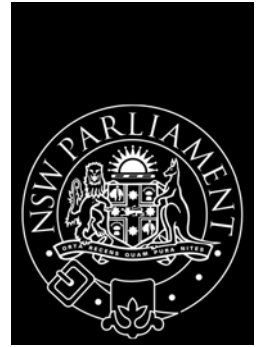


PARLIAMENT OF NEW SOUTH WALES



# Joint Standing Committee on Electoral Matters

2008 local government elections

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## Terms of reference

### Terms of reference for the committee

- (1) A Joint Standing Committee, to be known as the Joint Standing Committee on Electoral Matters, be appointed.
- (2) The Committee inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister that relate to:
  - (a) The following electoral laws:
    - (i) *Parliamentary Electorates and Elections Act 1912* (other than Part 2);
    - (ii) *Election Funding Act 1981*; and
    - (iii) Those provisions of the *Constitution Act 1902* that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than sections 27, 28 and 28a);
  - (b) The administration of and practices associated with the electoral laws described at (a).
- (3) All matters that relate to (2) (a) and (b) above in respect of the 24 March 2007 state election, shall stand referred to the Committee for any inquiry the Committee may wish to make. The Committee shall report on the outcome of any such inquiry within 12 months of the date of this resolution being agreed to by both Houses.

Votes and Proceedings of the Legislative Assembly, Thursday 21 June 2007, entry no 13 (7)  
Legislative Council Minutes of Proceedings, No 13, Tuesday 26 June 2007, entry no 25

### Terms of reference for the inquiry

All matters that relate to (2) (a) and (b) above in respect of the September 2008 local government elections are referred to the Committee for any inquiry the Committee may wish to make, including in relation to the costs of the 2008 local government elections.

The Committee is to report on the outcome of its inquiry by 2 March 2010\*.

Letter from The Hon Nathan Rees MP, Premier to Chair, dated 2 March 2009

\* In a letter from Premier received 16 March 2010 the final date for reporting was extended until 1 June 2010.

## Chair's foreword

As part of the 2008 Local Government Election in NSW, 4,620 people contested the election for the right to represent their community. This figure is more than 5 times the number of people who contested the 2007 NSW State Election.

These figures highlight important aspects of Local Government in NSW.

Firstly, it reflects the accessibility of Councils as a representative forum for their citizens. It also demonstrates the strong level of interest and the will of residents to be active participants in local democracy.

Secondly, it reminds the State's Legislators of the importance of ensuring the conduct of elections for Local Government is conducted impartially, professionally and transparently.

The Premier referred the conduct of the 2008 Local Government Elections to the Committee for inquiry following concerns raised by the Local Government and Shires Association.

This followed considerable disquiet amongst a number of Councils about various aspects of the conduct of the elections, especially cost.

The Committee invited all Councils, State registered political parties and parties registered to contest local government elections as well as a number of other stakeholders to make submissions to the inquiry on their issues of concern.

Submissions from Councils - both metropolitan and regional, identified a number of concerns about the elections. The most common issue identified through the inquiry was the issue of costs for running the elections. Many Councils felt the model used by the Electoral Commission for apportioning costs was an attempt to shift fixed costs of maintaining the electoral commission onto local government.

Other Councils identified issues with the use of the Regional Returning Officer (RRO) model – where a Returning Officer was shared amongst two or more Council areas.

Issues including insufficient ballot papers at polling booths, the time taken for results to be declared using the central vote counting centre, the selection of polling locations and returning officer accommodation were also raised by a number of Councils.

In addition to inviting submissions - of which 72 were received, the Committee also conducted public hearings to allow Councils, registered political parties and other stakeholders the opportunity to express their views on the conduct of the elections. 23 Councils participated in the hearings, as did disability advocacy groups and the Local Government and Shires Association.

The Committee wanted to further explore the concerns of Councils regarding the cost of the elections and resolved to engage a recognised accounting firm to conduct an independent review.

Chair's foreword

The firm of PKF Accountants conducted the review of costs and charges to Councils for the election. While the report identified areas where cost calculations could be clarified, the report concluded, "that nothing has come to our attention that causes us to believe that the costs passed onto Local Councils in relation to the 2008 Local Government Elections are unreasonable."

The Committee's report makes 16 key recommendations, which should assist in the conduct of future Local Government elections. For example, Recommendation 7 suggests the NSW Election Commission consider formulating a 'Service Charter' for local government modelled on the Commonwealth Government Service Charter for departments and agencies dealing with the public.

Another recommendation was to amend the Local Government Act 1993 to allow Councils to opt to use universal postal voting as the method of election.

But while the Committee has identified a number of areas where improvements can be made in the management of services by the Electoral Commission, the Committee was not critical of the conduct of the elections overall.

In fact, the Committee acknowledged that the Electoral Commission's conduct of the 2008 local government elections provided a comprehensive, transparent and impartial service to Councils.

Further, the Committee accepted that to ensure the integrity of Council elections, the Electoral Commission should continue to conduct all elections.

This Inquiry has been useful in allowing Councils to highlight issues of concern about the conduct of local government elections. I would like to acknowledge and thank the Councils, disability advocacy groups, political parties and other stakeholders who made submissions and participated in the public hearings.

I would also like to thank the Committee members for their hard work and interest in this important democratic process.

I would like to thank the Electoral Commissioner, Mr Colin Barry and his staff who were very helpful throughout this process. Their willingness to participate in a process that exposed their office to criticism was appreciated.

Finally, the wonderful staff of the Electoral Matters Committee - Helen Minnican, Amy Bauder, Jon Frazer, Leslie Gönye and the rest of the Secretariat - must be acknowledged for their hard work and support of the Committee. As always, such a report could not have been delivered without their dedication, talent and ability.



Robert Furolo MP  
Chair



## List of recommendations

### RECOMMENDATION 1: ..... 11

The Committee recommends that:

(a) each House of Parliament amend the resolution establishing the Joint Standing Committee on Electoral Matters to include a *standing reference* to inquire into and report upon:

- i. the conduct and administration of local government elections, and
- ii. any matter connected with the following laws as they pertain to local government elections -

- the *Local Government Act 1993* and the Local Government (General) Regulation 2005;
- the *Parliamentary Electorates and Elections Act 1912*; and
- the *Election Funding and Disclosures Act 1981*.

(b) the Committee is to report upon the outcome of any such inquiry as soon as practicable after 12 months from the date on which the local government elections are held.

(c) each House consider passing a resolution to clarify that the Joint Standing Committee on Electoral Matters may inquire into and report upon any matter relating to local government elections as referred to it by either House of the Parliament or a Minister.

### RECOMMENDATION 2: ..... 11

The Committee recommends that:

(a) the *Local Government Act 1993* be amended to require the Electoral Commissioner to provide a report to the appropriate Minister on each set of local government elections, within nine months of the election, and for the report to include details of the following:

- i. the role of the NSWEC;
- ii. electoral services provided to:
  - electors
  - councils
  - candidates, groups and political parties
- iii. recruitment and training of election staff, and the management of polling places;
- iv. counting and the provision of the election results;

List of recommendations

- v. funding arrangements and the costs associated with the local government elections;
- vi. benchmarking of the conduct and administration of the local government elections; and
- vii. any relevant legislative amendments affecting the conduct and administration of the local government elections.

(b) consistent with Recommendation 2a, an amendment be made to the *Parliamentary Electorates and Elections Act 1912* to require the Electoral Commissioner to provide a report to the Premier in respect of each state general election, within nine months of the election.

(c) the relevant statutes be amended to provide that the reports by the Electoral Commissioner in respect of each state general election and local government election be tabled in Parliament within 14 days of receipt by the Minister.

RECOMMENDATION 3: .....22

The Committee recommends that the Joint Standing Committee on Electoral Matters externally review the operation of the full cost recovery model for the 2012 local government general elections and, in light of the findings of that review, consider the necessity for engaging consultants to conduct any subsequent external reviews of the model.

RECOMMENDATION 4: .....27

The Committee recommends that the NSW Electoral Commissioner ensure that detailed information about the budgeted and actual costs for the 2012 local government elections be provided to all council General Managers. Such detailed information should provide explanations as to what each line item covers, and how it has been calculated and allocated.

RECOMMENDATION 5: .....45

The Committee recommends that a higher proportion of the NSW Government's advertising budget be spent advertising the next local government election in the fortnight preceding polling day.

RECOMMENDATION 6: .....47

The Committee recommends that:

- (a) the NSW Electoral Commission continue to conduct stakeholder surveys on the conduct of the election;
- (b) detailed information on the survey responses be provided to the Committee as part of the material examined during the proposed review of the 2012 local government elections, in addition to any statistical compilation of survey results;
- (c) in conducting the surveys the Electoral Commission give particular attention to stakeholder views on the following issues, raised with the Committee during the course of this inquiry:
  - the Regional Returning Officer model;
  - resourcing, staffing and location of pre-poll and polling booths;

- transportation of ballot papers;
- arrangements for scrutineering;
- election advertising;
- the Elector Inquiry Centre; and
- the counting of the vote.

RECOMMENDATION 7: ..... 50

The Committee recommends that:

- (a) the NSW Electoral Commission consider formulating a 'Service Charter for local government elections', to be developed in consultation with relevant stakeholders and modelled on the Commonwealth and State Government Service Charters for departments and agencies dealing with the public.
- (b) the proposed Service Charter be aligned to the corporate values of the NSW Electoral Commission around their four key result areas, as they relate to local government general elections.
- (c) the NSW Electoral Commission include in its report on the local government elections information on its performance in providing services for local government elections, benchmarked against the proposed Service Charter.

RECOMMENDATION 8: ..... 54

The Committee recommends that the following aspects of the Regional Returning Officer (RRO) model be given consideration by the NSW Electoral Commission in preparation for the 2012 local government elections:

- (a) the accessibility of RROs to the residents, candidates and staff of those councils not hosting the returning officer, including the possibility of the returning officer making visits to those other councils during the election period.
- (b) the use of a landline or free call contact number for all returning officers.
- (c) ballot paper transportation.
- (d) arrangements for pre-poll voting for those councils not hosting the RRO, including the possibility of employing part time electoral officials to cover those councils not hosting the RRO.

RECOMMENDATION 9: ..... 57

The Committee recommends that:

- (a) councils should continue to be responsible for the maintenance of the non-residential roll for local government general elections;
- (b) the NSWEC and Department of Local Government work to clarify the appropriate authority for providing advice to councils on inclusions and exclusions to the non-resident roll;
- (c) as part of the consultations with General Managers prior to the 2012 local government general elections, the Electoral Commissioner provide information to

List of recommendations

councils on strategies to improve enrolment levels in relation to non-residential electors; and

(d) the NSW Electoral Commission continue to provide support for publication of information relating to the non-residential roll via the NSWEC website.

RECOMMENDATION 10: .....57

The Committee recommends that the requirement that a candidate's signature on a local government election nomination form be witnessed by a Justice of the Peace be discontinued.

RECOMMENDATION 11: .....66

The Committee recommends that:

(a) the *Local Government Act 1993* be amended to allow elections with universal postal voting for those councils who opt to use that method of election, in time for the 2012 local government elections.

(b) the Government undertake consultation on the best method for councils to use to decide to opt into a universal postal voting system.

(c) the NSWEC provide advice to the General Manager of local councils interested in universal postal voting as to the costs involved in taking up this option.

RECOMMENDATION 12: .....69

The Committee recommends that prior to the 2012 local government elections, the NSWEC:

(a) review the methodology used to calculate projected voting figures and allocate ballot papers for polling places.

(b) review the policies and procedures in place to deal with any shortage of ballot paper that may occur on election day.

(c) review the method for determining staffing levels for polling booths on election day, including multi-ward and multi-council polling places.

RECOMMENDATION 13: .....69

The Committee recommends that the Electoral Commissioner examine multi-council how-to-vote cards for multi-council polling places, with a view to allowing multi-council how-to-vote cards.

RECOMMENDATION 14: .....74

The Committee recommends that more priority be given to disability access for polling places.

RECOMMENDATION 15: .....85

The Committee recommends that the Electoral Commissioner:

(a) provide advice to General Managers as part of the consultation process in the lead up to the 2012 local government elections on the option of a local computerised count where required, including detailed information about the costs and resourcing issues.

(b) report on any initiatives undertaken by the NSW Electoral Commission toward improving counting and publication of results in the Commission’s next report on the local government elections in 2012.

RECOMMENDATION 16: ..... 88

The Committee recommends that the NSW Electoral Commission investigate the feasibility of abolishing the random sampling method for preference distribution and the alternative fractional methods currently available, and calculate the costs associated with moving to technology that would support an alternative method.

FINDING 1: ..... 91

The Committee finds that changes to the above the line preferential voting system in use for local government elections would require further examination, including wider canvassing of stakeholder opinion, such as that of political parties, candidates and electors.

## Executive Summary

On Saturday 13 September 2008 elections were held for 148 council areas across NSW. This electoral event involved 332 individual elections for councillors in 187 wards, 84 undivided councils and 27 mayoral elections. Thirty nine uncontested elections were conducted for 36 wards, two undivided councils and one mayoral election. In addition to these elections of people to office, 17 council referenda and 17 polls were conducted.<sup>1</sup>

The NSW Electoral Commission (NSWEC) has reported that there were no successful court challenges to the election results and two recounts were conducted with no change to the outcome in either election.<sup>2</sup> Twelve recounts were undertaken for the 2004 local government elections.<sup>3</sup> The lack of any successful legal challenge or disputed results is one clear demonstration that the elections were conducted professionally, impartially and fairly.

The former Premier referred the 2008 local government elections to the Committee for inquiry, following a request from the Local Government and Shires Association (LGSA) for a Parliamentary Inquiry.<sup>4</sup> The Committee's inquiry was conducted in the context of significant concern and anxiety on the part of councils across the State in relation to the conduct and administration of the 2008 local government elections. The inquiry resulted from efforts by the Local Government and Shires Association (LGSA) to convey to the Government and the public the level of dissatisfaction on the part of individual councils about the cost of the election and the implementation of full cost recovery. In particular, Councils strongly objected to the costs that were well above what they had paid to the NSWEC in relation to the conduct of the previous local government elections.

In the lead up to the inquiry, media reports on the local government elections focused on the increase in charges<sup>5</sup> and the fairness of the increase in light of 'rate pegging' by the government, which limits councils' capacity to increase income. Councils raising this issue included Tamworth, Maitland, Bathurst, and Armidale Dumaresq.<sup>6</sup> Complaints regarding the conduct of the election also were raised in the media, including:

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<sup>1</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2008, p. 10.

<sup>2</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, October 2009, p. 12.

<sup>3</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2008, p. 113.

<sup>4</sup> Local Government and Shires Association of NSW, *Local Government Election Expenses*, <http://www.lgsa.org.au/www/html/3039-local-government-election-expenses.asp>, accessed 10 May 2010.

<sup>5</sup> 'Our \$260,000 election', *Manning River Times*, 27 June 2008, <http://taree.yourguide.com.au/news/local/news/general/our-260000-election.799050.aspx>, accessed 18 March 2009; L. Ashworth, 'Commission's ballot box rort', *Lithgow Mercury*, 24 June 2008, <http://lithgow.yourguide.com.au/news/local/news/general/commissions-ballot-box-rort/795378.aspx>, accessed 16 March 2009; P. Barrett, 'The price of democracy', *Armidale Express*, 23 June 2008, <http://armidale.yourguide.com.au/news/local/news/general/the-price-of-democracy/794658.aspx>, accessed 18 March 2009.

<sup>6</sup> D. Gregory, 'Revolt by councils – we won't pay up', *The Sun-Herald*, Sunday 8 March 2009, p. 35; B. Snedden, 'Cost to count your vote', *Maitland Mercury*, 3 September 2008, <http://www.maitlandmercury.com.au/news/local/news/general/cost-to-count-your-vote/1261208.aspx>, accessed 17 March 2009; Wood, B. 'Election bill soars by 349pc', *Western Advocate*, 5 June 2008, <http://www.westernadvocate.com.au/news/local/news/general/election-bill-soars-by-349pc/783642.aspx>, accessed 17 March 2009; P. Barrett, 'The price of democracy', *Armidale Express*, 23 June 2008, <http://armidale.yourguide.com.au/news/local/news/general/the-price-of-democracy/794658.aspx>, accessed 18 March 2009.

- understaffing of polling booths<sup>7</sup>;
- polling places running out of ballot papers<sup>8</sup>;
- too little or poor advertising of the date of elections and of the location of polling places<sup>9</sup>; and
- incorrect information provided to candidates on election results.<sup>10</sup>

The Committee ensured that all of these issues were examined carefully when inviting submissions and hearing from witnesses, including the NSW Electoral Commission.

All councils were invited by the Committee to make a submission to the inquiry and submissions were received from 45 local councils. In addition, the Riverina and Murray Regional Organisation of Councils and the Local Government and Shires Association also made submissions. Twenty-three of the councils who made submissions were represented at the hearings. Of the total 24 local councils that gave evidence, thirteen were from outside the Sydney Metropolitan area. Unfortunately, three of the local councils invited by the Committee to give evidence were unable to do so and one regional council declined the Committee's invitation to give evidence. The Local Government Association and the Shires Association also gave evidence to the Committee. The Electoral Commission was given the opportunity to participate and respond to issues raised during the inquiry through answers to questions on notice and evidence before the Committee.

