

PORTFOLIO COMMITTEE NO. 1 – PREMIER AND FINANCE

Monday 16 March 2020

Examination of proposed expenditure for the portfolio area

THE LEGISLATURE AND PREMIER

The Committee met at 09:30

UNCORRECTED

MEMBERS

The Hon. Tara Moriaty (Chair)
The Hon. Robert Borsak (Deputy Chair)
The Hon. Mark Buttigieg
The Hon. Ben Franklin
The Hon. Taylor Martin
The Hon. Shaoquett Moselmane
The Hon. Adam Searle
Mr David Shoebridge
The Hon. Natalie Ward

PRESENT

The Hon. John Ajaka, *President of the Legislative Council*

JOHN SCHMIDT, NSW Electoral Commissioner, affirmed and examined

The CHAIR: The Committee will now continue its questioning with the NSW Electoral Commissioner, Mr John Schmidt. Welcome and thank you for coming back. I declare examination of the proposed expenditure for the portfolio of the Premier open with questioning of the NSW Electoral Commissioner. There is no provision for witnesses to make any opening statements before the Committee commences questioning, so we will begin with questions from the Opposition.

The Hon. ADAM SEARLE: Electoral Commissioner, thank you for your time today. Last budget estimates you outlined for the Committee the financial pressures upon your organisation occasioned by the current level of government resourcing for the Electoral Commission. You outlined stressors on your workplace such as excessive hours and the like but also an ongoing financial fragility in the organisation given the current and proposed levels of funding. It has been some five months since then. Can you update the Committee about what, if anything, has happened in connection with the resourcing of your organisation and what, if any, discussions you have been having with the Government around those issues?

Mr SCHMIDT: Thank you, Mr Searle. To perhaps contextualise my comments, first I appreciate that we sit here today with a range of other pressures applying to Government and the community. Obviously the coronavirus will play out in due course and will have economic impacts and impacts on funding, and we of course have just come out of a period of fires, floods and drought—a challenging time. What I think is very important though for this discussion—and I welcome the opportunity to be here—is that in the very near future you and the public at large will receive two reports, one from the Public Accountability Committee about the funding model for the integrity agencies. And then the Auditor-General will release her report looking at the efficiency of operations, the funding model and hopefully also turning her mind to the adequacy of funding for the integrity agencies as well.

So, yes, the pressures which I have alluded to in the past continue. We are now in the lead-up to the budget process for the coming financial year. I have submitted a number of budget requests. In fact, if you asked me about the requests that I had put in the previous financial year, a number of them are replicated where they were unsuccessful. I am engaging in dialogue with a number of individuals within Government. To date I have met with representatives from the Premier's office, the Treasurer's office and Minister Harwin's office. I also plan to meet with the Premier shortly and Minister Harwin. My officers are engaged with the Treasury officials, as you do as part of any budget process, and I will be having further meetings myself with senior Treasury officers in the near future. We are doing everything that we can to bring to relevant people's attention the pressures that we are facing.

The Hon. ADAM SEARLE: Apart from the ongoing regulatory functions of your organisation, there is another challenge on the near-term horizon in terms of the September local council elections. Are any of those conversations or plans that you are developing directed to ensuring adequate resourcing for that task?

Mr SCHMIDT: Absolutely. We have in fact, as you are aware, been given funding—or the Government has announced funding. We have funding this year. The funding for next year has been announced and that is to meet some of the core costs of running those elections on behalf of councils. There is great consideration, as you would expect, within the commission at the moment as to what this means—this current crisis—for the holding of those elections. It is a very, very complex area. We are currently preparing for more intense discussions with governments in coming weeks about some of the critical breakpoints in the process.

For the benefit of people who may be watching this from councils, et cetera, who are interested in what sort of considerations have to come to bear, if I could walk you through. Assume, for example, that we are having a normal election in September, which includes postal voting, which might transpire. People might say, "Why can't you have full postal voting?", which is envisaged for future local government elections. To get to the decision points along the way, first off the nomination process has to work effectively. We bring in up to 80 temporary staff to process nominations and we only have two core people with the core skills to oversight that process. Let us assume the nomination process works. You print the ballot papers. You have to be able to have the supplier print those ballot papers. Can they source the paper? Can they source their own staff to do the work to produce the ballot papers?

