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Independent Pricing and Regulatory Tribunal
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Dear Tribunal Members

Review of Local Government Election Cost

The City of Sydney welcomes the opportunity to provide comments and feedback on key issues regarding the review of local government election costs. We intend that this feedback will assist the Tribunal in assessing a fair, equitable and transparent pricing mechanism for both the NSW Electoral Commission (NSWEC) and councils.

As stated in our initial submission, the City considers maintenance of the public's confidence in a fair and transparent electoral process is essential. As such, the City would only prefer to use a private provider if it was assured that the provider would deliver an election with the same integrity, customer-service levels and a lower cost as NSWEC.

IPART's stated purpose for this review*is to recommend a robust methodology for allocating the costs incurred by the NSWEC in administering local government elections. The costing methodology is required to minimise the financial burden on councils....* (whilst having) *regard to the market for electoral services in which the NSWEC operates....*¹

If IPART's reasoning is correct, the implementation of its draft report would have three key outcomes:

1. Reducing the overall cost of the local government elections through improved efficiencies in NSWEC's costs (based on the fact that NSWEC are the near monopoly supplier and so reducing their costs would reduce the overall cost)
2. Increase the financial burden of election costs on Councils by on average 62% by making councils responsible for 97% of NSWEC's cost relating to local council elections
3. Attract new private suppliers into the market by reducing the current considerable barriers to entry for potential competitors to NSWEC

While the City has serious concerns about IPART's reasoning, as outlined below, we welcome and support the desired outcomes 1 and 3. We do not support outcome 2 as a means of achieving those other outcomes. In addition, the second outcome clearly does not address the stated purpose of the review.

The City's submission focuses on five main issues:

¹ IPART Draft Report – Executive Summary

1. The pricing model is based on untested assumptions and places too much risk on councils.
2. The use of the “impactor pays” funding hierarchy to allocate election costs is questionable, based on who is the clear beneficiary, and creates a flawed methodology that does not adequately take into account non-cost considerations.
3. The proposed pricing model for the 2020 election will directly impact the ability of councils to provide key services.
4. Other non-cost factors need to be more strongly considered in the delivery and outcomes for local government elections.
5. The costs and market reform based recommendations should be deferred until the 2024 election, allowing for councils and the market to be better prepared to achieve this review’s intentions.

Detailed comments and submissions

1. Untested pricing model and risk to councils

The City recognises that, to encourage competition in the election service market, pricing needs to be fair and equitable, with the NSWEC competing on a level footing with private providers. As such, if alternative providers are to be encouraged, NSWEC’s offering cannot be subsidised by the State.

In Chapter 6 of the report, IPART states its belief that reducing barriers to entry will encourage more suppliers and thus drive down costs further. This may ultimately be the case. However, the City believes that any significant improvement in competition will take at least 3 to 5 election cycles. This means that councils will not benefit from competitive pressure until 2028 at the earliest, and possibly not until 2036.

Until this time Councils face an increase, on average, of 62% which does not *minimise the financial burden on councils*.

In addition, the City is seriously concerned that implementation of IPART’s proposed efficiencies through a 15.6% reduction of NSWEC costs may lead to a lowering of standards and ultimately put at risk the integrity of the election result.

The City is especially concerned by this as we are uniquely and additionally burdened with the requirement to create and maintain a register of non-residents. The City has repeatedly raised concerns with the NSW Government about the flawed nature of this legislation. As we have identified, the City faces a higher than average risk of having our election processes and results legally challenged than other councils.

IPART’s proposal means that councils bear all the risk;

- through a possible reduction in the integrity of the election outcome because NSWEC cannot deliver to the required standard on the proposed efficient cost;
- by having its costs increased by 62% on average; and
- by being required to cover any cost overruns by NSWEC if they cannot deliver to IPART’s unproven cost efficiencies.

The City is concerned that much of IPART’s analysis is built on estimates, assumptions and approaches which have not been tested. Councils will bear the risk of the likely increased costs or reduction in service if these assumptions and estimates are proven to be incorrect.

The City acknowledges that the NSWEC needs to price transparently to encourage private providers, but can see no justification for Councils having to bear the burden and risk of this

of market transformation. IPART's draft report offers little justification for burdening Councils with the near full cost of the election.

2. Flawed Methodology: "Impactor pays" funding hierarchy

Recommendation 9 of the IPART draft report proposed the use of the economic "impactor pays" funding hierarchy. That is, where possible, costs should be allocated to the parties that create the need for those costs.

The report states that the "impactor pays" funding hierarchy is used across a range of industries to allocate costs between different entities. In terms of this review, the use of this model is inappropriate as the distinction between the impactor and the beneficiary is not clear and the wider public outcomes of a robust and trusted democratic processes are not given adequate consideration or weight in an assessment under this methodology.