The Committee was clear that its role in the inquiry process was not to pass judgement about the competing interests of inquiry participants but rather to balance these interests with reference to the responsibilities, roles, expectations and performance of key stakeholders. The Committee notes the scale and complexity of the considerable logistical exercise involved in conducting and administering the local government elections and the challenges faced by the NSWEC in undertaking full responsibility for these elections for the first time. The Committee also notes that this change was one of the factors which may have affected the expectations of the local government sector.

The Committee regards the NSWEC's role as particularly significant in terms of securing the integrity of the election process and the observance of consistent standards in election processes at both the state and local levels of government. The relationship between the NSWEC and its stakeholders is critical to the success of the Commission and its credibility in performing this role.

The Committee's report contains a number of recommendations and findings that aim to enhance and develop the degree of accountability and transparency around the conduct and administration of the elections and foster the relationship between the NSWEC and key

<sup>7</sup> 'NSW council elections under scrutiny', *Government News*, Thursday 12 March 2009, <http://www.governmentnews.com.au/2009/03/12/article/ZNIWKTHOWY.html>, accessed 18 March 2009.

<sup>8</sup> 'NSW council elections under scrutiny', *Government News*, Thursday 12 March 2009, <http://www.governmentnews.com.au/2009/03/12/article/ZNIWKTHOWY.html>, accessed 18 March 2009; and 'Election bill row', *The Sunday Telegraph*, Sunday 14 December 2008, p. 24.

<sup>9</sup> 'Mayor says council should run election', *Liverpool Champion*, 5 November 2008, <http://liverpool.yourguide.com.au/news/local/news/general/mayor-says-council-should-run-election/1351676.aspx>, accessed 18 March 2009; 'A vote of no confidence', *The Sydney Morning Herald*, 4 November 2008, p. 24.

<sup>10</sup> 'A vote of no confidence', *The Sydney Morning Herald*, 4 November 2008, p. 24.

stakeholders in the election process, such as councils, candidates and the public. The proposals recommended by the Committee include:

- Ongoing parliamentary committee review of the conduct and administration of local government elections (as currently occurs in relation to state elections);
- Inclusion in the parliamentary committee review of the budgeted and actual costs for the 2012 local government elections, as considered necessary;
- Mandatory reporting by the NSWEC on local government elections (the NSWEC currently reports on a voluntary basis); and
- Development and implementation by the NSWEC of a local government elections Service Charter, in consultation with relevant stakeholders.

It was claimed during the course of the inquiry that the costs passed on to councils by the NSWEC were more than mere cost recovery. Evidence gathered in the course of the inquiry would indicate that this is not the case. The Committee has concluded that the costs recovered by the NSWEC from councils were reasonable and accurate. However, there were a number of areas in relation to the elections that the Committee considers should be subject to further examination and consultation in the lead up to the 2012 local government elections.

The Committee is confident that most of the issues raised by participants during the inquiry can be addressed administratively, without the need for significant policy changes or legislative amendment. In some cases, the Committee has identified areas where the NSWEC should undertake further investigation, which may subsequently lead to legislative change, for instance, in relation to random sampling. Significantly, the NSWEC has recently identified several of these areas as particular challenges on which it will continue to work:

- timeliness of results;
- cost estimates and cost recovery;
- Council visits programme;
- location of voting venues and staffing levels;
- electors with vision impairment (including the examination of electronic voting);
- legislative amendments (dealt with by the Committee in its previous inquiry into the public funding of state election campaigns).<sup>11</sup>

The Committee welcomes initiatives by the NSWEC in these areas and looks forward to reviewing the outcomes of the Commission's efforts as part of the proposed parliamentary review of the conduct and administration of the 2012 local government elections.

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<sup>11</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, October 2009, p. 42.



# Chapter One - Introduction

## Conduct of the inquiry

- 1.1 The Joint Standing Committee on Electoral Matters (the Committee), functions under terms of reference contained in the resolution of both Houses appointing the Committee. This resolution authorises the Committee to inquire into any matters that relate to the *Parliamentary Electorates and Elections Act 1912* (other than Part 2 relating to the distribution of electorates), the *Election Funding and Disclosures Act 1981*<sup>12</sup> and provisions of the *Constitution Act 1902* relating to procedures for and conduct of the elections of members of the Legislative Assembly and Legislative Council (other than sections 27, 28 and 28A relating to the distribution of electorates).<sup>13</sup>

### Terms of Reference

- 1.2 The then Premier, the Hon. Nathan Rees MP, wrote to the Committee on 2 March 2009 referring all matters that relate to the *Parliamentary Electorates and Elections Act 1912* (other than Part 2), the *Election Funding and Disclosures Act 1981* and the *Constitution Act 1902* (other than ss. 27, 28 and 28A), with respect to the September 2008 local government elections for any inquiry the Committee may wish to make, including in relation to the costs of the 2008 local government elections. The terms of reference for the inquiry are reproduced in full on page iv of this report.
- 1.3 In the referral letter, the former Premier made specific reference to s 21AA (2) of the *Parliamentary Electorates and Elections Act 1912*, which confers on the Electoral Commissioner the responsibility for administering the Act and the provisions of any other Act as they relate to the enrolment of electors, the preparation of rolls of electors and the conduct of elections. Additionally, s 21AA(3) of the *Parliamentary Electorates and Elections Act* provides that the Electoral Commissioner has the functions conferred or imposed on him by any other Act. Section 296 of the *Local Government Act 1993* confers on the Electoral Commissioner the responsibility for conducting local government elections. Parts 4 and 6 of the *Election Funding and Disclosures Act 1981*, which provide for the registration of candidates, groups and agents for elections, political donations and electoral expenditure, also apply to local government elections. A copy of Mr Rees's letter can be found at Appendix 1.

### Submissions

- 1.4 The Committee Chair wrote to the Local Government and Shires Associations (LGSA), State registered political parties, all political parties registered to compete in local government elections, and relevant individuals, stakeholders, statutory authorities and government agencies to inform them of the inquiry and invite submissions. An email to the same effect was sent to the 152 councils. Advertisements calling for submissions to the inquiry appeared in the *Sydney Morning Herald* and the *Daily Telegraph* on Wednesday 15 April 2009.

<sup>12</sup> The resolution appointing the Committee refers to the *Election Funding Act 1981*, the name of this Act was amended to the *Election Funding and Disclosures Act 1981* (EFDA) by the *Election Funding Amendment (Political Donations and Expenditure) Act 2008* which was passed by Parliament on 25 June 2008 and assented to 30 June 2008.

<sup>13</sup> Legislative Assembly Votes and Proceedings, Thursday 21 June 2007, entry no. 13 (7) and Legislative Council Minutes of Proceedings, No 13, Tuesday 26 June 2007, entry no 25.

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- 1.5 The Committee received 72 submissions and five supplementary submissions from metropolitan, regional and rural councils, the LGSA, registered political parties for state and local government elections, statutory authorities, advocacy organisations, candidates, and private individuals. The NSW Electoral Commission (NSWEC) provided the Committee with a copy of its *Report on the Local Government Elections 2008* which was published on the Committee's website. A full list of submission makers can be found at Appendix 2.
- 1.6 In preparing its submission to the inquiry, the Local Government and Shires Association called upon its members to provide information and feedback on their experience of the elections.<sup>14</sup> This information was reflected in the LGSA's submissions and evidence to the Committee's inquiry. The Committee was, therefore, cognisant that the issues raised during the inquiry stemmed from concerted efforts by the LGSA and councils to air their concerns and have issues addressed. Consequently, these views were considered by the Committee at all stages of the inquiry and have informed its deliberations on the report and recommendations.

*Public hearings*

- 1.7 Public hearings were held on 26 and 27 August 2009. The Committee took initial evidence from Mr Colin Barry, in his capacity as Electoral Commissioner and Chair of the Election Funding Authority (EFA), and other NSWEC representatives. The Committee also took evidence from council representatives, and the Riverina and Murray Regional Organisation of Councils (RAMROC). Thirteen of the 23 council representatives who gave evidence were from outside the Sydney metropolitan area.
- 1.8 Evidence was taken from individual councils and groups of councils in roundtable mode. Roundtables were formed around the following inquiry issues: the Regional Returning Officer Model; the selection of polling locations and pre-poll voting centres; Returning Officers, accommodation and other issues; the operation of the *Election Funding and Disclosures Act 1981*; and, the general administration of the elections. RAMROC appeared in a roundtable with representatives from three member councils. The LGSA also provided evidence to the Committee.
- 1.9 Representatives from peak disability advocacy organisations also gave evidence in a stakeholder roundtable that focused on the Braille voting initiative for the 2008 local government elections, polling place and pre-poll voting centre accessibility and proposals for future improvements to the accessibility of elections. The Committee also took evidence from two political parties and two individuals. In addition, the Committee engaged a consultant to provide independent accounting and financial advice in relation to the costs and cost recovery methodology used in the 2008 local government elections. The consultant's findings and the Electoral Commissioner's response have been incorporated into relevant sections throughout the report.
- 1.10 Final evidence from the Electoral Commissioner and representatives of the NSWEC was taken on 26 October 2009.
- 1.11 The Committee wishes to thank all those councils, organisations and individuals who participated in the inquiry by providing submissions or giving evidence.

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<sup>14</sup> LGSA, 'Item 17: Inquiry into 2008 Local Government elections', *Local Government Weekly*, 10/09, 13 March 2009, p. 24.

## Issues arising in relation to the *Election Funding and Disclosures Act 1981*

- 1.12 The Committee received a referral for an inquiry into public funding of election campaigns on 3 December 2009. The inquiry examined reform of the election finance system for political parties and candidates in NSW, to apply at both state and local levels. The report for this inquiry was tabled on 26 March 2010. There was significant overlap between issues raised in relation to the *Election Funding and Disclosures Act 1981* during the course of the Inquiry into 2008 local government election and those considered by the Committee in its report on *Public funding of election campaigns*. Consequently, the Committee has not considered these issues in detail in this report.
- 1.13 During the inquiry into 2008 local government elections a number of matters were raised in relation to the *Election Funding and Disclosures Act 1981* as it operates for local government election candidates and representatives. The Election Funding Authority identified a number of areas of confusion and uncertainty, which they encountered while administering the Act for the 2008 local government elections. The EFA argued that these problems were the result of inconsistencies introduced when the Act was amended in 2008.<sup>15</sup> Broadly, the issues were:
- *Difficulties in identifying persons capable of being prosecuted for failure to lodge disclosures* - The EFA argued that the deeming provision that applies where there is a failure to appoint official agents is difficult to invoke because it is based on a threshold factual premise about the acceptance of donations, which is difficult to establish.
  - *Ambiguity in the term of office of official agents* - The EFA argued that there is considerable uncertainty about when the term of an official agent can be held to have terminated. This in turn creates difficulties in determining when the obligations of an official agent expire.
  - *Ambiguity as to the conditions under which an individual is a 'candidate'* - The EFA considered that, given the varying definitions of candidate, there is uncertainty about the circumstances in which a person who satisfies one of those definitions is required to appoint an official agent and, further, there is uncertainty about the point in time at which a person can be held to have ceased being a candidate.
  - *Confusion resulting from the complexity of the threshold condition that triggers an obligation to open a campaign account and appoint an official agent* - The EFA argued that the circumstances in which expenditure can occur without the need to appoint an official agent or open an expenditure account are confusing and unnecessarily complicated.<sup>16</sup>
- 1.14 Other inquiry participants also raised the following issues:
- The administrative and financial burden placed on parties, candidates and elected councillors by declaration and disclosure requirements, particularly the ongoing six-monthly disclosure requirements.<sup>17</sup>
  - The cost and difficulty for smaller parties and independents of having returns audited by registered company auditors.<sup>18</sup>

<sup>15</sup> Election Funding Authority, *Submission 68*, pp. 2-3.

<sup>16</sup> NSW Election Funding Authority, *Submission 68*, pp.3-10.

<sup>17</sup> Our Sustainable Future, *Submission 8*; Yass Valley Council, *Submission 18*, p. 2; Wentworth Shire Council, *Submission 27*, p. 1; Upper Lachlan Shire Council, *Submission 31*, p. 2.

Introduction

- Problems with appointing a trained and qualified 'Election Agent' for independents.<sup>19</sup>

1.15 The issues outlined above were considered as part of the Committee's recent inquiry into the public funding of election campaigns. It is relevant to note that the following recommendations contained in that report are aimed at addressing these problems and giving greater clarity to relevant legislation:

**RECOMMENDATION 34:** The Committee recommends that, as a matter of priority, the Premier give consideration to bringing forward legislation as follows, in consultation with the Electoral Commissioner, to:

(a) amend those provisions in the *Election Funding and Disclosures Act 1981* identified by the Election Funding Authority to be in need of clarification as a result of the amendments arising in the *Election Funding Amendment (Political Donations and Expenditure) Act 2008*, particularly in respect of definitional matters and the period for which obligations arising under the Act apply and expire. (The amendments are contained within Appendix 4 to the report); and

(b) amend s.96l of the *Election Funding and Disclosures Act 1981* to remove the requirement to establish 'actual knowledge' of an offence at the time it is committed, in order to facilitate prosecution of offences captured by this general offence provision.

The Committee further recommends that any amendment to s.96l should make express provision for the availability of a defence of 'reasonable mistake', or any other relevant defence, for offences covered by this section.

**RECOMMENDATION 35:** The Committee recommends that the Premier clarify with the Electoral Commissioner the necessity for amendments to the *Election Funding and Disclosures Act 1981* in order to:

(a) ensure audit certificates are provided in accordance with the requirements of the Act; and

(b) provide for possible exemptions from the requirements, where considered necessary by the EFA, including where the cost to a small party, individual candidate or third party may be unreasonable.

**RECOMMENDATION 40:** The Committee recommends that, where there are reasonable grounds for the Election Funding Authority to believe breaches and offences have occurred under a new scheme, the Election Funding Authority be empowered to:

(a) compel the production of books, records and other information from any person or organisation;

(b) question any person in relation to possible breaches under the Act;

(c) engage the services of any person for the purpose of getting expert assistance, for the purpose of performing its functions.

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<sup>18</sup> Our Sustainable Future, *Submission 8*; Our Sustainable Future, Supplementary *Submission 8a*, p. 4; The Greens, *Submission 51*; Ashfield Council, *Submission 56*, p. 3.

<sup>19</sup> Ashfield Council, *Submission 56*, p. 3.

**RECOMMENDATION 41:** The Committee recommends that the Premier ensure the Election Funding Authority receives additional funds and resources to support the enhanced compliance and investigative role the Committee has recommended for the Authority.

**RECOMMENDATION 43:** The Committee recommends that:

(a) the Election Funding Authority undertake educational initiatives targeting parties, candidates, third parties and the voting public about their responsibilities and obligations under the legislation; and

(b) the Authority be adequately resourced to do so.<sup>20</sup>

- 1.16 The Committee also notes that the Government is required to respond to the recommendations contained in the report within six months of tabling, and that the Committee will have an opportunity to review the Government response as part of its inquiry into the conduct and administration of the 2011 State election and 2012 local government elections.
- 1.17 The Committee intends to consider issues of public funding for local government elections in greater detail as part of a follow-up inquiry. This will allow for further investigation of issues raised as part the current inquiry, including the registration of political parties.

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<sup>20</sup> Joint Standing Committee on Electoral Matters, *Public funding of election campaigns*, March 2010.

## Chapter Two - Legislative, policy and administrative context for the elections

- 2.1 The NSWEC took full responsibility for the conduct of local government elections for the first time in 2008. This Chapter outlines various legislative and policy reforms that resulted in this change. Previously, councils and shires had provided some election services in-kind, which were negotiated between the NSWEC and councils on an individual basis.
- 2.2 While supporting the current legislative and policy framework, the Committee considers that the existing accountability mechanisms could be strengthened to improve transparency and accountability in relation to the conduct of local government elections.

### Legislative provisions

#### *Local Government Act 1993*

- 2.3 The election of persons to civic office at a local government level is provided for in Chapter 10 of the *Local Government Act 1993*. Section 296 prescribes that the elections are to be conducted by the Electoral Commissioner and that the Electoral Commissioner is to appoint a returning officer (RO) and substitute RO for each local government area to conduct the elections under the direction of the Electoral Commissioner. The RO then:
- appoints electoral officials;
  - appoints the polling places;
  - determines the fees payable to the returning officer, substitute returning officer and electoral officials; and
  - determines any matter not provided for by this Act or the regulations.
- 2.4 The role of the Electoral Commissioner as outlined in this section has not been altered in the life of the Act. However, section 297 provides for the delegation of any of the Electoral Commissioner's functions to a person other than the Electoral Commissioner. To what extent functions were delegated to councils or other bodies in previous local government elections is unclear.
- 2.5 Section 296(7) of the *Local Government Act 1993* establishes that all costs incurred by the Electoral Commission in the conduct of local government elections are to be met by the councils for which they were conducted. This provision has remained unaltered in the life of the Act.