You then go to the next step of preparing the acquittal of those ballot papers to go out through the postal system. We are renting a large space out at the—I think it is the Sydney Showground—which will be an intensive area. We anticipated a normal election of about 200,000 postal packs. A full election would be approximately five million. There is a completely different set of challenges there. But let us say it is normal postal. You have to

have temporary staff come in to do that work. If they do not come in you cannot send out the postal packs. You could outsource some of that to providers who can provide those services; they may not be able to get the staff. What happens when the postal votes come back? There is some commentary in the media that the virus can live for a period of time on paper. From obvious health and safety grounds we have to form a view as to how long you leave paper and how you treat it before you count the votes.

Then you have got to have a significant number of staff brought in to actually do the counting. Again, if there is unavailability of the temporary staff you cannot do that. Also the national and State governments may have made decisions at various points in time to shut down processes and you run into statutory time limits, et cetera. So we are considering all of those—and that is just one stream of voting. We are considering all of those implications at the moment and we will continue to discuss that within Government.

The Hon. ADAM SEARLE: And what are those breakpoints? I know some countries—I think France recently held local council elections, but that was very touch and go given when it is happening. Hopefully by September things will be a bit clearer here. But what are the trigger points that might lead to, for example, a postponement or delay or the need for a delay?

Mr SCHMIDT: There are numerous ones. It might be that in the next few weeks the Government instructs all agencies to shut down completely—all of industry. There are some things you can do working from home remotely. There are some planning processes and running of IT systems, et cetera, you really need to have people in the office. If I cannot get past even those initial stages, can I catch up time? That might just be the first of a number of hurdles. I think we are just going to have to be incredibly flexible with this and it will be some time before final decisions can be made.

Ultimately, of course, I am only a service provider in the local government elections. It is different from State elections where I am the commissioner and I have a broader statutory remit. Here I provide a service to those councils who have engaged me; 124 of the councils have done so. It is a matter for the Government ultimately as to what happens with the conduct of the election. Having in mind, as I understand it, the legislation does not give a huge amount of scope for deferral as currently drafted as well. That is another problem that Government will have to grapple with and I will continue to provide advice to Government to inform any decisions.

The Hon. ROBERT BORSAK: So there is no decision being made yet to defer the local government elections?

Mr SCHMIDT: No.

The Hon. ROBERT BORSAK: So it is a watch-and-see basis?

Mr SCHMIDT: Absolutely.

The Hon. ROBERT BORSAK: For not just yourselves obviously, but the Government as well?

Mr SCHMIDT: Yes.

The Hon. ADAM SEARLE: Just to be clear, the current level of resourcing for your office has not been varied or increased since the last budget estimates hearing but you are in close discussions with Government around those issues?

Mr SCHMIDT: Yes. And back to the point which I made earlier—again, to give context not for today but in the future, it may well be that legislation comes out as a product of the Auditor-General's report or the public accountability report. To give you some further context, when you are considering what options you as a Parliament might decide to consider, I will give you two examples of some of the challenges we have faced. We are moving accommodation in the near future. We are meant to move on 1 June. We did not ask to move. We were quite happy where we were. We had an option to extend. We had an option to extend for five years at a discount of 15 per cent on the rent. I will digress into humour briefly. Last year one of my colleagues in the commission received a phone call from an officer in the Department of Premier and Cabinet [DPC] saying, "What did you think about the Cabinet decision about your accommodation?" To which our response was, "What Cabinet decision?" "Oh, weren't you consulted?" "No." My officer then said, "Can you tell me what the Cabinet decision says?" "No, I can't tell you that. It is Cabinet in confidence." So we are moving.

The Hon. ADAM SEARLE: That is laughable.

