



REPORT NO. 2/55 OF THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS – ADMINISTRATION OF THE 2011 NSW ELECTION AND RELATED MATTERS

NSW GOVERNMENT RESPONSE

In December 2012, the Joint Standing Committee on Electoral Matters issued a report on its inquiry into the administration of the 2011 NSW election and related matters.

The report makes 14 recommendations aimed at improving the services provided to electors by the NSW Electoral Commission (NSWEC) and strengthening the integrity and transparency of NSW elections. The NSW Government is pleased to provide the following response to the Committee's report.

Summary of NSW Government's response

The Government supports all of the Committee's recommendations either in whole or in principle, except for Recommendation 13, which recommends that the Government consider introducing legislation to require voters to provide proof of identity at the time of casting their vote.

The NSWEC has commissioned independent research into the extent of multiple voting in New South Wales, the use of an electronic mark-off system, and the likely impact of voter identification requirements.

The Government will await the results of the NSWEC's research before considering any legislative amendments to require voters to produce identification on polling day.

Recommendations supported by the Government

The Government supports in full the following recommendations made by the Committee:

- Recommendation 2 – That the NSWEC continues to promote awareness of registered general postal voting and promotion of those options such as iVote and mobile voting which are available to rural and remote electors.

The Government acknowledges that increasing awareness of registered general postal voting within remote communities is important, particularly for rural and remote electors. Registration ensures that postal voters receive ballot papers automatically and without the need to lodge a postal vote application, thereby increasing the likelihood that their vote will be received in time to be included in the count.



- Recommendation 3 – That the NSWEC undertake a review of the pre-poll application process, including consideration of whether any voter who cannot attend a polling place on polling day should be eligible to apply for pre-poll voting. The Government notes that the NSWEC will also undertake a review of the postal voting application process.
- Recommendation 5 – That the NSWEC facilitate a dialogue between disability advocacy groups and parties and candidates on the importance of providing voter information in accessible formats.
- Recommendation 6 – That the Government seek to amend sections 151F, 151G and 151GA of the *Parliamentary Electorates and Elections Act 1912* (the “PE&E Act”) to simplify the requirements for the registration of electoral material so they are clear and precise.
- Recommendation 8 – That the Government introduce legislation that applies penalties against providers of premises to the NSWEC for the purposes of polling who interfere with the display of compliant electoral material.
- Recommendation 9 – That the Government considers introducing legislation to amend the PE&E Act to enable technology assisted voting results to be counted separately to postal votes at State elections and by-elections.
- Recommendation 11 – That the NSWEC develop and implement voter preference verification for voters using iVote at the 2015 State election. The NSWEC has confirmed that this project is already underway.
- Recommendation 14 – That the NSWEC investigate and report back to the Committee on the future use of an electronic system to mark-off voters. The NSWEC has already commissioned independent research into the extent of multiple voting in New South Wales and the use of an electronic mark-off system.

The Government also supports Recommendations 1, 4, 7, 10 and 12 in principle.

Recommendation 1 – Availability of accessible polling places

The Committee heard that a lack of accessible polling places continues to hamper the NSWEC’s ability to cater for electors with a disability or with mobility impairment. Accordingly, Recommendation 1 suggests that “... the NSW Government introduce a legislative provision requiring the owner of any building in receipt of any State benefit to make that building available to the NSWEC for use as a polling place on an election day”.



While the Electoral Commissioner currently has the power under the PE&E Act to “appoint such polling places for each district as the Electoral Commissioner thinks necessary”, this is subject to the availability of premises for hire and the consent of the owner of the premises. In his evidence to the Committee, the Electoral Commissioner identified “church halls, private schools and council buildings” as the types of buildings that should be made available for use as polling places.

In support of its recommendation, the Committee referred to section 67 of the *Electoral Act 2002* (Vic), which enables the Victorian Electoral Commissioner to use any room or hall in a “prescribed premises” with 7 day’s notice. “Prescribed premises” include schools or buildings that are not exclusively used for religious services and that are supported by public funds, or have been built with, or are supported by, grants from the Consolidated Fund.

It is not clear how the NSWEC would identify such buildings in practice given that there is no central register of NSW buildings that are “in receipt of any State benefit”. Appropriate exemptions would also need to be considered (e.g. buildings required for emergency services).

The better option would be to limit the definition of “prescribed premises” to particular types of buildings that have been identified as a priority by the NSWEC and are known to be in receipt of a State benefit (e.g. council buildings, private schools) with provision for other types of buildings to be prescribed by regulation in future. The NSW Electoral Commissioner has endorsed this approach.

Accordingly, the Government supports Recommendation 1 in principle, but notes that any legislative amendments will be limited to particular types of buildings that are known to be in receipt of a State benefit (e.g. council buildings, private schools), with provision for other types of buildings to be prescribed in future.

Recommendation 4 – Hospitals and declared institutions

The Committee heard evidence that the timely identification of declared institutions continues to be a challenge for the NSWEC. In his evidence to the Committee, the Electoral Commissioner noted that, “[t]here is no central register of declared institutions in New South Wales or in Victoria that I can comment on”.

Based on these comments, the Committee concluded that, “[t]he NSWEC has stated that timely identification of declared institutions has been problematic and the process could be assisted by developing a central register of declared institutions in NSW”.¹ The Committee went on to state that “Ageing, Disability and Home Care, Department of Family and Community Services [(FACS)], is

¹ Joint Standing Committee on Electoral Matters, ‘Inquiry Into the Administration of the 2011 NSW Election and Related Matters’, Report 2/55, December 2012, p 20.



well placed to assist the NSWEC in developing means for the timely identification of declared institutions and recommends that they do so".²

FACS already assists the NSWEC with the identification of potential declared institutions within its administration (e.g. licensed residential centres under the *Youth and Community Services Act 1973*). Most of the declared institutions that the NSWEC has difficulty identifying are regulated and/or funded by other State or Commonwealth agencies. For example, nursing homes are funded by the Commonwealth Department of Health and Ageing, while retirement villages in New South Wales are regulated by NSW Fair Trading.