#### *Parliamentary Electorates and Elections Amendment Act 2006*

- 2.6 The 2006 amendment of the *Parliamentary Electorates and Elections Act 1912* altered the process for appointing returning officers, removing the Governor's role in the appointment and termination of a returning officer for state elections (at the recommendation of the Electoral Commissioner).
- 2.7 The changes gave the Electoral Commissioner ultimate responsibility for the conduct of elections by making returning officers responsible to the Commissioner, and by removing the discretionary powers previously held by the ROs in the conduct of state

elections.<sup>21</sup> The duty of conducting elections was vested in the Electoral Commissioner. In the second reading speech to the Parliamentary Electorates and Elections Amendment Bill 2006, the Minister for Local Government, the Hon Graham West MP outlined the rationale for these changes:

The amendments will increase the Electoral Commissioner's control over the conduct of elections and therefore reduce inconsistent decision making by various returning officers. The bill will make it clear that returning officers are subject to the direction and control of the Electoral Commissioner.<sup>22</sup>

- 2.8 The Act also established the NSW Electoral Commission as a statutory authority.<sup>23</sup> The administration and conduct of state elections was centralised under the control of the Commissioner, altering the previously decentralised administrative structure, in which electoral functions had been managed by returning officers in localised contexts. The Electoral Commission's increased role in the 2008 local government elections mirrors the increased centralisation of the administration of state elections.
- 2.9 Additionally, s 21E of the amending Act provided for councils to contribute to the costs of maintaining the electoral roll, which would have introduced a new cost for councils. This section has not yet commenced, and the cost of maintaining the roll has been instead funded separately through Treasury.<sup>24</sup>

#### *Local Government (General) Amendment (Elections) Regulation 2008*

- 2.10 In 2008, the Government sought to amend the *Local Government Act 1993*, with the Local Government Amendment (Elections) Bill 2008 seeking to bring the legislative framework for the conduct of local government elections into line with the state elections conducted under the *Parliamentary Electorates and Elections Act 1912*. Amendments were made in the Legislative Council to the provisions relating to the appointment of an administrator. However, the Bill was withdrawn in the Legislative Assembly on 7 May 2009.<sup>25</sup>
- 2.11 The Local Government (General) Amendment (Elections) Regulation 2008, gazetted in June, made a series of amendments to Part 11 of the Local Government (General) Regulation 2005, which regulates the conduct of local government elections. Various electoral functions were transferred from councils and returning officers to the Electoral Commission.<sup>26</sup> This change reflects the centralisation of responsibility for the conduct of elections in the Electoral Commission, which occurred as a consequence of the 2006 changes to the *Parliamentary Electorates and Elections Act 1912*. The Regulation also made the Electoral Commissioner responsible for the

<sup>21</sup> Incorporated Consultation Draft Parliamentary Electorates and Elections Act 1912 showing changes proposed in the Parliamentary Electorates and Elections Amendment Bill 2006, June 2006, <http://www.legislation.nsw.gov.au/exposure/archive/1912-41.pdf>, accessed 18 March 2009.

<sup>22</sup> The Hon Graham West, Second Reading Speech, Parliamentary Electorates and Elections Amendment Bill 2006, Legislative Assembly, 30 August 2006, *Hansard*, p. 1131.

<sup>23</sup> The State Electoral Office existed prior to this Act, and was the administrative agency by which the Electoral Commissioner exercised statutory functions. State Electoral Office, *Annual Report 2005-2006*, p. 5.

<sup>24</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p.7.

<sup>25</sup> The amendments moved by the Greens specified that an administrator be appointed for a period of no more than 12 months, and that fresh council elections be held within a 12-month period, See *Legislative Council Minutes of Proceedings*, No 46, Wednesday 9 April 2008, item 31; see also *Votes and Proceedings of the Legislative Assembly*, 7 May 2009, entry no 12.

<sup>26</sup> Explanatory Note for the Local Government (General) Amendment (Elections) Regulation 2008 (NSW), Gazette No 76 of 27 June 2008, page 6136, paragraph (a).

advertising associated with local government elections<sup>27</sup> and required that the Electoral Commission publish information about the election, including a list of candidates and candidate information sheets, on the NSWEC and council websites.<sup>28</sup> The requirement for publication of this information by the NSWEC may have had an impact on the costs of elections to councils and shires.

2.12 This regulation also introduced a number of other changes to the conduct of local government elections, including:

- allowing nomination proposals, withdrawals, certain applications and material to be transmitted by fax or email;
- providing for silent, pregnant, or disabled electors to be eligible to apply for postal votes;
- enabling mobile pre-poll voting in remote local government areas; and
- providing for the availability of ballot papers in Braille format.<sup>29</sup>

### **Council on the Cost and Quality of Government review**

2.13 A Council on the Cost and Quality of Government (CCQG) review following the March 2004 local government elections identified that the State Electoral Office (SEO), as the NSWEC was then known, was not recovering all costs associated with local government elections, despite being entitled to do so under the Act. The SEO stated that it had not received State Government funding to conduct local government elections and the deficit in cost recovery was having an impact on the other areas of the SEO's operations, namely the planning, preparation and conduct of state elections.<sup>30</sup>

2.14 According to the NSWEC, as a result of the CCQG findings the 'NSW Government required the NSWEC to charge the full cost of providing the elections'.<sup>31</sup> The NSWEC also reported that it became wholly responsible for the conduct of local government elections, and that all elections conducted after the 2004 local government elections were to be the sole responsibility of the Electoral Commissioner on a full cost recovery basis.<sup>32</sup>

2.15 In the period between the 2004 and 2008 local government elections, changes were made to the systems used to account for and recover costs, and to the management of the relationship between councils and the NSW Electoral Commissioner. The Electoral Commission implemented an Activity Based Costing model for determining the costs of the 2008 local government elections (see paragraphs 3.32 to 3.39 for more detail). According to the NSWEC this was the first time councils were provided with a line by line item report on the amounts charged to them by the Electoral Commission.<sup>33</sup> Previously the SEO had invoiced councils for some costs, such as

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<sup>27</sup> Explanatory Note for the Local Government (General) Amendment (Elections) Regulation 2008 (NSW), Gazette No 76 of 27 June 2008, page 6136, paragraph (b).

<sup>28</sup> Explanatory Note for the Local Government (General) Amendment (Elections) Regulation 2008 (NSW), Gazette No 76 of 27 June 2008, page 6136, paragraph (c); and, Local Government (General) Amendment (Elections) Regulation 2008 (NSW), [19] clause 290 (4) and (5).

<sup>29</sup> Explanatory Note for the Local Government (General) Amendment (Elections) Regulation 2008 (NSW), Gazette No 76 of 27 June 2008, p. 6136.

<sup>30</sup> State Electoral Office, *Annual Report 2004-2005*, 27 October 2005, p. 21.

<sup>31</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 15.

<sup>32</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 15.

<sup>33</sup> NSW Electoral Commission, *Annual Report 2007-2008*, 31 October 2008, p. 7.



RO salaries, and an administration fee.<sup>34</sup> This model had been used in the 2007 State election and was adapted for the local government elections to provide an accurate apportioning of the total costs of running the election. Issues surrounding the costs of the local government elections are dealt with in detail in Chapter 3.

## Conduct of 2008 elections

- 2.16 The Electoral Commission took full responsibility for all aspects of the local government elections for the first time in 2008.<sup>35</sup> Previously councils and shires provided some election services in kind.<sup>36</sup> This was negotiated between the Electoral Commissioner and the councils on an individual basis. Identifying the lines of delegation and responsibility as they stood in the 2004 local government elections is difficult. The in-kind arrangements obscured many of the costs associated with the running of local government elections, and also blurred lines of accountability in cases where councils were involved in the conduct of their own elections.
- 2.17 It would appear that the decision to take full control of the conduct of local government elections was a policy directive intended to simplify arrangements for cost recovery and to ensure the conduct of local government elections is consistent with that of state and federal elections. The Electoral Commissioner has also stated that he took the decision to centralise the elections, in the same manner as the 2007 State election, to ensure consistency of service provision across the state.<sup>37</sup>

## Accountability mechanisms

- 2.18 The Electoral Commission produced a report on the conduct of the 2008 local government elections, which incorporated feedback sought from key stakeholders, including NSW electors, council general managers and election staff, on their satisfaction with processes and operations for the elections. A copy of this report is available on the Committee's website. Individual reports for each local government area were also prepared by the NSWEC and provided to 148 councils. The NSWEC provided a copy of each of these reports to the Committee for reference during the inquiry.
- 2.19 The Committee notes that the Electoral Commissioner is accountable to the Governor, Premier and Parliament by virtue of section 21AB of the *Parliamentary Electorates and Elections Act 1912*.<sup>38</sup> The Electoral Commissioner is also accountable to the Parliament through the Joint Standing Committee on Electoral Matters.
- 2.20 The Electoral Commission is subject to the requirements of the *Annual Reports (Departments) Act 1985* and the *Public Finance and Audit Act 1983*<sup>39</sup>, and also falls

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<sup>34</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 15.

<sup>35</sup> NSW Electoral Commission, *Annual Report 2007-2008*, 31 October 2008, p. 7; and 'Electoral commission up-beat about council poll inquiry', *ABC News*, 12 March 2009, <http://www.abc.net.au/news/stories/2009/03/12/2513991.htm>, accessed 19 March 2009.

<sup>36</sup> NSW Electoral Commission, *Annual Report 2007-2008*, 31 October 2008, p. 7.

<sup>37</sup> Mr Colin Barry, Chair, Election Funding Authority, Inquiry into electoral and political party funding in New South Wales, *Transcript of evidence*, 11 April 2008, p.14.

<sup>38</sup> Under this section the Governor may suspend the Electoral Commissioner from office for misbehaviour or incompetence, but can only be removed from office if the Premier lays a full statement of the grounds for suspension before both Houses within seven sitting days of the suspension. Both Houses must then pass a resolution within 21 days that the Electoral Commissioner ought to be removed from office.

<sup>39</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, 30 October 2009, p. 1.

within the jurisdiction of the Ombudsman, the Independent Commission Against Corruption and the Auditor-General.

## Committee comment and recommendations

- 2.21 The Committee notes that this was the first occasion of full NSWEC responsibility for the conduct of local government elections, and acknowledges the difficulties that may accompany such a large administrative exercise. During the course of the inquiry the Committee heard complaints regarding the NSWEC's conduct of the election (which are dealt with in subsequent chapters of this report) but did not hear any evidence which it believes justifies a repeal or significant change to the legislative or policy framework underpinning the 2008 local government elections. The Committee is of the belief that concerns raised during the inquiry can be resolved for the 2012 local government elections through better communication, improvements in some administrative areas and alterations to some electoral procedures.
- 2.22 The Committee supports the current legislative and policy framework and is of the strong belief that the Electoral Commissioner's role in conducting local government elections is significant in terms of the independence and integrity of the election process, consistency of services and the transparency of procedures for voters, candidates and the local government sector. However, the Committee is of the view that the accountability mechanisms for the conduct of the election could be strengthened. The referral of this inquiry from the Premier is a welcome step, but the Committee is of the belief that inquiry into the conduct of these elections should be an ongoing function of the Committee.
- 2.23 The Committee considers its work in reviewing the conduct of state elections plays a vital role in ensuring that those elections are conducted by the NSWEC to the highest possible standard. This was recognised by the former Premier when he referred this inquiry to the Committee:
- I believe that the Committee's oversight of State elections is of substantial benefit in terms of transparency and accountability. I see no reason why the same degree of oversight should not be applied to Local Government elections in the interests of transparency.<sup>40</sup>
- The Committee is thus recommending that it be given a standing reference to inquire into and report on local government elections.
- 2.24 The Committee supports the NSWEC's initiative to provide a report on the elections as a whole, in the form of the *Report on the 2008 Local Government Elections*. This report provided information essential to this inquiry and served as an important means of transparency to stakeholders and the public on the Commissioner's activities in the conduct of local government elections. The Committee is recommending it be a requirement for the Commissioner to provide a report following each set of ordinary elections for local government, with the first report being provided following the 2012 local government elections.
- 2.25 The Committee notes the Commission also took the initiative of providing reports to individual councils on the conduct of their elections. The Committee recommends that the NSWEC continue this practice for future ordinary elections and, in doing so,

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<sup>40</sup> Letter from The Hon Nathan Rees MP, Premier to Chair, dated 2 March 2009.

consider further tailoring the reports to provide as much information as possible to each local government area.

### **RECOMMENDATION 1:**

The Committee recommends that:

(a) each House of Parliament amend the resolution establishing the Joint Standing Committee on Electoral Matters to include a *standing reference* to inquire into and report upon:

- i. the conduct and administration of local government elections, and
- ii. any matter connected with the following laws as they pertain to local government elections -
  - the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*;
  - the *Parliamentary Electorates and Elections Act 1912*; and
  - the *Election Funding and Disclosures Act 1981*.

(b) the Committee is to report upon the outcome of any such inquiry as soon as practicable after 12 months from the date on which the local government elections are held.

(c) each House consider passing a resolution to clarify that the Joint Standing Committee on Electoral Matters may inquire into and report upon any matter relating to local government elections as referred to it by either House of the Parliament or a Minister.

### **RECOMMENDATION 2:**

The Committee recommends that:

(a) the *Local Government Act 1993* be amended to require the Electoral Commissioner to provide a report to the appropriate Minister on each set of local government elections, within nine months of the election, and for the report to include details of the following:

- i. the role of the NSWEC;
- ii. electoral services provided to:
  - electors
  - councils
  - candidates, groups and political parties
- iii. recruitment and training of election staff, and the management of polling places;
- iv. counting and the provision of the election results;

- v. funding arrangements and the costs associated with the local government elections;
- vi. benchmarking of the conduct and administration of the local government elections; and
- vii. any relevant legislative amendments affecting the conduct and administration of the local government elections.

(b) consistent with Recommendation 2a, an amendment be made to the *Parliamentary Electorates and Elections Act 1912* to require the Electoral Commissioner to provide a report to the Premier in respect of each state general election, within nine months of the election.

(c) the relevant statutes be amended to provide that the reports by the Electoral Commissioner in respect of each state general election and local government election be tabled in Parliament within 14 days of receipt by the Minister.

## Chapter Three - Costs

### Legislative provisions relating to costs

3.1 As discussed in Chapter 1, various legislative provisions and changes have shaped, or been shaped by, the move to centralise the responsibility for the conduct of local government elections. Since 1993, the NSWEC has had greater legislative responsibility for the conduct of local government elections, which has also increased the costs associated with such elections for the NSWEC. Section 296(7) of the *Local Government Act 1993* confers upon councils the responsibility to meet the costs incurred by the NSWEC in connection with conducting an election. Amendment of the *Parliamentary Electorates and Elections Act 1912* effected a centralisation of power and responsibility for the conduct of elections to the Electoral Commissioner. The changes gave the Electoral Commissioner ultimate responsibility for the conduct of elections by making returning officers responsible to the Commissioner, and by removing the discretionary powers ROs had previously held.<sup>41</sup> The duty of conducting elections was vested solely in the Electoral Commissioner. Policy directives relating to cost recovery procedures impacted on the extent to which the NSWEC has accounted for, and recovered costs associated with, local government elections.

### Council responses to full cost recovery

- 3.2 One of the key areas of complaint from the local government sector during the inquiry was the move to full cost recovery, and the increase in costs to councils that this entailed. A number of councils, and the LGSA, argued that the NSWEC is a monopoly service provider which means costs are excessive. Berrigan Shire Council argued that the NSWEC operates in a 'legislated, price protected monopoly' and while this remains the case there will be no improvement in quality of services or the cost.<sup>42</sup> Campbelltown City Council attributed the increase in costs levelled at councils to cost shifting by the State Government to local government, which has great demands on its limited resources.<sup>43</sup>
- 3.3 Councils also argued that while the intention of the cost recovery model was to reveal all costs and prevent councils from having to incur any costs associated with the conduct of local government elections, this was not the case.
- 3.4 Yass Valley Council argued that the cost of the election quoted by the NSWEC of \$5.71 per elector did not reflect the true cost of the election for their Council. The Mayor of Yass Valley Council, Cr Carmody, argued that council provided the following:
- Loan of furniture for no charge
  - Transportation of material to booths, including labour costs
  - Arrangements for advertising, and the cost of advertising

<sup>41</sup> Incorporated Consultation Draft Parliamentary Electorates and Elections Act 1912 showing changes proposed in the Parliamentary Electorates and Elections Amendment Bill 2006, June 2006, <http://www.legislation.nsw.gov.au/exposure/archive/1912-41.pdf>, accessed 18 March 2009.

<sup>42</sup> Berrigan Shire Council, *Submission 14*.

<sup>43</sup> Campbelltown City Council, *Submission 30*.

Costs

- Staffing of pre-poll voting in place of the RO who was located in Queanbeyan (RRO).
- 3.5 According to Cr Carmody, when you take these activities into account, the true cost for the council was ‘probably in excess of \$7’ per voter.<sup>44</sup>
- 3.6 Upper Lachlan Shire Council concurred with complaints about the use of staff time to support the NSWEC activities in running the elections. The Council reported that 15% of all votes recorded were pre-poll votes processed at Council’s three offices and that there was no reimbursement of staff salaries, time or use of resources, which are expenses in addition to the NSWEC invoiced amount. It also claimed advertising and public notice expenses were directly incurred and additional council staff time was spent liaising and coordinating with advertising agents.<sup>45</sup>
- 3.7 Assessing the full value of the support and contribution made by councils in the 2008 local government elections is not straightforward. One difficulty concerns the lack of accurate and complete records kept by councils. While taking evidence from RAMROC member councils, the Committee heard that Councils had not been prepared for the need to record costs borne by Councils, in addition to the NSWEC cost recovery process:
- Mr PERKINS:** If you go back to the start of this process, councils were not expected to bear any significant internal costs. Therefore, none of them had systems set up to capture that information at the start of the process. It really became an issue with the pre-polling arrangements, where the councils were thrown it and left to it.
- Ms CHARLTON:** That is correct. We were not set up to capture that data initially, so we had to do a post estimate by interviewing everybody involved, including customer service staff—who received a lot of inquiries—and looking at governance time and management oversight.<sup>46</sup>
- 3.8 Many councils raised concerns about the value for money they received through NSWEC control and full cost recovery. For example, Berrigan Shire Council argued that the election had been characterised by over servicing and significant costs compared to the historic costs.<sup>47</sup> Hurstville City Council reported that their Councillors believed that the conduct of the election was at a “low level” compared to when councils ran elections and that with cost recovery by the NSWEC there was an expectation that the election would be conducted professionally.<sup>48</sup>
- 3.9 Blacktown City Council informed the Committee that even after much negotiation and a decision to hold pre-poll voting in the library, the costs were still excessive. Mr Craig Dalli, Manager of Governance and Property for Blacktown City Council stated that ‘we are still not convinced that we had full value for money or that all the costs that were attributed to council were justified.’ Mr Dalli also argued that the Council had a number of concerns about things such as the cost of printing ballot papers, where the Council ‘felt we could have got a much better price on those sorts of things and some of the other administrative type issues.’<sup>49</sup>

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<sup>44</sup> Cr Nicholas Carmody, Mayor, Yass Valley Council, *Transcript of evidence*, 26 August 2009, p. 17.

