

Local government elections – City of Perth Inquiry Report

By Jennifer Long

The Report of the Inquiry into the City of Perth (**Inquiry Report**) was tabled in Parliament on 11 August 2020 and contains extensive recommendations on the issues examined as part of its investigations, including local government elections.

A transparent and effective electoral system is essential to good government and the recommendations made by the Inquiry in relation to local government elections have potential implications for all local governments in Western Australia, not only the City of Perth (**City**).

Overview of findings – local government elections

In relation to local government elections, the Inquiry's findings included the following:

- Some candidates interfered with election processes for the position of councillor and subverted the democratic process.
- It was a common practice for candidates and council members to organise for companies owning or occupying property in the City to enrol people to vote who had no business or organisational connection with the company. This practice was inconsistent with the intent of the *Local Government Act 1995*, which is to enable businesses with property interests in the City to have the opportunity to participate in the electoral process and be represented by their preferred council members.
- There also existed a practice for candidates and council members to create sham leases or to lease premises that they did not use, or hardly used, to be eligible to nominate as a candidate and hold office.

A sham lease (for example, where parties entered into a sham lease for property that the parties did not intend to give rise to any rights, although it was intended to appear to be an enforceable lease), would not give a person 'a right of continuous occupation' under section 4.31(1C) of the *Local Government Act* that would enable a person to enrol to vote.

The practice of entering into a lease of premises which a person did not use, or hardly ever used, for the sole purpose of being eligible to vote, also undermines the intent of the *Local Government Act* (which is to enable people with a sufficient interest in the City to serve as council members); and

- The reliance on the accuracy of declarations made in enrolment forms, on the basis that it was an offence for a candidate or a person applying to enrol voters to provide a false declaration, was misplaced. The Inquiry found that the existence of an offence did not deter candidates or council members from falsely claiming they were eligible to nominate as a candidate or hold office, or from enrolling a person ineligible to vote (to increase electoral rights for

the election).

The Inquiry's recommendations

Some of the most significant aspects of the Inquiry Report in relation to local government elections are the recommendations for legislative reform and greater scrutiny. These recommendations have potential implications for all local governments in Western Australia, not only the City.

The Inquiry's key recommendations for local government elections are summarised below.

Legislative Reform

- Section 4.31(1G) of the *Local Government Act* be amended so that a body corporate owning or occupying rateable property can only nominate officers of the body corporate to vote on its behalf (recommendation 140).
- The *Local Government (Elections) Regulations 1997* be amended so that ballot papers can only be sent to the elector's address as shown on the State electoral roll and or the Commonwealth electoral roll (recommendation 141).
- Section 4.32(3) of the *Local Government Act* and the *Local Government (Elections) Regulations* be amended to prescribe that an occupier must either –
 - pay a minimum amount of rent; or
 - have the right to occupy a minimum amount of floor space,

in relation to a property, in order to be eligible to be enrolled on the owners and occupiers roll by reason of the occupation of that property (recommendation 142).

- Section 4.31(1C) of the *Local Government Act* be amended to add, as an additional criterion of eligibility to enrol to vote as a non-resident occupier, that the person uses and intends to continue to use the relevant rateable property for a genuine purpose (recommendation 143).
- If recommendations 142-143 are not adopted, the State Government consider whether to amend the *Local Government Act*, so non-resident occupiers of property are not eligible to vote or nominate as candidates in elections (recommendation 144).
- Section 4.98 of the *Local Government Act* be repealed and section 94 of the Criminal Code be amended so that Chapter XIV of the Criminal Code applies to local government elections (recommendation 147).

Review and audit

- Before each biennial local government election cycle, the Department audit the eligibility of candidates and electors across local governments (recommendation 145).
- The Western Australian Electoral Commission (**WAEC**) consider and review the adequacy of its practices and procedures regarding the handling and investigation of electoral complaints (recommendation 146).

Assessment of enrolment eligibility claims

- The City's returning officer scrutinise each candidate for the City of Perth local government elections to confirm that he or she is eligible to enrol as an elector for the City and where a candidate who is enrolled on the owners and

occupiers roll does not appear to be entitled to be so enrolled, the returning officer is to refer the matter to the City's CEO (recommendation 151).

- Applications for enrolment to vote by occupiers of rateable property within the City –
- be accompanied by adequate proof of that occupation, for example, copies of the lease of the property and proof of payment of rent; and
- be carefully scrutinised by properly trained scrutineers at the City, to ensure the right of occupation is genuine and the person meets the criteria in the *Local Government Act* for enrolment (recommendation 152).
- The City engage the WAEC to provide adequate training to persons assisting with the City's 2020 local government elections commensurate with their roles and responsibilities (including returning officer and scrutineers) (recommendation 153).

Greater scrutiny of enrolment eligibility claims

The issues that have come to light in relation to local government elections, highlight circumstances where some candidates and council members have been able to interfere with election processes and subvert the democratic process

In addition to the recommendations for legislative reform to address these issues, the Inquiry has also focused on the need for greater scrutiny of enrolment eligibility claims. For future local governments elections, the Inquiry has recommended that the Department audit the eligibility of candidates and electors across local governments.

The Inquiry's recommendation for enrolment eligibility claims made to the City by occupiers of rateable property, to be accompanied by adequate proof of that occupation (including copies of a lease, tenancy agreement or other legal instrument and proof of rent), and to be carefully scrutinised by trained staff at the City (to ensure the right of occupation is genuine and the person meets the criteria for enrolment in the *Local Government Act*), is likely to set a standard of expectation for all local governments in future local government elections.

Although in some circumstances it may not be easy for local government officers to detect fraudulent or improper conduct in relation to an enrolment eligibility claim, measures can be adopted to assess and identify discrepancies in the documents, which can assist in assessing whether a right of occupation is genuine and a person meets the criteria for enrolment under the enrolment eligibility provisions of the *Local Government Act*.

Where to from here?

The Inquiry's recommendations are only the beginning when it comes to increased regulation and scrutiny for local government elections. If the Inquiry's recommendations for legislative reform are implemented, it is likely the amendments could come to fruition in the planned reforms to the *Local Government Act*. The Inquiry's recommendations for greater scrutiny of enrolment eligibility claims are also likely to set a standard of expectation for all local governments in future local government elections.

It would be prudent for all local governments to ensure before the next local government elections, that their systems and practices in relation to the assessment of enrolment eligibility claims (and in particular claims made by non-resident occupiers of rateable property), are adequate to properly scrutinise and assess enrolment eligibility claims and determine if a person meets the criteria for enrolment under the enrolment eligibility provisions of the *Local Government Act*.



For further information, please contact Jennifer Long at jlong@mcleods.com.au. The information contained in this update should not be relied on without obtaining further detailed legal advice in the circumstances of each case.