Mr SCHMIDT: I received a request from Property NSW in November—or the commission did—asking me to sign a confirmation that I have \$64 million in my out-years to pay for the rent over the period of the lease. That is an increase in rent. There is a double period of rent for some 10-plus months in that. I do not have

\$64 million in my budget to do that and I do not have the delegation to sign for that amount of money; I have a \$5 million delegation. I am meant to be moving at this point on 1 June. I do not have the money to pay for the rent of the new property. I do not understand how that could happen.

The Hon. ADAM SEARLE: Just to be clear, your organisation is going to have to be paying two sets of rent for a period of nearly a year.

Mr SCHMIDT: There is nothing wrong with that in the sense that, because there is a local government election on, we always take extra accommodation. So if the election is held in September, then that would dovetail quite nicely on the basis that we can get in by 1 June but we have to have the additional money, and going forward we have to have the additional money. A more pertinent example is, I think, Mr Shoebridge, the last time when I appeared, I was asked a question—had I been consulted on the legislation that was proposed, the funding changes like the \$100 cash limit?—and I indicated I had not and that is fine. You said, "You probably require more resources" and I said I think I would.

But that legislation was announced again or when it became clear it was going forward, I wrote to the DPC saying, "This legislation is coming forward. It is going to have financial impacts on us to implement. My staff are ready, willing and able to discuss it with the Department of Premier and Cabinet." We submitted, at their request, details of the funding we thought we would require, a combination of staffing and communication—communication to the world at large and to political participants. This is a significant change as to how people have done business in this space previously. I have received approval, I think, on 3 March—now, this 3 March—to use some of my existing protected money for the expenditure I need in that space for this financial year. I do not have staff on deck to do a communications program yet.

It was envisaged I would bring them in. I am not going to be able to spend that money on a communications program between now and 30 June. There was also staff money sought for additional audit capability and investigatory capability. I cannot go to the market and engage people for three months—even if you get anybody—to do any work between now and 30 June. And I have further funding bid in the normal budget process, going forward into future years, for similar money.

So communication strategy—this legislation started on 1 January. We have material on our website. We have written to the parties and members about the change as if the local government election continues, as people have registered, because you can register as a candidate for fundraising purposes now. We alert them to this fact but the legislation was passed last year. The funding need was identified and I have been given permission to access only some of my own existing money, which is protected money—it was unspent money for public funding—on 3 March to 30 June. I have to wait now until May anyway to find out what the ongoing funding will be.

This is an example. A large organisation—an Education, a Health or a large infrastructure body—would have the capacity to move funds around and do things; I have no capacity. I cannot just take people off in their area of work because they are fully committed to do something because a new obligation arises. This is why transparency—whatever the model the Government or the Parliament ultimately adopts—is so important so that if there is a legislative change that has an impact on funding resourcing, there is this capacity for me—and I will speak on behalf of myself; the other integrity agency, I assume, have similar concerns—that I can come to you and say, "These are the implications of that. I can do this with that. I cannot do X if I do not have Y."

Mr DAVID SHOEBRIDGE: A contingency fund you could draw upon.

Mr SCHMIDT: That would be one particular solution to that but at the moment it is very hit-and-miss. Expectations are raised and I do not have the capacity to carry out the functions.

The Hon. ADAM SEARLE: Is there an additional problem that even within the overall resourcing of your organisation there are limits on the moneys you can access, or is just a question of the quantum of funds that you have got?

Mr SCHMIDT: Certainly, I think 55 per cent of my budget is protected money—it is public funding, it is election funding et cetera. Out of \$120 million, \$55 million you can take out of the equation straightaway. That is earmarked. I have very limited capacity to move funds around with the remainder. I talked I think before the Public Accountability Committee; I am not sure if I talked about it here. I still face that cliff at the end of October where, I think, 135 of my 257 positions become unfunded. So my primary bid with the Government at the moment is to seek some ongoing funding for core capabilities. Not all of that group of people have an expectation they will continue to be engaged because we do have cyclical funding, but through the external

reviews that we have done and the ongoing internal reviews, we have identified 50 core staff who we require to maintain our capability.