<sup>45</sup> Upper Lachlan Shire Council, *Submission 31*.

<sup>46</sup> Mr Rowan Perkins, General Manager, Berrigan Shire Council; and Ms Judith Charlton, Director, Corporate Services, Albury City Council, *Transcript of evidence*, 26 August 2009, p. 34.

<sup>47</sup> Berrigan Shire Council, *Submission 14*.

<sup>48</sup> Hurstville City Council, *Submission 11*.

<sup>49</sup> Mr Craig Dalli, Manager of Governance and Property, Blacktown City Council, *Transcript of evidence*, 27 August 2009, p. 19.

- 3.10 Dubbo City Council raised similar reservations about the value of NSWEC control, arguing that it could have sourced cheaper printing through local suppliers, than the amount the NSWEC invoiced for printing ballot papers.<sup>50</sup>
- 3.11 Councils expressed a belief that the utilisation of their resources could reduce costs, and the NSWEC's inflexible implementation of the decision to centralise all electoral functions was problematic. Lane Cove Council argued that prior to 2008 the council had the option of contributing resources to keep costs down but in 2008 the NSWEC externalised these costs. Lane Cove Council was particularly dissatisfied with the inability for the cost recovery model to recognise contributions that were actually made, explaining that they were charged \$11,000 for IT infrastructure and support even though Lane Cove Council provided phone lines and support in installing IT equipment.<sup>51</sup>
- 3.12 Campbelltown City Council informed the Committee that in negotiations with the NSWEC they had indicated that they had a 'large number of well maintained voting screens' in storage which could be used in the elections, and that they were advised by the NSWEC that new voting screens would be provided and council would meet the cost.<sup>52</sup> This perceived inflexibility caused frustration for councils who were already concerned about cost increases.
- 3.13 Randwick City Council argued that certain costs, like the production of manuals for ROs and election officials, provision of computerised election management systems for ROs to streamline administration, e-learning for the training of polling place managers and the internet election night results system could, or should, be reduced for the next elections. They argued that the set-up costs for these things were covered by councils in 2008 and, therefore, should be lower next time.<sup>53</sup>
- 3.14 Baulkham Hills Shire Council expressed satisfaction with the full cost recovery exercise, stating that 'in the past there have [sic] been a lot of work and activities taken on by councils that have never been fully costed'<sup>54</sup>. Mr David Walker, General Manager, also argued that value was gained through the additional transparency and independence imparted by NSWEC responsibility for the elections.<sup>55</sup>

### Cost recovery model

- 3.15 In the period between the 2004 and 2008 local government elections, changes were made to the systems used to account for and recover costs, and to the management of the relationship between councils and the NSW Electoral Commissioner. The NSWEC developed a cost recovery model for the 2008 local government elections which was based on the Activity Based Costing (ABC) model used to account for the costs of the 2007 State election. The model was adjusted throughout the planning process for local government elections to ensure it included all relevant costs and that activities from the State election, which are not relevant to local government, were removed.

<sup>50</sup> Dubbo City Council, *Submission 4*.

<sup>51</sup> Lane Cove Council, *Submission 16*.

<sup>52</sup> Campbelltown City Council, *Submission 30*.

<sup>53</sup> Randwick City Council, *Submission 12*.

<sup>54</sup> Mr David Walker, General Manager, Baulkham Hills Shire Council, *Transcript of evidence*, 27 August 2009, p. 18.

<sup>55</sup> Mr David Walker, General Manager, Baulkham Hills Shire Council, *Transcript of evidence*, 27 August 2009, p. 18.

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- 3.16 As touched on above, the move to full cost recovery was instigated as a result of the CCQG review of the SEO which found the office was not adequately recouping costs associated with local government elections. The move was part of a broader shift in the operations of the newly established NSWEC to account for the full cost of its activities. The 2007 State election was the first occasion on which the NSWEC (as either the NSWEC or SEO) provided a full report on the cost of the elections.<sup>56</sup>
- 3.17 Section 296(7) of the *Local Government Act 1993*, specifies that:  
Expenses incurred by the Electoral Commissioner, returning officer, substitute returning officer and electoral officials in connection with an election are to be met by the council for which it is conducted and are recoverable from the council as a debt owed to the Electoral Commissioner as the holder of that office.
- 3.18 The Act does not distinguish between the types of expenses to be recovered, nor does it make specific provision for either direct or indirect costs to be recovered. It is clear that the intent of the legislative requirement, as stands, is for the NSWEC to recover *all* costs incurred in the conduct of the local government elections. This is not a matter requiring amendment for clarity.
- 3.19 The NSWEC advised that the costs which councils covered from their existing resources hampered the transparency of election conduct, but also masked the true cost of elections:  
The cost of electoral services were offset by using council premises and council staff but the financial value of this support was not captured or built into expenditure reports. As a result the true costs of Local Government elections were never determined.<sup>57</sup>
- 3.20 This was the first time councils were provided with a line by line item report on the amounts charged to them by the Electoral Commission.<sup>58</sup> The Electoral Commissioner stated that the thorough account of election costs was one of the key achievements from the 2008 local government elections; in evidence he told the Committee:  
For the first time we now have a comprehensive picture of all costs associated with these elections. We have a robust costing model that distributes costs across all councils according to assumptions and methodologies that can now be independently reviewed.<sup>59</sup>
- 3.21 Some councils, such as Baulkham Hills Shire Council expressed gratitude for the capture of, and accounting for, all costs of the elections. Baulkham Hills Shire Council submitted that in previous elections they had provided “in-kind” assistance, such as accommodation and administrative assistance, at a substantial cost to council. The costs had not been accurately accounted for as they generally took the form of a reallocation of existing council resources.<sup>60</sup> The General Manager of Baulkham Hills Shire Council, Mr David Walker, also argued that while there were extra costs to council, these were worthwhile for the independence and transparency associated with NSWEC centralised administration.<sup>61</sup>

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<sup>56</sup> NSW Electoral Commission, *Report on the 2007 State Election*, 26 November 2007, p. 26.

<sup>57</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 15.

<sup>58</sup> NSW Electoral Commission, *Annual Report 2007-2008*, 31 October 2008, p. 7.

<sup>59</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 2.

<sup>60</sup> Baulkham Hills Shire Council, *Submission 1*, p. 1.

<sup>61</sup> Mr David Walker, General Manager, Baulkham Hills Shire Council, *Transcript of evidence*, 27 August 2009, p. 20.



3.22 However, the majority of submissions the Committee received from councils argued that the increase in costs for councils was not a positive, and that the NSWEC's control did not remove the administrative burdens from councils.<sup>62</sup>

### Development of the Cost Recovery Model

3.23 According to the NSWEC's *Report on the 2008 Local Government Elections* the following steps were taken in developing the cost recovery model:

First, all 2008 Local Government Elections projects and associated activities were identified and quantified.

Secondly, the budget estimates were developed using a 'zero based' or 'bottom-up' budget methodology involving itemising volume and unit costs for each project, the tasks for each month and identifying the financial years 2007/08 and 2008/09 which were impacted.

Thirdly, substantive testing of these budget items and their estimated costs was undertaken using the most reliable cost schedule available that is the 2007 State General Election.

Fourthly, allocation of the costs for each project to individual councils was completed using the applicable methodology for the activity involved in each project. The three methodologies applied were either:

- Cost per elector:
- Actual costs incurred in specific council areas; and
- Allocation for Regional Returning Officer based on elector numbers.

This enabled equitable sharing of overheads applicable to all councils separately from costs specific to each council.<sup>63</sup>

### What it covered

3.24 The following activities made up the costing model:

- Programme Management allocated on the basis of cost per elector
- Performance evaluation and reporting allocated on the basis of cost per elector
- Finance services – budget management allocated on the basis of cost per elector
- Finance services – payroll processing allocated on the basis of cost per elector
- Finance services – payables processing allocated on the basis of cost per elector
- Finance services – mail services allocated on the basis of cost per elector
- Council visits allocated on the basis of cost per elector
- Candidate information sessions allocated on the basis of cost per elector
- De-briefing program allocated on the basis of cost per elector
- Centralised vote count allocated to specific councils requiring a central count<sup>64</sup>

<sup>62</sup> Berrigan Shire Council, *Submission 14*; Lane Cove Council, *Submission 16*; Yass Valley Council, *Submission 18*; Upper Lachlan Shire Council, *Submission 31*; Waverley Council, *Submission 33*; Shoalhaven City Council, *Submission 35*; Eurobodalla Shire Council, *Submission 41*; Griffith City Council, *Submission 43*; Blacktown City Council, *Submission 47*.

<sup>63</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 135.

<sup>64</sup> The total cost of conducting central counts was divided by the total number of electors in all local government areas that required central counting, and then multiplied by the number of electors in each specific council with central counts.

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- Voting centres allocated to specific councils based on number of polling officials, polling place rent, pre-poll venues and mapping
- Election materials allocated on the basis of cost per elector
- Training program allocated on the basis of cost per elector
- RO support centre allocated on the basis of cost per elector
- Wages for ROs allocated to councils based on actual cost, or if Regional Returning Officer then the total cost for the Regional Returning Officer divided by the total number of electors serviced by the RO, multiplied by the number of electors in a council area
- Wages for office assistants allocated to councils based on actual cost, or if Regional Returning Officer then the total cost for the office assistants divided by the total number of electors serviced by the RO, multiplied by the number of electors in a council area
- Wages for election officials allocated by the number of polling officials working in local government area
- RO accommodation allocated based on hard coded budget data specifically allocated to councils, or divided among councils who shared RO in same manner as with RO wages
- Registration of how-to-vote material allocated on the basis of cost per elector
- Printing ballot papers allocated specifically to councils
- Equal access to democracy program allocated on the basis of cost per elector
- Elector information campaign allocated on the basis of cost per elector
- Elector information campaign brochure allocated directly depending on whether the council decided upon a household brochure or a brochure for each elector
- Media information allocated on the basis of cost per elector
- Elector inquiry centre allocated on the basis of cost per elector
- Website and education allocated on the basis of cost per elector
- Systems support allocated on the basis of cost per elector
- IT setup allocated on the basis of cost per elector
- Dynamic website allocated on the basis of cost per elector
- Roll printing allocated on the basis of cost per elector
- IT staff allocated on the basis of cost per elector
- Results allocated on the basis of cost per elector
- Administration fee allocated on the basis of cost per elector.<sup>65</sup>

3.25 Certain costs were not recoverable from councils, and as such were not included in the cost recovery model:

- \$1.7 million in capital equipment from the 2007 State election
- \$2.1 million of development costs associated with the Election Management System<sup>66</sup>

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<sup>65</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, pp. 14-21

- \$3.7 million of Commonwealth roll maintenance costs.<sup>67</sup>
- 3.26 The NSWEC responded to council complaints about the cost recovery model, and costs in general, by arguing that there were costs which were not passed on to Councils:
- They do not pay for the roll, which costs the Government \$3.8 million a year. They contribute nothing to that. They do not pay for the infrastructure in terms of the computerisation. There are lots of things that the Commission has in terms of its intellectual capital that do not exist out there in 151 councils. The Commission does value its integrity and we have done a workmanlike job on these local government elections. We will do better next time.<sup>68</sup>
- 3.27 While there was general concern about the actual cost of full cost recovery, the Committee identified three main areas of concern with the model: the \$195 per hour administration fee charged to councils to recoup NSWEC head office costs; the timing and accuracy of cost estimates which were provided to councils; and, the lack of supporting documentation provided to councils with invoices from the NSWEC. These three issues will be dealt with in detail below.

### NSWEC audit program

- 3.28 An independent audit of the costing model was contracted to WalterTurnbull, as part of the NSWEC's 2007/08 internal audit program (which is overseen by the Commission's Internal Audit Committee).<sup>69</sup>
- 3.29 The audit objectives were to determine that:
- all relevant projects associated with the 2008 local government elections have been captured in the model, and that only relevant projects have been included;
  - appropriate costs drivers have been used in the model; and
  - charges are sufficient to recover costs.<sup>70</sup>
- 3.30 WalterTurnbull stated that its review was limited to an evaluation of the NSWEC's Activity Based Costing (ABC) model for the upcoming state-wide local government elections, and included a review of tasks performed and financial allocations made in the model to ensure that the NSWEC is recovering all costs borne.<sup>71</sup>
- 3.31 The WalterTurnbull review was conducted on the assumption that the costs associated with capital equipment from the 2007 State election, development of the Election Management System and Commonwealth roll maintenance costs were not

<sup>66</sup> "A computer software application consisting of four modules (staffing, candidates, declaration votes and results) to automate many of the routine tasks otherwise performed by election officials" from *Report on the 2008 Local Government Elections*, June 2009, p. 162.

<sup>67</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p. 7.

<sup>68</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 14.

<sup>69</sup> NSW Electoral Commission, *Annual Report 2007-2008*, 31 October 2008, p. 55. The Internal Audit Committee is comprised of Jim Mitchell, chair, Candy Nay, senior officer from the local government sector, and Kathleen Haddock, returning officer. The NSW Electoral Commission Director, Finance and Administration is secretary of the Committee.

<sup>70</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p.1.

<sup>71</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p.4.

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being included in the cost recovery model.<sup>72</sup> The NSWEC had advised WalterTurnbull that these costs were funded separately by Treasury.<sup>73</sup>

### Activity Based Costing Model (ABC)

- 3.32 The WalterTurnbull review excluded appraisal of the “controls in place to ensure that the information used for costing is accurate and reliable”.<sup>74</sup> WalterTurnbull found that:
- the systems employed by the NSWEC to capture and apportion the costs associated with the upcoming state-wide local government elections capture all the material associated costs with the running of a local government election, apportion them in a fair and equitable manner.<sup>75</sup>
- 3.33 The audit report noted that in adapting the ABC model from the 2007 State elections, the NSWEC had removed activities not relevant to local government elections.<sup>76</sup>
- 3.34 The WalterTurnbull report outlined three main areas requiring improvement:
- High rent estimates provided by councils for returning officers which would require additional documentation from councils to substantiate;
  - Errors in manual cell references within the Excel database used to administer the cost recovery system, which could be fixed through better use of Excel functionalities; and
  - Upward variation in costs for some smaller councils from original cost estimates, as a consequence of finalising the cost recovery model. WalterTurnbull recommended that arrangements be put in place to deal with council grievances following communication of these cost increases. They also recommended that a management plan for the release of cost estimates be developed for the next election to ensure the accuracy of estimates provided to councils.<sup>77</sup>
- 3.35 The review conducted for the Committee by PKF Chartered Accountants and Advisers (PKF) included a limited assessment of the source documentation used to determine actual costs, which did not find any anomalies.<sup>78</sup> PKF also found that adequate controls were in place to ensure that the costs passed on to councils were complete, accurate and valid.<sup>79</sup>
- 3.36 The PKF review also supported the WalterTurnbull report findings. PKF reported to the Committee that they had
- performed a review of all directly allocable costs categories included in the activity based costing model that were recharged to Councils based on a specified cost driver. This review did not highlight any cost categories which were not directly related to the 2008 LGEs and therefore recoverable from Councils.<sup>80</sup>

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<sup>72</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p. 7.

<sup>73</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p. 7.

<sup>74</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p.4.

<sup>75</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p. 2.

<sup>76</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p. 6.

<sup>77</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p. 1-2.

<sup>78</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 12.

<sup>79</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 13.

<sup>80</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 12. Please note LGE stands for local government elections in all PKF quotes.