The draft report argues that councils are the "impactor", creating the need to conduct local government elections, and as a result should pay for a larger share of the costs. The report further suggests that councils could also be viewed as the beneficiary of the service provision, and should therefore also pay the costs of the service where possible.

The City contends that this approach is based on a fundamentally flawed premise. Local Government elections are conducted as a requirement of and according to the strict requirements of the Local Government Act 1993, an instrument of the NSW Government's legislative framework. Councils are obliged to comply with the direction provided by the NSW Government under this Act, and specifically, the conduct of elections. This includes requirements as to the timing of both elections and, where required, by-elections. Councils do not have the powers to not conduct elections unless instructed by the NSW Government, and as a result it can be argued that the NSW Government have a higher order power on the local government elections than councils. The NSW Government should therefore also be regarded as a key impactor for local government elections.

IPART's view that councils are the sole impactors suggests that councils have a level of choice in the timing, process and providers for conducting local government elections. They do not. Unlike other industry impactors, councils cannot control when elections are held, the manner or process to be used or the level of service. This is set in legislation or by NSW government agencies. Where a casual vacancy arises, the NSW Government effectively controls whether or not a by-election must be held. The new weighted inclusive Gregory method (WIGM) counting process has been determined by the NSW Government and the NSWEC will implement this change in the 2020 election.

A further example of the decision making hierarchy is the requirement for the creation of the City of Sydney's non-residential register and rolls, introduced prior to the 2016 council election. This was the result of a NSW Government legislative amendment to the City of Sydney Act 1988 which was not initiated by the City of Sydney. Following these amendments the City was made responsible for the creation and maintenance of a non-residential register and roll which is different to that required of any other council in NSW. This obligation has the impact of increasing the number of electors, for which the City of Sydney will be then obligated to pay for into the future in addition to its own administrative costs for maintaining the register and rolls. Additionally, there are specific obligations imposed on the City's CEO under this legislation as to the ongoing maintenance of an accurate register of electoral information which make it particularly crucial that a high level of support from an electoral service provider is available.

The City argues that IPART's attribution of weighting with respect to impactors and beneficiaries of the local government elections is mistaken, resulting in a flawed methodology for the proposed cost allocation.

The City of Sydney recommends that:

- The NSW government be treated as the direct impactor of local government elections and therefore the report's costing methodology should reflect this with a greater share of the overall efficient costs of conducting elections.
- If councils are to be nominated as the impactors and / or beneficiary of elections, they should also be able to control their requirements and be the beneficiary of all costs and related election revenues. For example, this would include the NSW Government reallocating revenue raised through the issue of failure to vote infringements to councils or NSWEC rather than appropriate the funds to general revenue.

3. Non-cost considerations

Administering local government elections in an efficient manner is much more than minimising costs. Elections, by their democratic nature, need to be conducted with integrity and be fair, equitable and accessible for all.

The report's costing methodology does not widely consider the non-cost factors that ensure elections are conducted with the highest levels of integrity.

The NSWEC was created to ensure that these non-cost factors are met for each election. It has the specialised skills and capital to conduct elections and mitigate the risks of an unfair process. It applies the same standards across local and state government elections and ensures all elections in NSW are treated with the same level of integrity.

With no established standards, private providers may not have a similar regard for these non-cost factors. In addition, if faced with significant increases in costs, Councils may be tempted to cut corners with the reputation of local government suffering as the electorate's trust in the electoral process falls.

To ensure standards are maintained, the City welcomes the proposal for a 'third option'² through the establishment of an independent oversight body tasked with verifying that valid election results are delivered, both from private providers and NSWEC. Councils could use the standards developed by this body to ensure their selected election provider would deliver a valid election and build their confidence in private providers.

4. Community Impact

As a result of the late introduction of these proposed increased charges, councils will need to decrease or cease services or defer capital projects to accommodate these additional costs within their existing budgets. This is especially difficult as IPART have indicated that the average increase of 62% would not be considered as sufficiently material to consider when setting the rate peg for the 2020/21 financial year. As a result there will be no mechanism to allow Councils to recover the additional costs.

The range of the proposed increases across the state, especially between rural and metropolitan councils, will impact communities differently, with rural communities impacted at a higher percentage rate and it could be argued that they have less opportunity to accommodate the significant percentage increases. Each council will need to make different decisions in order to accommodate their impact.

The City does not believe that any part of the community, in our city or across the state, should be disadvantaged in any way, in order to participate in a modern democratic process.

² IPART Draft Report 6.3.4 final paragraph.

The use of impactor-pays funding hierarchy does not consider any of the above and ignores the impact on communities arising from a reduction in services to pay for increased election costs. It does not allow for this review to reflect the true impacts of its recommendations on Councils and their communities and therefore should not be used.

5. Cost and allocation review.

The City welcomes the review and scrutiny of the NSWEC election costing model to improve the budgeting and transparency of the cost arrangements with local government and the NSWEC.

The proposal to unbundle the services of the NSWEC for local government elections has merit to support a future model where better levels of services and performance measures are planned for and reported.