As I have said to Government, that is my primary bid for this financial year. In essence, you can give me money for other things but if I do not have the staff to deliver the function, it becomes an exercise in futility. I am now starting to say no to things. One of the matters, I think, Mr Borsak discussed last time I was here was the online poll for funding and disclosure. We have had funding for that for a period of time. When in the lead-up to the State general election the former Premier asked that we stop the broader project but concentrate on a disclosure regime and an online system for political donations in the lead-up to the election, we did that because that money was expended to finish the entire project to have the maximum benefit for political participants—online lodgement of materials, which we can help guide people through the accuracy and completeness of what they lodge. I am going back to government additional funding.

I am hopeful I get that but I am being quite blunt these days. I have said to Government, "If I do not get that money, I will not be doing the project." I have money at the moment to do a discovery phase. We are going to market and we will be engaging someone to complete a discovery phase in the period up to 30 June. But to complete the project and make it a reality, I will need additional money in future years. If I do not get the money, that is it—I stop. I do not have the capacity to spend more time developing a matter, which I know is near and dear to every politician, every party and every political participant because it is a complex area and anything we can do to engage people and make it easier for them must be a good thing.

Mr DAVID SHOEBRIDGE: Commissioner, I know you answered some questions before I got here about capacity to defer the September local government elections. If I understand the reports that I had, you do not have any capacity to defer it yourself and there is no mechanism other than a legislative intervention to defer that. Is that right?

Mr SCHMIDT: I am merely a service provider. I will advise the Government about whether I, as a service provider, actually can deliver it. It may become a fait accompli anyway. But my understanding of the legislation, as it is currently drafted, is that I think the Minister can defer it up to 28 days.

Mr DAVID SHOEBRIDGE: Yes.

Mr SCHMIDT: If that is the case then they may have to—a question arises as to what happens in reality if no deferral is given but the election fails. We have to be able to hold elections and so there may be an argument that you can somehow restart the clock. But I will not get into that. That is a matter for government.

Mr DAVID SHOEBRIDGE: Can there be repeated 28-day deferrals?

Mr SCHMIDT: I am not sure of that. I would leave that to the Minister and the Government.

Mr DAVID SHOEBRIDGE: In terms of the preparation for something as complex as a local government election, how much notice do you need to plan ahead for a particular day to ensure that the election succeeds? I assume at the moment we have advice that it will proceed in September, all things being equal. But if that were called off, how much notice would you require to get something as complex as a local government election back on track?

Mr SCHMIDT: There is no simple answer. Obviously, it depends. The wildcard is the ongoing impact of the coronavirus. But if it were not to be held in September, it depends what sort of election you are talking about. We are considering all possibilities. One of the possibilities is could you have just postal elections the next time around, as will be the case for many councils in future years? Do you introduce internet voting into this space as well? If it is full postal, there will be a number of people. It may be that the postal service is so disrupted by coronavirus that people cannot vote. If you are going to use internet voting as well, that will take a considerable period of time to develop. I am not going to be held to this—these are just dates we are throwing around. I have not had this discussion within Government yet. It may be March; it may be May. We shall see.

Mr DAVID SHOEBRIDGE: If that were deferred, as we have seen with previous election cycles, would the current councillor terms be extended to cover that deferral period?

Mr SCHMIDT: That is a matter for the Government.

Mr DAVID SHOEBRIDGE: But that has been a historical precedent. Is that right?

Mr SCHMIDT: I think they did that in 2017 with the split—elected 2016-2017.

Mr DAVID SHOEBRIDGE: Yes, and I think they did it in 2012 or 2013. That is my memory as well, having suffered through that extension.

The Hon. ADAM SEARLE: In the 2004-2008 session and the 2008-2012 session, both terms were extended.