- 3.37 The PKF report looked at the use of cost per elector as the primary basis of allocation in an ABC model.<sup>81</sup> The statewide actual costs of the activities carried out for the election (outlined at paragraph 3.24) is divided by the total number of electors in NSW to achieve a unit cost per elector. Each local government area is then allocated costs based on a formula in which the per elector unit cost is multiplied by the number of electors in the local government area.<sup>82</sup> The cost calculations used for the final invoice councils received in March 2009 were based on statewide actual costs, whereas cost estimates prior to this were based on budgeted statewide amounts for activities.<sup>83</sup> However, as noted previously, not all activities were allocated according to cost per elector. Some were allocated on the basis of actual costs incurred in specific local government areas or allocation for regional returning officer based on elector numbers. The NSWEC has listed the allocation methodologies against each activity in its report on the 2008 local government elections.<sup>84</sup>
- 3.38 Inquiry participants expressed confusion about the basis for cost allocation. It has been suggested that the NSWEC should use a system for allocating costs that is more closely linked to the activity, for example, in the same way costs associated with running a call centre are allocated based on the number of calls received from a particular area. However, as PKF noted, the infrastructure that would be required to capture and record usage to determine allocation of costs would entail an additional setup cost. PKF concluded that the costs and benefits of using more activity based cost drivers to allocate costs to councils should be considered for future elections.<sup>85</sup> However, the Committee notes the advice of the NSWEC that consideration of appropriate cost drivers and allocation methodologies was the subject of considerable attention by the NSWEC, and subsequent review by the Commission's internal auditors. This original review process led to the conclusion that implementing more detailed cost drivers would not be cost-effective or feasible. The Electoral Commissioner has advised:
- The cost drivers were determined through a process of consideration of what was feasibly collectable data as cost drivers. More detailed cost drivers may be able to be collected, such as telephone calls recorded by district of call, however once again there will be a cost of implementation and no overall savings. Walter Turnbull reviewed and agreed the cost drivers used as an appropriate basis for allocation and the NSWEC implemented this approach as agreed with its Internal Auditors. PKF did not review the approach, reasoning and sign-off process and therefore their perspective is a view rather than a considered conclusion based on findings of such a review.<sup>86</sup>
- 3.39 The Committee is not persuaded a different approach for allocating costs to that currently used by the NSWEC would be cost-efficient or necessarily feasible. The methodology for calculating the allocation of costs to councils is a matter that can be reviewed by the Committee, or the NSWEC's internal auditors, should the need arise. Significantly, the Committee notes that PKF concluded 'that nothing has come to our

<sup>81</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 13.

<sup>82</sup> Walter Turnbull, *Review of Local Government Election Pricing: Final Report*, July 2008, p.14.

<sup>83</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 135-7

<sup>84</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 135.

<sup>85</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 13.

<sup>86</sup> Letter from Mr Colin Barry, Electoral Commissioner to Committee Manager, dated 12 February 2010, p. 4.

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attention that causes us to believe that the costs passed on to Local Councils in relation to the 2008 LGEs are unreasonable'.<sup>87</sup>

### **RECOMMENDATION 3:**

The Committee recommends that the Joint Standing Committee on Electoral Matters externally review the operation of the full cost recovery model for the 2012 local government general elections and, in light of the findings of that review, consider the necessity for engaging consultants to conduct any subsequent external reviews of the model.

#### **\$195 per hour administration fee**

- 3.40 A common issue raised by councils and the LGSA during the inquiry was the \$195 per hour charge out rate used to determine the administration fee charged to councils. Many councils were of the opinion that this was an unfair cost to be passed on to local government. The main areas of concern for councils were the reasonableness of passing the ongoing administrative costs of the NSWEC on to councils and the large expense of \$195 per hour for, what was understood to be, solely staff time.
- 3.41 For example, Camden Council argued that the \$195/hour for NSWEC staff 'would indicate Councils are now paying for direct salaries of all permanent Electoral Commission staff involved in the election process' and argued that these staff would already be covered in the NSWEC budget. They also argued that this charge was in addition to other costs charged by the NSWEC such as IT, Systems Support, Payroll and Information Campaigns, which Camden Council submitted may be 'double dipping' on the part of the NSWEC.<sup>88</sup> Mr Graeme Wilson of Lismore City Council agreed, stating that administrative costs should be borne by the NSWEC and not passed on to councils, with only direct costs being charged to councils.<sup>89</sup>
- 3.42 The NSWEC is a statutory authority, but is not wholly government funded, and as such needs to include some of its ongoing head office costs in cost recovery processes for all non-Parliamentary election clients. The NSWEC stated that it charges an administration fee because the funding provided by Treasury to the NSWEC is not consistent for the four year election cycle, it has "peaks and troughs", depending on the commercial activities of the NSWEC. In the 2008 budget the NSWEC had set a sales of goods and services target of \$3.149 million, of which it was expected income totalling \$830,000 would come from the conduct of statutory industrial ballots.<sup>90</sup> The \$2.3 million of budgeted income remaining was allocated to local government in recognition of the fact that the main activity of the Commission during that period was running local government elections:

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<sup>87</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 6.

<sup>88</sup> Camden Council, Submission 32, p. 4.

<sup>89</sup> Mr Graeme Wilson, Corporate Compliance Coordinator, Lismore City Council, *Transcript of evidence*, 26 August 2009, p. 47.

<sup>90</sup> Mr Trevor Follett, Director, Finance and Administration, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 5.

“So that \$2.3 million is a net reduction in funding from Treasury for that year and that amount is charged to local government to recognise that there are permanent staff who are paid for by the state who are assisting in a local government process.”<sup>91</sup>

- 3.43 According to Mr Trevor Follett, NSWEC’s Director of Finance and Administration, the administration fee was calculated as part of the Walter Turnbull Review of Election Pricing process, after it was deemed that the \$50 per hour administration fee previously charged by the NSWEC for head office costs was not sufficient to cover these costs.<sup>92</sup>
- 3.44 The LGSA highlighted Council’s concerns, submitting that the administration fee seemingly recovered more than basic staff costs:  
a charge of \$195 per hour is considerably more than basic cost recovery. Using the NSWEC maths this charge would provide that each person employed by the NSWEC costs the NSWEC 1 x 52 weeks x 35 hours x \$195 = \$354,900.<sup>93</sup>
- 3.45 In support of their claim the Associations cited total employee related expenses from the Annual Report:  
The actual overall per person cost can be broadly calculated using the NSWEC’s own figures:  
 $\$5,324,000^{94} / 38 \text{ staff} / 52 \text{ weeks} / 35 \text{ hours} = \$76.98 \text{ per hour}$ . A normal full cost recovery is, by way of an example an employee’s hourly rate plus 20 – 30% to cover oncosts such as superannuation, insurances, etc, however the figure of \$76.98 is inclusive of these costs.<sup>95</sup>
- 3.46 The LGSA complaint is based on a belief that the administration fee includes a mark up of \$118.02 per hour. However, according to documentation provided to the Committee by the NSWEC, the \$195 consisted of the following components:
- \$53.67 of “Salary Costs – Front Line Staff”
  - \$66.93 of “Salary Costs, support staff”
  - \$22.85 of “Rent”
  - \$24.58 of Electricity, phone and other utilities
  - \$5.96 of “IT expenses”
  - \$21.01 of depreciation<sup>96</sup>
- 3.47 PKF’s review of the administration fee found that the number of frontline staff employed in the Electoral Commission’s Client Services Branch dealing specifically with local government elections had ‘increased significantly since the operation of

<sup>91</sup> Mr Trevor Follett, Director, Finance and Administration, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 5.

<sup>92</sup> Mr Trevor Follett, Director, Finance and Administration, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 4.

<sup>93</sup> Local Government Association of NSW and Shires Association of NSW, *Submission 66*, p. 12.

<sup>94</sup> Total employee related expenses (including salaries and wages, recreational leave, superannuation, long service leave, workers compensation insurance and payroll and fringe benefits tax) listed in the NSW Electoral Commission’s Annual Report 2007/08.

<sup>95</sup> Local Government Association of NSW and Shires Association of NSW, *Submission 66*, p. 13.

<sup>96</sup> Document provided by Mr Colin Barry, Electoral Commissioner, titled “Joint Standing Committee into Electoral Matters Wednesday 26 June 2009”, at Public Hearing held Wednesday 26 August 2009.

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LGEs had been centralised and run by NSWEC due to the additional workload associated with this task.<sup>97</sup>

3.48 The question of the basis for the calculation of the staff component of the administrative fees was one of the matters raised with the Committee. In this regard, the Committee notes PKF's comments that NSWEC management believe that 18 staff over 19 weeks was a "very conservative" estimate of the time spent working on local government elections.<sup>98</sup> Mr Follett, NSWEC's Director of Finance and Administration, stated in evidence to the Committee that 'in reality, that would be at the lower end of the effort by the administration staff of the Commission.'<sup>99</sup>

3.49 PKF undertook a calculation of the administration fee using actual costs from the period in which work was carried out on local government elections (18 months from July 2007 to December 2008). PKF provided two recalculations of the administrative fee as follows:

- \$202 per hour – excluding depreciation costs and a staff component for non-billable hours (both of which were included in the \$195 administration fee calculated by the NSWEC);
- \$264 per hour – inclusive of a staff component for non-billable hours.<sup>100</sup>

3.50 PKF concluded that:

there are a number of estimates included in the calculation of the Administration Fee. The methodology employed for the 2008 LGEs was a pragmatic approach to enable full cost recovery in the context of a number of unknowns associated with running LGEs centrally for the first time. Although our recalculation of the hourly rate included in the Administration Fee found the \$195/hr rate to be relatively accurate, we recommend that NSWEC revisit the model prior to each election to ensure the Administration Fee is calculated based on the most recent, relevant and accurate information available.<sup>101</sup>

3.51 Consequently, the Committee has concluded that the administration fee charged by the NSWEC was relatively accurate. The Committee notes that PKF found that the \$195 per hour administration fee did not completely cover all costs as local government elections costs were significantly higher than those associated with state elections, which had formed the basis for the estimates used to calculate the fee.<sup>102</sup>

3.52 On the basis of its findings, PKF recommended:

that the model employed to calculate the Administration Fee be revisited prior to each election to ensure the Administration Fee is calculated based on the most recent, relevant and accurate information available.<sup>103</sup>

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<sup>97</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 9.

<sup>98</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 9.

<sup>99</sup> Mr Trevor Follett, Director, Finance and Administration, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 4.

<sup>100</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 11.

<sup>101</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 11.

<sup>102</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 11.

<sup>103</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 11.



3.53 In this regard the Committee notes that the Electoral Commissioner has indicated that it is the policy of the NSWEC to ‘conduct [such a] review every four years in line with the election cycle.’ Further, the Committee notes the Electoral Commissioner’s advice that:

the costs applied were 2006 costs and had this review been conducted immediately before the 2008 Local Government election the costs to councils would have been considerably greater.<sup>104</sup>

3.54 In evidence to the Committee, the Electoral Commissioner confirmed that the \$195 per hour rate would be reviewed as part of the NSWEC’s internal audit process, in the same way it was initially set.<sup>105</sup> The Committee supports ongoing internal audit review of the administration fee and the basis for its calculation on a regular basis.

### Timing and accuracy of cost estimates

3.55 The NSWEC provided cost estimates to councils of the “likely costs of their elections” which had been calculated prior to the completion of the full cost recovery model in mid 2007, and was based on 2007 state election costs.<sup>106</sup> This was followed with an estimated budget in May 2008 which had been developed “using updated costings and the specific costs of providing electoral services to councils”<sup>107</sup> Invoices for the expected costs were distributed to councils with contested elections<sup>108</sup> in August 2008. These invoices required payment of an 85% deposit of the expected cost.<sup>109</sup> Final invoices based on actual costs of the election were issued to all councils (whether they had contested or uncontested elections) in March 2009.<sup>110</sup>

3.56 The NSWEC’s handling of invoicing procedures and communication with councils regarding costs was criticised by many councils in submissions and evidence. The timing of communicating cost estimates to councils was a problem for some councils, such as Hurstville and Ashfield, who both reported that they received the estimates after budgeting decisions had been made for the relevant financial year.<sup>111</sup>

3.57 Blacktown City Council informed the Committee that the size of their budget meant that budgeting had occurred well in advance of the NSWEC provision of cost estimates:

I think the key thing is—the next election is in three years—that we get an estimate of costs as soon as possible. From Blacktown’s perspective when the representatives from the Electoral Commission came to our office it was probably roundabout November the year before the election. We actually start our budgeting process ahead of that. Our budget is sort of creeping up to about \$300 million now so we need to start

<sup>104</sup> Letter from Mr Colin Barry, Electoral Commissioner to Committee Manager, dated 12 February 2010, p.3.

<sup>105</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 12.

<sup>106</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 134.

<sup>107</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 134.

<sup>108</sup> Councils with uncontested elections or by-elections only received one invoice in March 2009, they were not required to make the 85% payment, but the same principles of cost recovery were applied to these councils, so if there were any costs for these councils they were allocated to that council (for example an uncontested election still required a nomination process to be conducted which required the employment of a RO and accommodation for the RO, as well as statutory advertising relating to nominations and candidates, which were costs borne by the council). (NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 137.)

<sup>109</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 137.

<sup>110</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 137.

<sup>111</sup> Mr Warren Park, Senior Manager, Administration and Public Officer, Hurstville City Council, *Transcript of evidence*, 26 August 2009, p. 26; and Ashfield Council, *Submission 56*, p. 1.

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working on that. We had to go and find another \$600,000 basically from that first estimate. We would certainly like to know as soon as possible the sort of figure we need to allow for.<sup>112</sup>

- 3.58 Councils' budgeting processes had been based on the councils' cost for previous elections, which as discussed at paragraph 3.76, did not necessarily include costs absorbed by council through the utilisation of administrative resources to run the election process. The increase in costs associated with the NSWEC control and full cost recovery for the 2008 had not been a long-term expectation held by councils.
- 3.59 The Committee notes the time constraints faced by the NSWEC in determining cost estimates, given that this was the first occasion of full cost recovery, and the limited information on which to make determinations. The Committee appreciates that the NSWEC has stated that they will strive to have budget estimates for the 2012 elections provided to councils earlier and with greater accuracy.<sup>113</sup>
- 3.60 The Committee also notes that Councils will have an expectation that the elections will be conducted by the NSWEC on a full cost recovery basis and a baseline cost from the 2008 local government elections will be of assistance in guiding the development of their budgets for 2012.

**Communicating costs to councils**

- 3.61 Another area of concern raised with the Committee by inquiry participants concerned the lack of supporting documentation the NSWEC provided with invoices to each council.
- 3.62 The LGSA argued that they were unable to determine the basis of costings used in the cost recovery methodology and the actual costs passed on to councils. They expressed dissatisfaction with the paperwork provided to councils, arguing that a one-page listing of costs was insufficient as an invoice for the whole election.<sup>114</sup> The LGSA submitted to the Committee that:
- It is not acceptable to permit the NSWEC to provide to councils a single one page cost summary and expect payment without question. The Associations find this manifestly abhorrent to good and proper governance practices.<sup>115</sup>
- 3.63 The LGSA submitted that councils should receive comprehensive documentation of costs in the future:
- The Associations contend that each council should have been provided with copies of invoices, quotes, agreements, etc, as it related to them individually so that each council could fully understand both the basis of each item and the methodology of the distribution of each cost.<sup>116</sup>
- 3.64 Kogarah Council submitted that they had concerns about the minimal documentation provided by the NSWEC to support their invoices, which did not allay their concerns about the accuracy and reasonableness of the NSWEC's cost recovery process.<sup>117</sup>
- 3.65 Waverley Council echoed these complaints, contending that:

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<sup>112</sup> Mr Craig Dalli, Manager of Governance and Property, Blacktown City Council, *Transcript of evidence*, 27 August 2009, p. 20.

<sup>113</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, 30 October 2009, p. 42.

<sup>114</sup> Mr Peter Coulton, Director, Corporate Services, Local Government and Shires Association, *Transcript of evidence*, 27 August 2009, p. 26.

<sup>115</sup> Local Government Association of NSW and Shires Association of NSW, *Submission 66*, 13.

<sup>116</sup> Local Government Association of NSW and Shires Association of NSW, *Submission 66*, 13.

<sup>117</sup> Kogarah Council, *Submission 10*.

In relation to cost, like most councils we are concerned with the significant increase from the previous election to the 2008 election. We believe some of those costs are driven by decisions made by the Electoral Commission. We would like more information on what certain categories of costs are charged for by the Commission. We would also like feedback on items that council funded such as the central call centre. If we had better information about some of these things we could perhaps make changes for the next election. Looking to the future, we would like to work in a more collaborative way with the Commission to decide what is required and how it is to be provided.<sup>118</sup>

3.66 PKF observed that the level of documentation provided to councils with their invoices was the cause of some dissatisfaction for councils and there was a “lack of clarity regarding the value and type of LGE costs recharged”.<sup>119</sup> They also noted instances where the inclusion of specific costs had not been clearly communicated to councils.<sup>120</sup> Consequently, PKF recommended that

prior to the next LGE, the NSWEC implement a process to ensure accurate, timely and documented communication to Councils of the services to be provided regarding LGEs, the associated types of costs that will be recharged and the methodology for recharging...<sup>121</sup>

3.67 On the specific issue of communication of costs, the Committee recommends that the NSWEC consider providing more detailed information on the components covered by the line items in the costing documentation currently provided to councils. In this regard, the Committee notes the NSWEC’s commitment to improve the provision of budgetary advice to councils, as stated in its report on the 2008 local government elections.<sup>122</sup>

#### **RECOMMENDATION 4:**

The Committee recommends that the NSW Electoral Commissioner ensure that detailed information about the budgeted and actual costs for the 2012 local government elections be provided to all council General Managers. Such detailed information should provide explanations as to what each line item covers, and how it has been calculated and allocated.

### **Issues raised by Councils re cost of previous elections**

3.68 Some councils provided the Committee with information about the historical cost of conducting elections, as a comparison with the cost of the 2008 local government elections. The table below collates figures provided in council submissions and where councils did not provide figures information was used from other sources, including the NSW Electoral Commission’s *Report on the 2008 local government elections*.

<sup>118</sup> Mr Robert Hogan, Divisional Manager, Governance, Administration and Executive Support, Waverly Council, *Transcript of evidence*, 27 August 2009, p. 1.

<sup>119</sup> PKF, *Review of New South Wales Electoral Commission’s Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 9.

<sup>120</sup> PKF, *Review of New South Wales Electoral Commission’s Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 10.

<sup>121</sup> PKF, *Review of New South Wales Electoral Commission’s Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 9.

<sup>122</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 159.

