Council (No 2)* [2022] NSWSC 409.

- the decision to issue postal vote packs to all electors in the electorates of Bega, Monaro, Strathfield and Willoughby for the State by-elections held on 4 February 2022
- the adequacy of advertising and awareness campaigns held to inform electors of these by-elections.

1.4 The committee notes that these issues were ventilated, at least in part, during the Budget Estimate hearing of Portfolio Committee No. 1 – Premier on Monday 7 September 2022. Issues addressed in the evidence of the NSW Electoral Commissioner during this hearing included:

- funding received by the NSW Electoral Commission in the 2022-23 State Budget for the conduct of future elections
- the challenges posed by some of the aging electoral systems used by the Electoral Commission
- the likelihood of future State elections being conducted entirely by postal vote
- the discontinuation of iVote
- voting options for blind and low-vision voters
- an upcoming review of technology assisted voting in New South Wales
- the effect of the decision of the NSW Supreme Court in *NSW Electoral Commissioner v Kempsey Shire Council (No 2)*.

1.5 In light of the evidence received in Budget Estimates in September 2022, the committee resolved not to proceed with the inquiry.

1.6 The committee thanks those stakeholders who made a submission to this inquiry.

Appendix 1 Submissions

No.	Author
1	Mr Julian Richards
2	Ms Dominique Passmore
3	Mrs Ellie Robertson
4	Port Stephens Council
5	Information and Privacy Commission NSW
6	Dr Tanya Jakimow
7	Dr Vanessa Teague
8	Mrs Candy Bingham
9	City of Sydney Council
10	Liberal Party of Australia - NSW Division
11	NSW Labor
12	Kempsey Shire Council
13	Carers NSW
14	NSW Electoral Commission
15	Local Government NSW
16	Vision Australia
17	Cr Maree Edwards
18	Mr Michael Moon
19	Cr Linda Scott
20	The Greens NSW
21	Blind Citizens Australia
22	Ms Alexandra Wyatt

Appendix 2 Minutes

Minutes no. 1

Thursday 2 June 2022

Select Committee on the conduct of elections in New South Wales

Room 1136, Parliament House, Sydney at 10.32 am

1. Members present

Mr Borsak, *Chair*

Ms Faehrmann

Mr Fang

Mr Farlow

Mrs Houssos (via Webex)

Mr Primrose

2. Tabling of resolution establishing the committee

The committee noted the following resolution of the House establishing the committee, which reads as follows:

- 1) That a 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 particular 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,
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 - (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.
- (2) That, notwithstanding anything to the contrary in the standing orders, the committee consist of six members comprising:
 - (a) two government members,
 - (b) two opposition members, and
 - (c) two crossbench members, one being Mr Borsak.
- (3) That the Chair of the committee be Mr Borsak.
- (4) That, unless the committee decides otherwise:
 - (a) submissions to the inquiry are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
 - (b) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,

- (c) the sequence of questions to be asked at hearings is to alternate between government, opposition and crossbench members, in order determined by the committee, with equal time allocated to each,
- (d) transcripts of evidence taken at public hearings are to be published,
- (e) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness, and
- (f) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

3. Election of Deputy Chair

Mr Primrose nominated Mrs Houssos to be Deputy Chair.

There being no other nominations, Mrs Houssos was elected Deputy Chair.

4. Conduct of proceedings - media

Resolved, on the motion of Ms Faehrmann: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- the committee adopt the interim guidelines on the use of social media and electronic devices for committee proceedings, as developed by the Chair's Committee in May 2013
- media statements on behalf of the committee be made only by the Chair.

5. Conduct of the inquiry into the conduct of elections in New South Wales

5.1 Proposed timeline

Resolved, on the motion of Mr Farlow: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close – Friday 15 July 2022
- First hearing – August 2022
- Reserve hearing date – September 2022
- Report deliberative – Late October/early November
- Table report – November 2022.

5.2 Stakeholder list

The committee considered the Chair's proposed stakeholder list.

Resolved, on the motion of Mr Fang: That members agree to the proposed stakeholders, as amended, being invited to make written submissions and have 48 hours to make any further suggestions via email to the secretariat.

6. Adjournment

The committee adjourned at 10.45 am, sine die.

Laura Ismay
Committee Clerk

Draft minutes no. 2

Thursday 27 October 2022

Select Committee on the conduct of elections in New South Wales

Room 1254, Parliament House, Sydney at 12.00 pm

1. Members present

Mr Borsak, *Chair*

Mr Barrett, substituting for Mr Fang (*via teleconference*)

Mr Primrose (*via teleconference*)

2. Apologies

Ms Faehrmann

Mr Farlow

Mrs Houssos, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Primrose: That draft minutes no. 1 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 6 June 2022 – Email from Ms Vanessa Dusi, Parliamentary Advisor, Australian Electoral Commission, to the committee, declining the invitation to the Australian Electoral Commission to make a submission to the inquiry
- 21 September 2022 – Letter from Cr Darriea Turner AM, President, Local Government NSW, to the committee, providing further information as part of the inquiry.

5. Submissions

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of submissions nos. 20-22.

6. Consideration of Chair's draft report

Resolved, on the motion of Mr Primrose: That:

- a. the draft report be the report of the committee and that the committee present the report to the House;
- b. the submissions relating to the inquiry be tabled in the House with the report;
- c. upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d. upon tabling, all unpublished submissions be published by the committee, except for those documents kept confidential by resolution of the committee;
- e. the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f. the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g. dissenting statements be provided to the secretariat by 10.00 am Friday 28 October;
- h. the report be tabled at 2.00 pm Friday 28 October 2022;
- i. the Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

7. Adjournment

The committee adjourned at 12.01 pm.

Laura Ismay
Committee Clerk