Mr DAVID SHOEBRIDGE: Could I then ask you about what kinds of considerations you are looking at in terms of the coronavirus? What are the circumstances in which you would say, "We cannot practically hold an election"? What are you looking at to make that kind of call?

Mr SCHMIDT: Certainly. I will talk about some of the things that we can do. First off, for example, one of the main vulnerabilities at the moment appears to be the aged and infirm. Under both the State and local government voting regimes I can have declared institutional voting at nursing homes and hospitals. I have already made a decision that if it is September, there will be no declared voting. Anybody who wants to vote in those premises will be using postal votes. I assume the authorities would not want to see them anyway with people wandering around in those particular places.

Mr DAVID SHOEBRIDGE: That is because you do not want to introduce a risk by having one of your officers going into an elderly person's home. Is that right?

Mr SCHMIDT: Yes, that is exactly right.

Mr DAVID SHOEBRIDGE: There is that impact. Therefore, if there was that risk, that is one way of managing that. We would obviously get a reduced vote from frail and elderly people in those circumstances. But what are the other indicators that would say, "We cannot practically hold an election."

Mr SCHMIDT: If you work downscale, if the current model is static gatherings of 500 people or more, some pre-polls on the Friday before the election become very busy. Sydney Town Hall has been used traditionally and there would be a strong argument to say that we should not offer that as a facility. There is the risk to the electorate in turning up and voting and the degree of comfort that they have with that, but we engage 22,000 staff to run the election.

If the labour hire organisations are unable to provide that, and whilst a number of these people—the temporary staff we engage and the labour hire staff—work in smaller polling places with not so much contact but there is a steady stream of people coming through. When it comes to some of the key components of the election, in particular, counting, you have massive numbers of people in the same space for extended periods of time. So it may well be, say, we cannot count the votes. We take the votes but we cannot count them. If it is that bad, I do not think we can get to the stage of taking votes anyway.

Mr DAVID SHOEBRIDGE: Is there a place where you are having this dialogue with the Government? Where is that dialogue happening? I hope it is better than about your rental premises.

Mr SCHMIDT: Sorry?

Mr DAVID SHOEBRIDGE: I hope it is a better dialogue than you have about rental premises, Commissioner.

Mr SCHMIDT: I am sure it will be. We are having an internal discussion. I have alerted, obviously, the Office of Local Government and the Department of Premier and Cabinet. They are aware of these considerations and they have been fed into the State Emergency Operations Centre as a risk. We are working—we have been and will continue to work—this week to bring together a whole range of options and identify the key risk areas. I hope to be having a meeting next week with representation from the Department of Premier and Cabinet and the Office of Local Government to have a much more nuanced discussion about the risks.

Mr DAVID SHOEBRIDGE: I suppose given the situation is very fluid, you would not have an idea when a statement might be made or a position might be adopted.

Mr SCHMIDT: No.

Mr DAVID SHOEBRIDGE: I have a number of other questions I could put you about your budget. There has been another place where we have been having those discussions. But my only question about the budget is: Given a lot of this is going to be happening outside the standard budgeting cycle—everyone's bids went in in November and they are being churned through the system at the moment. Given a lot of what you are going to have to do, either to prepare or defer an election, is going to happen outside the budget cycle, how do you make the application for additional budget? Is there a process through which you can make application for additional budget to deal with this?

Mr SCHMIDT: We will be raising it directly with the Department of Premier and Cabinet and the Treasury. The challenge will be, of course, in that it is not fully Government funded. The issue is the risk for

councils. We are expending money now. They will be incurring liability now if it is postponed. There is a risk that for some particular services they may be charged twice. It will be a matter for the Government how they deal with such situations.

Mr DAVID SHOEBRIDGE: How many of the council areas have confirmed they are going with the Electoral Commission? Do you know how many have confirmed they are going to a private provider?

Mr SCHMIDT: I think there are 128 local government areas in New South Wales. Two are in administration. One hundred and twenty-four are coming with the commission and two have gone to a private provider.

The Hon. ADAM SEARLE: Have they gone to the same private provider?