IPART proposes to increase the cost of elections to local government on average in the order of 62%. For the City of Sydney, the proposed increase represents a 48% increase on the City's 2016/17 cost of \$986K (an additional \$476K).

This represents an additional increase of 3.4% of the total governance costs for the City of Sydney for the proposed 2020/21 year, which is material and significant.

In reality, for the 2020 election, the City will be forced to accommodate the additional costs within one financial year without any chance of a rate peg offset, adding pressure on the delivery of other services it provides to the community.

The City supports some of the arguments put forward by the NSWEC in terms of the allocation of costs between local government and the NSW Government. The City agrees that there are some cost items that should be borne by the NSW Government due to the legislative arrangements between the NSW Government and local government and the level of discretion or actual decision making ability local government has on the services provided by the NSWEC. The following cost items should be funded by the NSW Government:

- Enrolment and maintenance of the electoral roll
- Data Management
- Financial services
- Election procedures document/training
- State-wide advertising
- IT business systems
- Head office and remote working infrastructure
- Funding disclosure
- Project Management office
- Head office and Executive costs

IPART proposes that local government are the beneficiaries of the elections and should pay the appropriate price for those services. However, councils are not the sole beneficiaries as democracy is a government function on behalf of the community. Furthermore, councils do not receive the revenue from fines generated by electors who fail to vote in local government elections. It is proposed that the State Government consider this revenue to offset the election costs borne by councils.

6. Implementation

Recommendation 12 suggests that the NSW government implement a 'new market model' for local government election services by undertaking a variety of regulatory reforms.

The City of Sydney

- Supports these reforms in principle and their implementation for the 2024 election.
- Proposes that Recommendations 1 – 11 (if adopted) be applicable to the 2024 election, to align with recommendation 12.
- Recommends that the current pricing structure and procurement contracts that Councils have entered with either the NSWEC or other providers, remain in place for the 2020 election.

IPART have committed to report the findings of this review to the NSW Government on 30 August 2019. This is less than 13 months ahead of the next local council election which is required under the Local Government Act 1993 to be held on 12 September 2020. If the costing recommendations were adopted by Government, this would leave a very limited amount of time for councils to fund these changes.

The report states the impacts on rate payers to be relatively 'modest'³, as the costs are recovered over a four year period. Yet the costs for the 2020 election would need to be recovered in less than a year, with limited time for councils to identify opportunities to fund the extra cost. A reduction in other services will be the inevitable outcome if this approach is adopted.

The report also suggests that these costing recommendations would result in higher bills for councils only in the short term and increased opportunity for competition will lead to cost decreases over the medium term. The report discusses that any savings will not be available until the report's 'new market model' is in place for the 2024 election, as a result the City recommends that the report's costs recommendations (if adopted) be deferred until the 2024 election, in alignment with the 'new market model'.

This would allow for:

- Alignment of the unbundling of services and pricing to be better matched and funded.
- Better prepared councils in relation to their budget allocation and capabilities to manage elections and its procurement
- The NSWEC to have their unbundling and component pricing ready for councils and the market
- The establishment of an independent regulatory body to oversee the 2024 election and ensure there is no failure of proper democratic process (to be funded by the NSW Government)
- Time for the market to respond to the proposed changes and create competition
- Concerns over the ability for private providers to count votes using the weighted inclusive Gregory method to be resolved.
- The NSWEC, NSW Government and Councils to move towards making iVote available for local council elections. Enhanced service options align with the broader NSW Government digital and customer service directions and will help reduce the cost per elector.

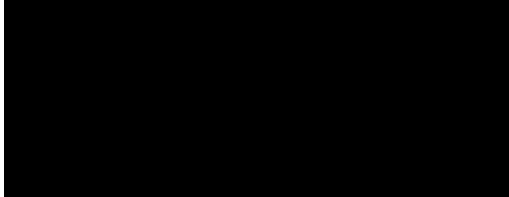
The City strongly advocates that the state government should share the risk of this market transformation by making a contribution to all councils' election costs no matter what organisation is delivering it. Allowing for any delivered efficiencies, the NSW Government should continue to contribute to all council's election costs at the current rate, reducing this contribution once competitive pressure has pushed costs down. The City also advocates that any changes adopted following IPART's final report should be delayed until the 2024 election cycle to give councils adequate time to prepare. This will deliver the desired aims of the inquiry: of improving efficiencies, improving competition and minimising the financial burden on Councils.

³ IPART Draft Report - review of local government election costs – Chapter 5

The City of Sydney encourages the Tribunal to consider this submission and to deliver a fair, equitable and transparent outcome for both the NSW government and Councils, including the City of Sydney.

Should you wish to speak with a Council officer about this submission, please contact Maria Pavlides, Acting Manager Council Elections on [REDACTED] or at [REDACTED]

Yours sincerely

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Monica Barone
Chief Executive Officer