While the Electoral Commissioner noted in his evidence to the Committee that there is no central register of declared institutions in New South Wales, he acknowledges that the creation and ongoing maintenance of such a register would require significant additional resources. The most efficient way to address the issue would be for the NSWEC to continue to make appropriate information-sharing arrangements with the State and Commonwealth agencies that have responsibility for the different kinds of declared institutions that exist in New South Wales.

FACS will continue to support the NSWEC's efforts to identify declared institutions in a timely manner, and the Government will continue to consult with the NSWEC in relation to this issue.

Recommendation 7 – Publication of registered electoral material

The Committee recommends that the NSWEC publish registered electoral material (e.g. how-to-vote cards and election-related handbills, pamphlets and notices) at NSWEC offices and on its website, as soon as practicable after the deadline for registration, with a view to increasing public access to this material during future elections.

This recommendation would require the NSWEC to publish all versions of the how-to-vote cards registered by a party before the election, even though only one of those versions will become the official how-to-vote card of the party on polling day. The main benefit of making this information publicly available would be to enable interested individuals to better estimate the likely impact of alternative preference scenarios on the outcome of the election.

While the NSWEC has no objection to making registered election material available for inspection at its offices, the Government questions the merit of publishing it on the Internet given the amount of material that would need to be published and the fact that it could create confusion within the electorate as to the official voting directions of parties. The Government also considers that the right to inspect electoral material should not include the right to take copies to avoid the risk of unofficial electoral material being disseminated to the public.

² Ibid.



While the Government supports measures to increase public access to electoral material, it does not consider that registered electoral material should be published online. Making such material available for public inspection at the NSWEC's offices is sufficient for enhanced scrutiny and avoids the risk of confusion within the electorate as to the official voting directions of parties.

Recommendation 10 – iVote for absent voters at by-elections

The Committee recommends that the Government consider introducing legislation to amend the PE&E Act to enable electors at a by-election to use technology-assisted voting if they are to be more than 20km outside their electorate on polling day.

The Government supports this recommendation in principle as voters who are outside their district on polling day at a by-election do not have the option of absent voting at a polling place in another district. The 20km distance requirement is not, however, supported as it is arbitrary and unnecessary. In addition, iVote users are required to register before the by-election. It would be very difficult for electors to know in advance and with certainty whether they will meet the 20km distance requirement on polling day. The requirement could also operate unfairly in particular districts. For example, an elector might be less than 20km outside their district as the crow flies, but the actual journey distance and/or travel time to return their district to vote might be significant due to a range of factors (e.g. topography, limited public transport, traffic).

For by-elections, anyone who will be outside their district on polling day should be eligible to register to use technology-assisted voting. The Government will therefore consider introducing legislation to enable electors at a by-election to use technology-assisted voting if they are to be outside their district on polling day.

Recommendation 12 – fixed date for the issue of the writ

The Committee heard evidence that, since the introduction of fixed-term parliaments in 1995, general elections have been conducted with a fixed date for the expiry of the Legislative Assembly and polling day, but with a variable date for the issue of writs. Section 68 of the PE&E Act currently provides that “[a]ll writs for Assembly general elections shall be issued within four clear days after the publication in the Gazette of the proclamation dissolving the Assembly, or after the Assembly has been allowed to expire by effluxion of time”.

The Committee recommends that the NSW Government introduce legislation to amend section 68 to fix the dates for the issue of writs and the close of nominations for normal quadrennial elections. The Government supports this approach as it would enable the NSWEC to publicise the date for the close of



the authorised roll and the close of nominations in advance of the formal election period.

The Committee also recommends that, where section 24B(4) of the *Constitution Act 1902* is invoked to vary the date for a quadrennial election, or an early dissolution occurs, the date should be similarly fixed. Section 24B provides that the Governor may issue a proclamation dissolving the Assembly early in certain circumstances (e.g. if a motion of no confidence in the Assembly is passed by the Assembly, if the Assembly rejects an appropriations bill, or if the election would fall at an inconvenient time).

This aspect of the Committee's recommendation is not supported. It is not clear how the date for the issue of the writ could be fixed when the date of early dissolution of the Assembly under section 24B would continue to be variable. Accordingly, the Government supports Recommendation 12, but only insofar as it relates to normal quadrennial elections.

Recommendation 13 – voter identification

As noted above, the only recommendation that is not supported at this time is Recommendation 13, which recommends that the Government consider introducing legislation to require that voters provide proof of identity at the time of casting their vote.

The NSWEC does not support this recommendation as there is no evidence of widespread or systemic multiple voting or voter impersonation, and requiring people to produce a commonly accepted form of photographic identification such as a driver's licence upon casting their vote would most likely disenfranchise certain groups (e.g. itinerant electors, the elderly).

The Government does, however, support consideration of an electronic mark-off system to limit opportunities for multiple voting. The NSWEC advises that it has already commissioned independent research into the extent of multiple voting in New South Wales, the use of an electronic mark-off system, and the likely impact of voter identification requirements, consistent with Recommendation 14.

Accordingly, the Government will await the results of the NSWEC's research before considering any legislative amendments to require voters to provide proof of identity at the time of voting.