## Costs

**Table 1**

Council	2004 Cost	2008 Cost
Gosford City Council	\$377,183	\$600,900
Armidale Dumaresq Council	\$65,000	\$108,800
Dubbo City Council	\$78,435	\$153,500
Penrith City Council	\$398,218.15 (with \$86,071.25 paid to the NSWEC)	\$627,000
Singleton Council	\$49,066.55	\$123,615.93
Randwick City Council	\$251,000	\$450,752
Muswellbrook Shire Council	\$41,466.10	\$80,200
Lane Cove Council	\$82,000	\$161,150
Parramatta City Council	\$375,600 <sup>123</sup>	\$538,600 <sup>124</sup>
Campbelltown City Council		\$649,400 (230% increase on cost of 2004 election)
Upper Lachlan Shire Council	\$25,000	\$48,200
Camden Council	\$111,949	\$211,000
North Sydney Council	\$145,666.07 (excluding RO accommodation)	\$333,400
Shoalhaven City Council	\$199,946	\$397,700 <sup>125</sup>
Tamworth Regional Council	\$182,116	\$234,740
Auburn Council	\$75,000 (with \$30,396.45 paid to the NSWEC)	\$235,800
Port Stephens Council	\$151,350	\$308,200
Ku-ring-gai Council	\$230,000	\$406,500
Eurobodalla Shire Council	\$98,000	\$199,900
Willoughby City Council	\$117,040.69	\$277,200
Griffith City Council	\$49,637	\$121,000
Blacktown City Council	\$459,000	\$821,700
Clarence Valley Council	\$160,000	\$214,000 <sup>126</sup>
Blayney Shire Council	\$25,135.20 (with \$8,192.38 paid to the NSWEC)	\$36,200 <sup>127</sup>
Ashfield Council	\$85,600	\$193,900
Lismore City Council	\$103,000	\$198,000
Hornsby Shire Council	\$375,000	\$616,000 <sup>128</sup>
Strathfield Council	\$80,000	\$136,350
Riverina and Murray Regional Organisation of Councils	\$477,333 <sup>129</sup>	\$791,440 <sup>130</sup>

<sup>123</sup> Based on Parramatta City Council's assertion that there was a \$163,000 increase in costs between 2004 and 2008 (*Submission 20*)

<sup>124</sup> Figure reported in Volume 3 of NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009.

<sup>125</sup> Figure reported in Volume 3 of NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009.

<sup>126</sup> This is in addition to \$5269 of local costs (Clarence Valley Council, *Submission 54*).

<sup>127</sup> This is in addition to \$2119.58 of local costs such as preparation of non-resident roll and advertising (Blayney Shire Council, *Submission 55*).

<sup>128</sup> Figure reported in Volume 3 of NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009.

<sup>129</sup> This figure was provided in document titled "RAMROC Schedule of 2004 and 2008 Electoral Costs" which was provided to the Committee by Mr Ray Stubbs at public hearing on 26 August 2009, it differs from the figure of \$459,000 provided in the RAMROC' submission (*Submission 49*).

<sup>130</sup> This figure was provided in document titled "RAMROC Schedule of 2004 and 2008 Electoral Costs" which was provided to the Committee by Mr Ray Stubbs at public hearing on 26 August 2009, it differs from the figure of \$821,700 provided in the RAMROC' submission (*Submission 49*).

- 3.69 While the Committee notes that there are significant increases in the cost of local government elections from 2004 to 2008, as provided by councils, it should be appreciated that the move to a full cost recovery system was intended to reveal the hidden costs of running the elections and to record the costs that the NSWEC and councils had previously absorbed. The extent to which costs had previously been absorbed by both councils and the NSWEC became apparent to the Committee as the inquiry progressed.
- 3.70 The LGSA argued that the strict accountability protocol governing the activities of councils, and each of their sections, provides surety that the costs cited for the 2004 elections are accurate.<sup>131</sup>
- 3.71 However, it is relevant to note that there was some indication that there may have been some variation in the accuracy with which costs were recorded across councils. Cr Genia McCaffery gave evidence that:
- I think certainly with the larger councils like Blacktown and my own, North Sydney, we could be reasonably confident that our 2004 figures were accurate, with some margin of error.<sup>132</sup>
- 3.72 Certain councils recognised that the costings they had provided to the Committee would have excluded some costs, for example Blacktown City Council recognised that the costings they provided for the 2004 elections would have excluded costs absorbed by councils, such as staff time and diversion of resources.<sup>133</sup>
- 3.73 Baulkham Hills Shire Council submitted that in previous elections, council staff had provided significant support and assistance to the NSWEC and the local returning officer. They submitted that these costs were not accurately captured as they involved reallocation of existing office space and resources.<sup>134</sup> In evidence the General Manager, Mr Walker, argued that
- It was also not just the cost, it was the diversion of resources. For example, at the last election we had a training room for our outdoor staff. That training room was then provided to the returning officer, so I lost that training room for a period of eight or 10 weeks. We processed staff that worked on the election. We processed that through our own payroll system.<sup>135</sup>
- 3.74 Cr Ray Donald, Mayor of Bogan Shire Council, stated that he did not think that a detailed account of all costs for the 2004 local government elections would have been kept. However, he argued that while the Council may not have an accurate total figure, all costs, including hidden or absorbed costs such as staff wages, were met within council's budget.<sup>136</sup>
- 3.75 After speaking with a number of councils regarding the recording of costs for previous elections, PKF reported that

<sup>131</sup> Cr Genia McCaffery, President, Local Government Association of New South Wales, *Transcript of evidence*, 27 August 2009, p. 29.

<sup>132</sup> Cr Genia McCaffery, President, Local Government Association of New South Wales, *Transcript of evidence*, 27 August 2009, p. 29.

<sup>133</sup> Mr Craig Dalli, Manager of Governance and Property, Blacktown City Council, *Transcript of evidence*, 27 August 2009, p. 25.

<sup>134</sup> Baulkham Hills Shire Council, *Submission 1*.

<sup>135</sup> Mr David Walker, General Manager, Baulkham Hills Shire Council, *Transcript of evidence*, 27 August 2009, p. 20.

<sup>136</sup> Cr Ray Donald, Mayor, Bogan Shire Council, *Transcript of evidence*, 27 August 2009, p. 52.

Costs

it was likely that not all costs had been accurately captured by Councils in the past. This was due to the misconception that 'costs' only relate to expenditure items, rather than the full real costs of running the election, including those that may be absorbed by 'normal' Council activities, e.g. the cost of office space where Council owned buildings were used.<sup>137</sup>

3.76 Consequently, the Committee considers that figures for the 2004 local government elections may not account for the following costs, thereby preventing direct and accurate comparisons between the figures for 2004 and 2008:

- Accommodation costs (particularly where Council owned buildings were used)
- Capital items, used for both exclusive local government election purposes and Council 'business as usual' activities
- Indirect costs such as utilities
- Staff costs for all Council, temporary and casual employees involved in the conduct of local government elections, including superannuation, payroll tax and other associated costs
- IT related costs, including IT support and set up/ infrastructure type costs
- Material costs.<sup>138</sup>

3.77 These factors should be considered in any direct comparisons stakeholders may wish to make between costs recorded prior to the introduction of full cost recovery and those incurred in the 2008 local government elections.

### Proposals for managing costs in future elections

3.78 The NSWEC conducted and recovered the costs of the 2008 local government elections based on the legislative and policy framework introduced by the State Government in the lead up to the 2008 elections. Under this framework, the NSWEC administered a full cost recovery model in line with the NSW Government requirement that full cost recovery be undertaken for the conduct of local government elections (see Chapter Two for details).<sup>139</sup>

3.79 The Committee received submissions proposing that the State Government should fund the NSWEC to conduct the local government election process.<sup>140</sup> For instance, the Greens Registered Officer, Mr Maltby argued

I think the costs across the State are relatively modest when considered against the State budget but it is quite significant against council budgets, given that councils are already under significant financial pressures by rate capping and other concerns that they have. So having a single large buyer in the form of the State Government might make it more efficient than forcing the councils to deal with a much larger provider.<sup>141</sup>

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<sup>137</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 18.

<sup>138</sup> PKF, *Review of New South Wales Electoral Commission's Costs and Charges for the 2008 Local Government Elections: Final Report*, November 2009, p. 18.

<sup>139</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 15.

<sup>140</sup> Mr Jason Horton, *Submission 22*; The Greens, *Submission 51*; and Waverley Council, *Submission 33*.

<sup>141</sup> Mr Chris Maltby, Registered Officer, The Greens New South Wales, *Transcript of evidence*, 27 August 2009, p. 46.

- 3.80 Some councils were of the opinion that a partial approach should be introduced, whereby the head office administration costs and fixed costs of the NSWEC, at a minimum, should be funded by the State Government.<sup>142</sup>
- 3.81 A number of models for cost minimisation via council involvement in local government elections were put forward by inquiry participants. While Dubbo City Council put forward a solution whereby councils have the authority to conduct the elections returned to them (something akin to the pre-*Local Government Act 1993* situation), the Council qualified their proposal by confirming that they do not believe that the General Manager of council should be the Returning Officer.<sup>143</sup> They stated that:
- it would be better value for its rate payers and have less impact on its limited budget if it were to conduct the Elections internally where it has control of its expenditure and can use its internal resources which are not subject to unsubstantiated charges...<sup>144</sup>
- 3.82 Parkes Shire Council argued that councils should be given the option to utilise the services of the NSWEC, observing that the Council would prefer council staff to conduct the election in future.<sup>145</sup>
- 3.83 Armidale Dumaresq Council proposed a model of partial council administration, whereby the NSWEC would conduct and control the election and appoint a returning officer to run the election at a local level, utilising local staff for the whole process. They argued that:
- Council, under what is proposed, would meet staffing and operational expenses for carrying out the election, but not as is presently the case having to pick up the substantial level of State Electoral Office overheads and staffing in Sydney.<sup>146</sup>
- 3.84 Another point of view put during the inquiry was that there should be no NSWEC involvement in the conduct of local government elections. Tamworth Regional Council Mayor, Cr James Treloar, argued that there had not been any problems with council running the elections in the past. In evidence he stated that the 'general manager, I think, as the returning officer provided a level of independence, and I am unaware of any community criticism of the process.'<sup>147</sup>
- 3.85 However, these comments appear to be based on a misconception. The Committee notes that no general manager had acted as returning officer for local government elections since the 1991 local government elections, following amendments to the local government legislation. Independent returning officers appointed by the NSWEC were responsible for the conduct of the elections from this time on.<sup>148</sup>
- 3.86 Cr Treloar reported that he had attempted to ascertain the NSWEC's reasons for greater involvement and he gave evidence that the NSWEC cited a public perception that greater independence was needed. Cr Treloar argued that he had been unable to find any evidence of this public perception.<sup>149</sup>

<sup>142</sup> Mr Peter Gesling, General Manager, Port Stephens Council, and Cr James Treloar, Mayor, Tamworth Regional Council, *Transcript of evidence*, 26 August 2009, p. 57.

<sup>143</sup> Dubbo City Council, *Submission 4*.

<sup>144</sup> Dubbo City Council, *Submission 4*, p.1.

<sup>145</sup> Parkes Shire Council, *Submission 9*.

<sup>146</sup> Armidale Dumaresq Council, *Submission 3*.

<sup>147</sup> Cr James Treloar, Mayor, Tamworth Regional Council, *Transcript of evidence*, 26 August 2009, p. 57.

<sup>148</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 14.

<sup>149</sup> Cr James Treloar, Mayor, Tamworth Regional Council, *Transcript of evidence*, 26 August 2009, p. 57.

Costs

3.87 The Electoral Commissioner told the Committee that the decision about who should conduct elections is a policy question, which is a matter for the Government or Minister. However, the Commissioner expressed opposition to partial council control of elections, stating that:

In respect of the option of the Commission appointing returning officers and then handing the running of the election over to the council, I am totally opposed to that. I either want to be in the game or out of the game.<sup>150</sup>

3.88 The Electoral Commissioner held the view that the decentralisation of election services would lead to variations in service levels and conduct of the election between councils across the state. The Commissioner also gave evidence that accountability would be diminished under a decentralised system:

There would be no role for the Electoral Commissioner and the Commission other than to appoint the returning officer. There would be no accountability to this Committee or to the Minister, other than by the 151 returning officers/general managers/mayors who were running the elections.<sup>151</sup>

3.89 The Committee has carefully considered the suggestions from inquiry participants in relation to the overall scheme for the conduct of local government elections and the extent of the NSWEC's involvement in that process. As the Electoral Commissioner has noted, the Commission's role in the conduct of the local government elections was defined according to the overall legislative and policy framework introduced by the State Government. To date, the Committee has not received any evidence or submissions that would lead it to conclude that there is a need for fundamental policy and legislative change to the current scheme in any substantive way. The recommendations contained in this report are intended to address issues that have been raised with the Committee by stakeholders in relation to the 2008 elections, with a view to ensuring that these problems do not recur and that the systems in place support the efficient conduct of elections.

3.90 The overall scheme is a matter that may be subject to further review should there be any evidence of significant irregularities in the conduct of the 2012 election. Should such reconsideration occur, the views of the Premier and Minister for Local Government, and their respective administrations would need to be canvassed. The Committee fully supports the role of the NSWEC in conducting elections and considers the Commission's involvement to be significant in terms of ensuring the integrity of the election process, the consistency of service delivery to electors and other stakeholders, and transparency for electors, candidates and the local government sector.

## IPART oversight

3.91 The Shires Association resolved at their Annual Conference in 2008 that their members would submit their costs for the election to the Independent Pricing and Regulatory Tribunal (IPART) for independent assessment.<sup>152</sup> The LGSA made public calls for the costs of the 2008 local government elections to be referred to IPART for

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<sup>150</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 1.

<sup>151</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 1.

<sup>152</sup> Local Government Association of NSW and Shires Association of NSW, *Submission 66*, p. 13.



review and oversight in the lead up to the elections.<sup>153</sup> In submissions and evidence to the Committee a number of councils also indicated support for IPART oversight of the existing cost recovery model for local government elections.

- 3.92 The *Independent Pricing and Regulatory Tribunal Act 1992* (IPART Act) provides IPART with six functions, including the regulation of prices, review of pricing policies for government monopoly services, conduct of reviews in relation to industry, pricing or competition (as referred by the Minister) and investigation of complaints under the competitive neutrality regime.<sup>154</sup>
- 3.93 Under the IPART Act, a government monopoly service is defined as “a service supplied by a government agency and declared by the regulations or the Minister to be a government monopoly service”.<sup>155</sup> A monopoly service is considered to be one
- (a) for which there are no other suppliers to provide competition in the part of the market concerned, and
  - (b) for which there is no contestable market by potential suppliers in the short term in that part of the market.<sup>156</sup>
- 3.94 The Committee notes the views of inquiry participants who have argued for IPART oversight of the NSWEC in relation to local government elections. However, the Committee is of the view that it is not necessarily appropriate to apply the IPART model to the services provided by the NSWEC for local government elections. The NSWEC is not supplying services to local government and recovering costs as a profit driven exercise but rather in accordance with the legislative requirements, outlined in paragraphs 2.3 to 2.12. The local government election costs are a one off cost recovery exercise and, as the Committee understands the role of IPART, it would not be involved in pre-reviewing election costs which are charged on a cost recovery basis.
- 3.95 This is a matter that the Government may wish to consider further. However, it is not a recommendation of the Committee. In this regard, the Committee notes the response of the Electoral Commissioner, Mr Barry, to a question about his opinion on IPART oversight of the NSWEC
- My view on that for what it is worth is it is a matter for the Government. Personally I have no concerns whatsoever. I would only caution councils that they might find that such a review would find they are not paying the full cost.<sup>157</sup>

### Competitive tendering for election services

- 3.96 A number of inquiry participants put forward competitive tendering for future election services as a means of addressing their concerns about the cost of the 2008 local government elections.

<sup>153</sup> Local Government and Shires Association, “Councils Call for IPART Review of Election Cost Blow Out” Media Release, 17 July 2008, <http://www.lgsa.org.au/www/html/2564-17-july-2008.asp?intSiteID=1>, accessed 25 January 2010.

<sup>154</sup> IPART, “IPART – New South Wales – Australia – About Us – Legislation”, [http://www.ipart.nsw.gov.au/about\\_us/legislation.asp](http://www.ipart.nsw.gov.au/about_us/legislation.asp), accessed 27 January 2010.

<sup>155</sup> Independent Pricing and Regulatory Tribunal Act 1992, Part 1, Section 4.

<sup>156</sup> Independent Pricing and Regulatory Tribunal Act 1992, Part 1, Section 4.

<sup>157</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 5.

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- 3.97 Griffith City Council argued that putting the conduct of local government elections to tender would allow market testing of the service provided by the NSWEC.<sup>158</sup>

RAMROC also submitted that:

investigations be made into the potential for the actual election conduct to be opened to contestability, as distinct to the present situation where the Electoral Commission is legislated to conduct the process, which has resulted in a monopoly situation, with Councils being forced to accept and pay whatever price is determined.<sup>159</sup>

**Mr STUBBS:** ... The third issue relates to competitive tendering of election services. The New South Wales Commission is legislated under the Act to conduct the process. We believe that this creates an uncontested and protected monopoly. Councils are in fact legally obliged to pay whatever price the Electoral Commission dictates. We will come to the question of price later. Councils have no control over determining the appropriate levels of service that are required. The increased costs for the 2008 election were enormous, even though the final accounts from the Electoral Commission were in some cases substantially less than the cost estimate that had been provided to the councils in May.... Councils are required, in their operational activities, to conform to tendering and procurement procedures and contestability principles, and we believe that the election proves should be no different.... Overall, it is our view that the national competition policy principle should apply and the local government election process should be market tested by open tender.<sup>160</sup>

- 3.98 Inquiry participants indicated that the two main types of organisations who could possibly compete in a tender process would be other councils and electoral commissions from other jurisdictions.