Mr SCHMIDT: Yes.

The Hon. ADAM SEARLE: What is the name of that provider?

Mr SCHMIDT: Australian Election Company Proprietary Limited.

The Hon. MARK BUTTIGIEG: I have a follow-up question on my colleague's question regarding the preparedness. You touched on the possibility of moving towards an online, internet-based election. How long would that take to develop and implement? Part of the problem is that we do not actually know how dire it is going to be in September, and presumably you need a lead-in time. How long would that take to develop?

Mr SCHMIDT: It is a good question, and having in mind the legislation does not currently envisage internet voting for local government it will not be my call as to whether it happens, but there are significant issues. As you are aware, we had some problems with the use of iVote at the last election and a number of those difficulties related to the registration component of the system. We have not gone through the entire process of resolving those as yet because we were not anticipating that there might be a call on a large scale until the 2023 election. There is a fundamental question about capacity. I digress briefly. The discussion with The Legislature earlier was interesting about working from home. We, of course, are encouraging people to work from home, but is there a sufficient bandwidth in Australia if everybody does it from home? So I will just park that issue.

The Hon. ADAM SEARLE: I think we know the answer to that question.

Mr SCHMIDT: And bandwidth is important too for internet voting. We take a couple of hundred thousand votes at the State general election. If we were to make it available at the local government election—say, approximately five million potential users, a significant number might use postal, a large number using internet voting—the absolute number of users itself is not a challenge, it is when they choose to vote. So what organisation has the bandwidth capacity without the system crashing to handle that flood, and we do get floods at particular points of time. How do you throttle access to the system without discouraging people to enable it to work? In a roundabout way, to answer your question, there are a number of significant issues, which is why I was foreshadowing time periods. Internet voting would not be available this year is my current thinking and you would be looking at some time next year if that was perceived to be a potential solution to this problem.

Mr DAVID SHOEBRIDGE: But I think there was a widespread view that iVote should not be expanded beyond its current capacity not only for those practical reasons but there are also ongoing concerns about the integrity, if I could say that, about following through the vote to the final count, and those have not been fully resolved to a state that all political parties are comfortable with.

Mr SCHMIDT: And that may well be the case. I am just offering it—

Mr DAVID SHOEBRIDGE: No, I understand.

Mr SCHMIDT: And I will be appearing on 31 March before the Joint Standing Committee on Electoral Matters, where this, I think, will be the primary discussion of the day.

Mr DAVID SHOEBRIDGE: All things being equal.

Mr SCHMIDT: Assuming we are all together on that occasion as well.

The Hon. BEN FRANKLIN: I suspect there will be one or two things as well on top of that.

The Hon. MARK BUTTIGIEG: Just to finish off quickly, like all things, those issues are a function of the amount of resource thrown at it because we have got a world financial system that basically operates online; we have got legal documents that get circulated everyday with traceable, audible trails. So it is a matter of will, is it not, at the end of the day, and resource?

Mr SCHMIDT: Internet voting is a bit more challenging because of the secret vote. The ultimate product that comes out the other end is a vote which is removed from the voter. If you send a legal document through an electronic system you can see the product that comes out the other side of the electronic process and say "That is the document I sent." We endeavour, through our system, to provide as much certainty as we can to give assurance that what goes in one end comes out the other, but there are people who are raising questions about the reliability of those systems, and perception or reality are very, very important in this space because it is people's trust and faith in the system which ultimately must be maintained.

Mr DAVID SHOEBRIDGE: And it is that moment when it transfers over from a traceable link to the individual voter to go into the pool that has created the concern.

The Hon. ADAM SEARLE: There is also a different dynamic in voting, which we do not have time to discuss today.

Mr DAVID SHOEBRIDGE: Yes, there is a different other issue.

The CHAIR: Thank you, Commissioner, for your time today. The Committee secretariat will be in touch in the near future regarding any questions taken on notice and any supplementary questions.

(The witness withdrew.)

The Committee proceeded to deliberate.