- 3.99 Palerang Council submitted that competitive tendering could provide a way for councils to have greater control over the costs and management of the elections. In evidence Mr Bascomb the Council's General Manager, posited the Victorian model of competitive tendering, stating that:

Victoria is subject to a tendering process—and again that is my background—certainly as part of, if I can call them the Kennett reforms, the process of holding the elections. In practice it is only two that actually tend to tender. That is the Victorian Electoral Commission and the Australian Electoral Commission, and without doubt the majority of elections are conducted by the Victorian Electoral Commission, but there is a sense of keeping things honest by that open process.<sup>161</sup>

- 3.100 The Victorian Electoral Commission, in their *Report of Local Government Electoral Activity*, explained the requirement for tendering and process as follows

Councils are required to tender for the provision of an election service if the cost of the service is expected to exceed \$100,000. Councils whose election services are expected to cost under \$100,000 are required to seek three quotations.

At the time of the introduction of the tender process in 1995, there was a competitive market for election services in Victoria, and the Australian Electoral Commission (AEC) was actively competing to provide local government election services. However, the AEC has not tendered or quoted for a Victorian local government election since March 2002, and the VEC was the sole respondent to all tenders and requests for quotations for the 2008 Victorian local government elections. There is no legislative requirement for a Commission to tender for, or conduct, these elections. Victoria is the only State

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<sup>158</sup> Griffith City Council, *Submission 43*, p.4

<sup>159</sup> Riverina and Murray Regional Organisation of Councils, *Submission 49*, p.6.

<sup>160</sup> Mr Raymond Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils, *Transcript of evidence*, 26 August 2009, p. 29.

<sup>161</sup> Mr Peter Bascomb, General Manager, Palerang Council, *Transcript of evidence*, 26 August 2009, p. 24-5.

where the Electoral Commissioner does not have legislative responsibility for the conduct of local government elections.<sup>162</sup>

### 3.101 The VEC reported that:

In responding to tenders or requests for quotation, the VEC provided cost estimates for a standardised product, with a limited selection of optional extras not required by legislation. This was essentially the same service package as that proposed to councils in December 2007. Optional extras included additional early voting centres for attendance elections, additional candidate information sessions, voting reminder advertisements, the inclusion of multi-language voting instructions in voting centres for attendance elections or included in ballot packs for postal elections, and responsibility for compulsory voting.<sup>163</sup>

### 3.102 In their report on local government election activity the VEC contended that removing the tendering requirement would improve efficiency:

Certainty in relation to the number of elections to be conducted by the VEC would assist with planning. Also, further efficiencies could be achieved if the requirement to tender (or request for a quotation) was removed.<sup>164</sup>

### 3.103 The VEC concluded by recommending that the Electoral Commissioner be made responsible for the conduct of all local government elections.<sup>165</sup>

### 3.104 The LGSA was concerned that opening up the provision of election services to tender processes, enabling private sector involvement, may lead to the privatisation of elections, which may result in a more expensive process.<sup>166</sup>

### 3.105 Mr Max Phillips, who gave evidence on behalf of The Greens, argued that privatising the electoral system, through the running of elections by private companies, would be a mistake which may undermine the confidence of voters in the integrity of the system, but that it would be acceptable for public bodies to compete to conduct local government elections.<sup>167</sup>

### 3.106 The Committee does not believe the case for competitive tendering is strong, considering that Victoria is the only jurisdiction using such a system and the VEC has recommended removing the requirement to tender to improve efficiency.

## Possible improvements to cost recovery model

### 3.107 During the inquiry the Committee suggested that a group of representatives from local government could form a consultative group for the elections. However, the

<sup>162</sup> VEC, *Report of local government electoral activity 2008-2009, Part I Report of the conduct of the 2008 local government elections*, at <http://www.vec.vic.gov.au/files/P1Reportlgeactivity200809.pdf>, accessed 12 December 2009, p. 16.

<sup>163</sup> VEC, *Report of local government electoral activity 2008-2009, Part I Report of the conduct of the 2008 local government elections*, at <http://www.vec.vic.gov.au/files/P1Reportlgeactivity200809.pdf>, accessed 12 December 2009, p. 16.

<sup>164</sup> VEC, *Report of local government electoral activity 2008-2009, Part I Report of the conduct of the 2008 local government elections*, at <http://www.vec.vic.gov.au/files/P1Reportlgeactivity200809.pdf>, accessed 12 December 2009, p. 17.

<sup>165</sup> VEC, *Report of local government electoral activity 2008-2009, Part I Report of the conduct of the 2008 local government elections*, at <http://www.vec.vic.gov.au/files/P1Reportlgeactivity200809.pdf>, accessed 12 December 2009, p. 17.

<sup>166</sup> Cr Genia McCaffery, President, Local Government Association of New South Wales, *Transcript of evidence*, 27 August 2009, p. 26.

<sup>167</sup> Mr Max Phillips, Former Campaign Coordinator, The Greens New South Wales, *Transcript of evidence*, 27 August 2009, p. 46.

Costs

Electoral Commissioner cast doubt on the need for and effectiveness of such a model

You mentioned before whether we would prefer to work with a group of councils, whether we would be prepared to work with the Local Government and Shires Associations [LGSA]. The difficulty in all of this is that the LGSA is one part of the organisation but it is the individual councils who are our real clients, so to speak, in this. We want to build good relationships with each of those councils—as we do in by-elections now; we make sure we go out and meet face to face with the general manager. ...I know the issue of the cost—in the general managers I have met with—has been not so much the issue of the dollar amount but the timing of when it all happened. Now that they know what the cost is, they will roll those amounts of money into their forward estimates, and they will not be seeing the sort of big jump that happened last time.<sup>168</sup>

3.108 Having considered the Electoral Commissioner's evidence and in view of the recommendation for a Service Charter specific to local council elections (see paragraph 4.40), the Committee does not consider separate consultations with a representative local government group to be necessary. Provided the NSWEC adopts an approach involving more detailed provision of information about budgeted and actual costs to local council General Managers (as outlined in recommendation 3), the Committee considers that the NSWEC would be appropriately meeting its obligations to communicate with local councils about the costs of local government elections. The Committee notes the Electoral Commissioner's point that his relationship with each individual client council is of utmost importance.

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<sup>168</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 10.

## Chapter Four - Planning and administration

### NSWEC involvement in local government elections

- 4.1 The NSW Electoral Commissioner explained to the Committee that the conduct of local government elections is a complex, large-scale operation.<sup>169</sup> The Commission reported that local government elections in NSW are the most complex in Australia, with legislative and regulatory frameworks creating a variety of voting and counting systems for different types of elections for different councils. According to the NSWEC, the range of legislative and regulatory 'requirements with the scale of the exercise and the geographical distribution of NSW councils make the conduct of these elections very challenging.'<sup>170</sup>
- 4.2 In this regard, the Committee notes the sheer scale of the local government election event held on 13 September 2008:
- elections were held for 148 council areas across NSW;
  - there were 332 individual elections conducted for councillors in 187 wards, 84 undivided councils and 27 mayoral elections;
  - thirty-nine uncontested elections were conducted for 36 wards, two undivided councils and one mayoral election;
  - seventeen council referenda and 17 polls were conducted;
  - a roll of 4,500,000 million electors was managed;
  - 3,529,220 votes were cast for councillor positions;
  - nominations were processed for 4,654 candidates; and
  - services were provided to 4,620 candidates.<sup>171</sup>
- 4.3 As discussed previously, this was the first instance of full NSWEC control over the conduct of the elections. The Electoral Commissioner argued that this centralisation ensures electoral services are provided to all electors at a consistent standard across NSW. During the Legislative Council's inquiry into electoral and political party funding in New South Wales, Mr Barry offered the following rationale for NSWEC administration of local government elections:

I want to see consistency of services across the State. I want to see everybody have equal access to the democratic process, whether they live in a remote part of the State or in metropolitan Sydney. I want to see well-trained returning officers, people first of all properly selected and trained. In the past they got, at best, one day's training. They are now getting four day's training.

I want to see the same sort of services that we had for the State election with a centralised call centre where people can ring a 1300 number and get answers to any question about the election. We are automating most of the election processes like we do at the State election by giving the returning officers access to customised computer software. We are providing virtually a tally room on the Internet so people can get the results on election night. We are centralising the printing of ballot papers—it might surprise committee members to note that a couple of councils actually printed their own

<sup>169</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 2.

<sup>170</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2008, p. 8.

<sup>171</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2008, p. 10.

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ballot papers at the last local government elections, and they tell me it worked very well. I am sure it did, but I do not think that that is the sort of democratic system we want in New South Wales for local government elections.<sup>172</sup>

- 4.4 In evidence to this Committee, the Commissioner indicated that a return to council administration of elections, even under the supervision of the NSWEC with independent ROs, would produce great variation in service levels across councils and no central accountability for the conduct of the elections.<sup>173</sup>

*The perspective of councils*

- 4.5 Evidence to the Committee suggests that some councils did not agree that council elections had not been run professionally in the past. As an example, RAMROC's Executive Officer, Mr Stubbs, stated in evidence that in his experience services had been provided to a professional standard:

I think one of the things that upset our councils during the whole process was the inference that the Electoral Commission is now doing everything well and that there is no more corruption, poor performance and so on. In the 30 years that I was involved in local government elections I never saw any evidence of that at all, particularly in country areas. The standard of service at elections was very good. Having said that, Ms Rhiannon's comment is good because many of our general managers would probably agree with Rowan that going back to the old days is not necessarily the answer.<sup>174</sup>

- 4.6 The General Manager of Berrigan Shire Council, Mr Rowan Perkins, expressed confusion about the justifications provided by the NSWEC for centrally administering the elections. In evidence he refuted two of the arguments which had been used against the devolved model:

I think Mr Barry raised the issue that prior to this election there had been no returning officer training. That is not correct; there has been returning officer training at every previous election that I am aware of. Mr Barry also raised the issue of election failures. It would help us if we knew what these election failures were. Personally, I have not heard of any election failures in previous elections. So it would be useful to get that information out to the councils.<sup>175</sup>

- 4.7 Many other councils were accepting of the role of the NSWEC in running the election process, but were unhappy with the basis on which the client / provider relationship was handled. Waverley Council's Divisional Manager, Governance, Administration and Executive Support, Mr Hogan, stated that the council recognised the role of the Electoral Commission in the elections, but argued that they were

concerned that currently it is a very unequal arrangement. The Electoral Commission has the mandate to conduct the elections of councils and their communities have to pay the cost. We would like something a little more like a partnership where we contract with the Commission to provide specific services. The current arrangement means that the Commission makes decisions that may be good for them, such as central vote

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<sup>172</sup> Mr Colin Barry, Chair, Election Funding Authority, Inquiry into electoral and political party funding in New South Wales, *Transcript of Evidence*, 11 April 2008, pp. 14-15.

<sup>173</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 1.

<sup>174</sup> Mr Raymond Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils, *Transcript of evidence*, 26 August 2009, p. 35.

<sup>175</sup> Mr Rowan Perkins, General Manager, Berrigan Shire Council, *Transcript of evidence*, 26 August 2009, p. 30.

counting, but possibly not for council. We would like to see more "local" in the local government election process."<sup>176</sup>

- 4.8 This is a constraint recognised by the Electoral Commissioner who stated that  
It is a difficult environment to manage because I have got the legal obligation to run these elections, and the council has got a legal obligation to pay the bill. That is not the best commercial environment that anyone wants to be in, particularly from the point of view of council...<sup>177</sup>
- 4.9 Notwithstanding these complaints, many councils considered the independence of the NSWEC as a positive. Cr Cassidy, Mayor of Ashfield Council, argued that the General Managers should not have to be involved in the conduct of elections, as it may be in conflict with their involvement in the local area.<sup>178</sup> Cr Aitken, Mayor of Penrith City Council, observed that the NSWEC conducting the election "takes it away from any personalities in the local community".<sup>179</sup>
- 4.10 Other councils posited the independence in accountability terms. Mr Sewell, Director of Business Services from Campbelltown City Council stated that  
[t]he view of my council would be that the independent nature of the conducting of the election is similar to a number of functions that have been outsourced by local government. A perfect example is the procurement of contracts, where independence is critical in that role as well.<sup>180</sup>
- 4.11 Baulkham Hills Shire Council, in their submission, indicated that senior management supported the separation of operational activities from the political process of conducting elections, believing this reflects the intention of the *Local Government Act 1993*.<sup>181</sup> In evidence the General Manager, Mr Walker, expressed satisfaction with the independence and transparency of the elections:  
From our point of view, the fact that the Electoral Commission took over full responsibility for everything, I think that added to the transparency, added to the objectivity and obviously added to the independence. In previous years it has been somewhat of a dual role. I think separating it is the most positive thing that has happened.<sup>182</sup>
- 4.12 The LGSA indicated that although they believed that a person independent of council should manage the election, an independent returning officer would provide the required level of independence and councils should be able to run the administration of the election.<sup>183</sup>
- 4.13 The loss of local involvement in the 2008 local government elections was raised by some councils as a negative consequence of centralised NSWEC control. Bogan Shire Council advocated in their submission for local community ownership of the

<sup>176</sup> Mr Robert Hogan, Divisional Manager, Governance, Administration and Executive Support, Waverley Council, *Transcript of evidence*, 27 August 2009, p. 1.

<sup>177</sup> Mr Colin Barry, Chair, Election Funding Authority, Inquiry into electoral and political party funding in New South Wales, *Transcript of Evidence*, 11 April 2008, p.15.

<sup>178</sup> Cr Ted Cassidy, Mayor, Ashfield Municipal Council, *Transcript of evidence*, 27 August 2009, p. 10

<sup>179</sup> Cr James Aitken, Mayor, Penrith City Council, *Transcript of evidence*, 27 August 2009, p. 14.

<sup>180</sup> Mr Michael Sewell, Director, Business Services, Campbelltown City Council, *Transcript of evidence*, 27 August 2009, p. 10.

<sup>181</sup> Baulkham Hills Shire Council, *Submission 1*.

<sup>182</sup> Mr David Walker, General Manager, Baulkham Hills Shire Council, *Transcript of evidence*, 27 August 2009, p. 18.

<sup>183</sup> Cr Genia McCaffery, President, Local Government Association of New South Wales, *Transcript of evidence*, 27 August 2009, p. 27.

election process, through the local council running the election.<sup>184</sup> In evidence Cr Ray Donald, Mayor of Bogan Shire Council stated that:

... we have major concerns about what we see to be the gradual slipping away of local government control and local community control of our local government elections.

There has been a comment made that the desire is to make local government elections similar to State and Federal elections, and we certainly oppose that, because local government is very separate to State and Federal. It is the government closest to the people. It is the most trusted of governments, and they are not just my words, they are established facts, and therefore we want to keep the elections local, keep the interest in them at a local level and the participation, the maximum amount from people who can make a suitable contribution to their own local communities.

....

Getting participation by local people in standing for local government and also getting the participation and the ownership of the elections locally, we believe to keep them local is the better way to go in the future and also making sure the costs do not blow out.<sup>185</sup>

- 4.14 Waverley Council submitted that the NSWEC based much of its planning on previous state and federal elections, and did not take account of the local nature of council elections.<sup>186</sup> Tamworth Regional Council's Mayor, Cr Treloar, argued that the NSWEC needs to utilise local knowledge when making decisions about matters such as polling places.<sup>187</sup>
- 4.15 Numerous councils were happy with the administration of the elections. Baulkham Hills Shire Council expressed gratitude in their submission for the fact that they did not need to provide any administrative support or assistance, accommodation or infrastructure for the 2008 local government elections.<sup>188</sup>
- 4.16 Ku-ring-gai Council reported that they had very little to complain about in relation to the actual conduct of the election, and they found the election to be "characterised by significant advanced planning and advanced organisation from the Electoral Commission and the returning officer."<sup>189</sup>
- 4.17 Kogarah Council reported that they had four ward elections and a poll<sup>190</sup> which were conducted with few complaints or concerns. They submitted that their RO resolved issues as raised and the relationship between the RO and the Council was good and cooperative.<sup>191</sup>

## **NSWEC consultation and communication with councils**

- 4.18 A number of councils made submissions and gave evidence regarding the consultation and communication undertaken by the NSWEC throughout the planning stages for the elections.

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<sup>184</sup> Bogan Shire Council, *Submission 61*, p.1

<sup>185</sup> Cr Ray Donald, Mayor Bogan Shire Council, *Transcript of evidence*, 27 August 2009, p. 50.

<sup>186</sup> Waverley Council, *Submission 33*.

<sup>187</sup> Cr James Treloar, Mayor, Tamworth Regional Council, *Transcript of evidence*, 26 August 2009, p. 59.

<sup>188</sup> Baulkham Hills Shire Council, *Submission 1*.

<sup>189</sup> Mr John Clark, Director, Corporate, Ku-ring-gai Council, *Transcript of evidence*, 27 August 2009, p. 19.

<sup>190</sup> The provisions relating to council polls and referendums can be found in a separate Chapter of the *Local Government Act 1993*, see Chapter 4, Part 3.

<sup>191</sup> Kogarah Council, *Submission 10*.



- 4.19 The NSWEC reported that one of the major components of its pre-election planning and preparation was early consultation with councils. It indicated that from September 2007, representatives visited each council for which an election was to be held in 2008<sup>192</sup> in order “to receive input from councils, provide information regarding services and initiatives the NSWEC would provide, and discuss how the elections would be costed”.<sup>193</sup>
- 4.20 The agenda for these meetings with council staff included the following items:
- Election Timetable – covering the regulated election period, required activities and key dates.
  - Council’s election budget and election costs – indicative costs, full cost recovery model and the reasons why it had been implemented (i.e. the CCQG report, Government policy and exposure of previously hidden costs borne by councils), where costs increased or were incurred for the first time, what full cost recovery covered.
  - Redevelopment of NSWEC’s Election Management Software (EMS) and Vote Counting Software – customisation of the EMA for provision to RO and its functions.
  - Returning officer accommodation – discussion of potential accommodation, including council premises, criteria for RO office floor space and guidelines for selecting RO office accommodation.
  - Provision of election equipment and materials to RO and polling places – what NSWEC would provide (such as computers, printers, fax/copiers, phones, stationery, forms, cardboard equipment [and that stock held by council would not be suitable]); that there would be no opportunity for councils to provide computer hardware to the NSWEC because of data security, virus risks/protection, imaging and configuration issues; NSWEC provision of IT expertise to ROs; and request for councils to provide storage for polling place furniture.
  - Polling places, pre poll offices and declared institutions – the status of the NSWEC polling place, pre poll and declared institution locations review; that State/Commonwealth polling places were selected over council preferred locations (unless council preference was a better location or council can provide a compelling reason to change venue); centralised booking of venues by NSWEC; and the determination of polling place resources (staffing and materials) that were the responsibility of the NSWEC.
  - Election advertising – NSWEC and RO coordination of and responsibility for all advertising; councils’ option to place the advertisements with local newspapers on behalf of RO; councils’ ability to place extra advertisements as long as they are NSWEC generated advertisements; the possibility of including a council’s logo but only in advertising specific to that council; Elector Information Campaign; other NSWEC advertising; and councils’ option to distribute election brochure to individual electors or households.
  - Equal Access to Democracy – strategies to provide access to voting for all people.

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<sup>192</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 2.

<sup>193</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 19.

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- Recruitment and payment of election officials and office assistants – NSWEC recruitment process and training, ability for councils to provide the RO with a council employed office assistant.
- Candidate information sessions – what they would cover; how times and locations would be determined; options for the local government sector to present on councillor duties.
- NSWEC and council websites – contents of NSWEC and EFA website and ability for councils to link to NSWEC and EFA websites.
- NSWEC call centre – timeline for operation of the call centre; provision of a general inquiries number for electors and a helpdesk number for councils and candidates; and the reactivation of the call centre when penalty notices were issued.
- Printing ballot papers – highlighting the NSWEC’s complete control over the printing of ballot papers.
- Electoral rolls and “iRoll” – the process for council General Manager receipt and certification of non-resident roll applications and provision to NSWEC for inclusion in the roll of electors; provision of rolls to candidates and political parties; and an explanation of iRoll.
- Vote counting arrangements – timeline for counts and the central counting of ballot papers with above the line group voting squares.
- Display and declarations of election results – process for displaying results on the NSWEC website from election night onward; expected delay for some councils with central count; pre-determined order for central counting; and options for recounts.
- Post election – refunding candidate deposits; arrangements for decommissioning the RO office; feedback to be formally collected from RO and stakeholders; invoicing; reporting; and the issuing of penalty notices.<sup>194</sup>

4.21 The concerns of councils in relation to consultation and communication focused largely on the lack of opportunity Councils believe they had to influence the NSWEC’s decisions about levels of service delivery and operational matters. The Committee perceived a desire from councils to have some negotiating power during the NSWEC’s planning, particularly in respect to matters such as RO accommodation, office equipment and the location and number of polling places.<sup>195</sup>

4.22 For example, Hornsby Shire Council included in its submission correspondence to the NSWEC, in which it expressed discontent with the relationship and claimed that consultation was inadequate:

Whilst a meeting did take place with your staff, Council was informed of the services which would be provided by the Electoral Commission in respect of the election. No opportunity existed for Council to present that it believed a service was either

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<sup>194</sup> NSW Electoral Commission, document titled “Agenda and discussion points for meeting between NSWEC and councils regarding arrangements for the 27 September 2008 local government elections”, provided to the Committee as an Answer to question taken on notice at public hearing held 26 October 2009.

<sup>195</sup> Campbelltown City Council, *Submission 30*; Ms Petra Tinker, Manager, Governance and Customer Services, Fairfield City Council, *Transcript of evidence*, 26 August 2000; Mr Robert Hogan, Divisional Manager, Governance, Administration and Executive Support, Waverley Council, *Transcript of evidence*, 27 August 2009; and, Cr James Treloar, Mayor, Tamworth Regional Council, *Transcript of evidence*, 26 August 2009.

unnecessary or that the cost to be incurred for such service outweighed the benefit. It appears that an assumption was made by the Electoral Commission that all services are required by all councils and they, therefore, have no choice but to accept the service and pay for it. I do not agree, therefore, that consultation took place and fear that councils across NSW are being over-serviced.<sup>196</sup>

- 4.23 During the inquiry, the number of polling places and selection of their locations and the location of the retuning officer's office also emerged as areas in which councils felt the NSWEC could have improved its responsiveness to councils' requests. Shoalhaven City Council's Deputy Mayor, Cr Ward stated that:

The Electoral Commission should give greater consideration to comments by council with respect to the placement of polling booths.

For example, the Shoalhaven Administrative Centre has always been a polling place for past local government elections. Council staff found it very difficult to convince SEO officials of the need to retain this booth whilst advocating that a second booth at Nowra Primary School would not be warranted under these circumstances. While the SEO finally agreed to our request to open a polling station at the Shoalhaven administrative centre, the Commission also operated a polling station at Nowra Primary School. Because Shoalhaven City Council is divided into wards, many electors who attempted to vote at their closest polling booth may not have been able to vote in their defined ward because their closest booth was not in their ward. Council would like the Committee to consider requesting booths on the periphery of ward boundaries to stock appropriate ballot papers for adjacent wards.<sup>197</sup>

- 4.24 Waverley Council felt that the NSWEC was not responsive to council's request for a reduction in the number of polling places:

In relation to polling places, the Commission had a list of what they recommended as polling places. We spoke to our councillors about that. The councillors supported a number of them but certainly they said there were more than what they thought necessary. We went back to the Commission. The Commission made some changes in relation to locations but certainly not to the number of polling booths. So there was consultation but at the end of the day our request to have less certainly did not hold a lot of sway.<sup>198</sup>

- 4.25 However, Waverley Council were satisfied with the outcome of some consultation, reporting that they were able to convince the NSWEC to change the RO office location, and thus the central polling place from Bondi to Bondi Junction, which they argued is the central transport node and where suitable council owned office space was available:

We actually provided the accommodation for the electoral officer, which was a cost saving to us. They are the sorts of things we would like to have more discussion about; where there are things that we can do that can save costs in running the election.<sup>199</sup>

- 4.26 Fairfield City Council reported that they felt they had been provided with the polling place selection early enough to provide comment, but their comments were ignored.<sup>200</sup> They also reported problems with the consultation process relating to the

<sup>196</sup> Hornsby Shire Council, Attachment A to *Submission 65*. p.1

<sup>197</sup> Cr Gareth Ward, Deputy Mayor, Shoalhaven City Council, *Transcript of evidence*, 26 August 2009, p. 37.

<sup>198</sup> Mr Robert Hogan, Divisional Manager, Governance, Administration and Executive Support, Waverley Council, *Transcript of evidence*, 27 August 2009, p. 2.

<sup>199</sup> Mr Robert Hogan, Divisional Manager, Governance, Administration and Executive Support, Waverley Council, *Transcript of evidence*, 27 August 2009, p. 2.

<sup>200</sup> Ms Petra Tinker, Manager, Governance and Customer Services, Fairfield City Council, *Transcript of evidence*, 26 August 2009, p. 59.

Returning Officer's office. Ms Tinker, the Manager of Governance and Customer Service, reported that:

When we had face-to-face discussions with our returning officer we seemed to have reached agreement and everything was fine. The next day we would get a telephone call from the Electoral Commission to say that the returning officer has indicated problems. Did not come back to us; it came back to us through the Electoral Commission, and I think that was part of the cause that caused the relationship to get off to a rocky start.<sup>201</sup>

4.27 Penrith City Council's submission consisted of a table of concerns that the council had raised with the NSWEC and the NSWEC's responses to these concerns. The Mayor of Penrith City Council expressed appreciation for the response they had received when he gave evidence to the Committee. The Committee was of the impression that, notwithstanding a number of operational problems with the elections, Penrith City Council had a positive working relationship with the NSWEC. The Mayor, Cr Aitken stated that:

Firstly, may I just say that we appreciate the challenges and time frames faced by the New South Wales Electoral Commission. We understand the scale and complexity of local government elections and the technological and legislative changes being embraced.<sup>202</sup>

4.28 The LGSA were dissatisfied with the NSWEC's provision of information regarding the elections, Mr Coulton, Director of Corporate services argued that

As a general comment, we think the conduct of the elections should be open and transparent, which I know may sound ridiculous to this Committee. The information we have been unable to get—or we have been able to get out of the Electoral Commission sluggishly or only with great pressure—we think is mad; all the information should be made available.<sup>203</sup>

#### *NSWEC perspective*

4.29 The NSWEC acknowledged that there were areas for improvement, particularly in relation to better communication with stakeholders, including councils.<sup>204</sup> However, the Electoral Commissioner argued firmly that the relationship between councils and the NSWEC was not one of negotiation, but rather one of consultation. When asked about the consultations or negotiations that took place with councils in the lead up to the elections, Mr Barry replied:

It is interesting that you use the words "consultations" and "negotiations". They are two different words embracing two different concepts. This is a fundamental issue that I think is worth exploring. I consulted with the councils on a range of matters from the returning officer, the returning officer's location, to polling places, pre-poll and newspaper advertisements. I consulted with them; I did not negotiate with them. I sought their advice. I gave them a plan on various parts of the operation and said, "Do you have any comments on this?" In some cases, there were no comments; in some cases, there were very helpful comments, which we took into account; and in some cases there were some very unhelpful comments, like councils wanting to close half the polling places.

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<sup>201</sup> Ms Petra Tinker, Manager, Governance and Customer Services, Fairfield City Council, *Transcript of evidence*, 26 August 2009, p. 59.

<sup>202</sup> Cr James Aitken, Mayor, Penrith City Council, *Transcript of evidence*, 27 August 2009, p. 12.

<sup>203</sup> Mr Peter Coulton, Director, Corporate Services, Local Government and Shires Association, *Transcript of evidence*, 27 August 2009, p.27.

<sup>204</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 2.

But there was no negotiation.<sup>205</sup>

- 4.30 As discussed above in relation to costs, the role of councillors or elected representatives, in the planning process was problematic. In evidence to the Committee, the Electoral Commissioner argued that he sought input from General Managers of councils, as the position holders responsible for the management of the administrative and operational functions of council, which had been a productive process. However, the Commissioner had problems with the involvement of elected representatives in this consultation process, arguing that it was inappropriate and caused much of the difficulty with the situation.

### Communication with electors

- 4.31 The Committee acknowledges that the NSWEC implemented communication initiatives for the 2008 local government elections, including:
- the distribution of 940,806 election information brochures;
  - provision of voter information in 24 languages; and
  - the placing of 163 press advertisements in a mix of general, multilingual and Aboriginal press throughout NSW, 3,244 radio advertisements, and 260 'live reads'. 217 different local newspapers used with at least one newspaper from each council area.<sup>206</sup>
- 4.32 However, a number of inquiry participants expressed concern that there was insufficient community awareness of the 2008 local government elections.

### RECOMMENDATION 5:

The Committee recommends that a higher proportion of the NSW Government's advertising budget be spent advertising the next local government election in the fortnight preceding polling day.

### Quality assurance and stakeholder surveys

- 4.33 The Electoral Commission outlined the following 'quality assurance' processes it has undertaken in relation to the 2008 local government elections:
- project and risk management approaches to election planning and execution, including the use of standard operating procedures and training modules for election processes, and use of scrutineers and an independent observation team during the count;
  - performance measurements captured and defined against identified corporate targets;
  - customer feedback surveys completed for all stakeholder groups;
  - reports on the conduct of elections provided to major stakeholders;
  - submission to the NSW Parliament's Joint Standing Committee on Electoral Matters completed;

<sup>205</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 2.

<sup>206</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, 30 October 2009, p. 21.

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- complaints management system and corrective actions; and
- reviews and internal and independent audits conducted on the elections and NSWEC systems.<sup>207</sup>

*Stakeholder surveys*

4.34 In terms of stakeholder surveys, the NSWEC undertook the following as part of their review of the 2008 local government elections:

- Electors – available online following the election with 2044 respondents.<sup>208</sup>
- General Managers – a debrief survey was emailed with 77.7% of General Managers from councils with contested elections responding.<sup>209</sup>
- Political stakeholders – one survey as part of the registered political party annual registration process with a 33% participation rate<sup>210</sup> and one online survey made available to all candidates who had provided an email address (72.2% of total candidates), of which 42.6% responded (28.4% of total candidates).<sup>211</sup>
- Election staff (Polling Place Managers and election day staff) – available online with 62.4% of all staff employed on election day responding.<sup>212</sup>
- Returning Officers – with 94.4% responding.<sup>213</sup>

4.35 The NSWEC provided summaries and analysis of some of the results from each of these surveys in its *Report on the 2008 Local Government Elections* and also stated it used the results when evaluating its performance in the conduct of the local government elections.<sup>214</sup>

4.36 The Committee considers that survey information provided in a summary form is sufficient for the Commission's report on the elections. However, it would prefer to receive as detailed an account as possible of the views represented in the survey for the purpose of completing the Committee's proposed review of the 2012 local government elections. The Committee fully supports the survey process undertaken to date by the Commission and has made a number of recommendations aimed at improving communication between the NSWEC and stakeholders on the conduct and administration of local government elections.

4.37 In relation to the surveys, the Committee notes the range of issues on which the NSWEC reported and the overall general level of satisfaction observed. In view of the valuable information that can be derived from such stakeholder feedback, the Committee suggests that the NSWEC examine ways to enhance the survey program undertaken. For example, the NSWEC may consider ways to increase stakeholder participation levels and use different survey methods, in order to obtain both qualitative and quantitative data. In this regard, the Committee notes the NSWEC's report that the web-based survey inviting stakeholder feedback on service aspects of the 2008 local government elections showed:

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<sup>207</sup> NSW Electoral Commission, *Annual Report for 2008-2009*, p.71.

<sup>208</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 44

<sup>209</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 66

<sup>210</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 87

<sup>211</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 88

<sup>212</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 105

<sup>213</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 107.

<sup>214</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 143.

electors did know of their obligation to enrol and to vote, however the findings are not reliable as an indicator of those in the community who did not respond to the survey and who may not have known of their obligation to enrol to vote.<sup>215</sup>

- 4.38 The Committee considers that the post-election survey could also provide a useful measure of elector opinions about the knowledge and helpfulness of polling place staff. Where shortcomings are identified, the Electoral Commissioner should report to the Committee on what action is proposed to improve training of polling place staff.
- 4.39 As part of the proposed parliamentary inquiry into the 2012 local government elections it may be useful for the Committee to examine the survey questionnaires sent to stakeholders and the nature of the responses received by the NSWEC. The Committee anticipates that the stakeholder responses to the surveys conducted by the NSWEC would serve as a useful guide to the level of satisfaction among stakeholders with the services provided by the NSWEC. It also would provide the Committee with a stronger empirical basis on which to draw conclusions about the extent and seriousness of any issues that may arise in relation to the conduct and administration of the elections.

### **RECOMMENDATION 6:**

The Committee recommends that:

- (a) the NSW Electoral Commission continue to conduct stakeholder surveys on the conduct of the election;
- (b) detailed information on the survey responses be provided to the Committee as part of the material examined during the proposed review of the 2012 local government elections, in addition to any statistical compilation of survey results;
- (c) in conducting the surveys the Electoral Commission give particular attention to stakeholder views on the following issues, raised with the Committee during the course of this inquiry:
  - the Regional Returning Officer model;
  - resourcing, staffing and location of pre-poll and polling booths;
  - transportation of ballot papers;
  - arrangements for scrutineering;
  - election advertising;
  - the Elector Inquiry Centre; and
  - the counting of the vote.

<sup>215</sup> NSW Electoral Commission, *Annual Report for 2008-2009*, p.56.

## A local government election Service Charter

4.40 In responding to PKF's comments about the need to achieve greater clarity in the communication of costs to councils, the Electoral Commissioner has informed the Committee that, from the wider perspective of service delivery generally:

The rationale for establishing a mechanism for accurate and documented communication with Councils is strongly supported by the NSWEC.<sup>216</sup>

4.41 To this end, the Electoral Commissioner has indicated that, the Commission would: establish a service charter along the lines introduced by State and Commonwealth Governments which focus upon customer service outcomes. It is proposed that the document takes the form of an 'Election Strategy' - a broader concept which in view of the public sector context of the NSWEC would also address the needs of electors in rural, regional and remote parts of NSW, the needs of electors with disabilities and those who speak a language other than English, innovations to be introduced by the NSWEC and their rationale, and the performance measures the NSWEC will apply.<sup>217</sup>

4.42 In this regard the Committee notes that the Electoral Commissioner, Mr Colin Barry, places the 'service charter' clearly in the public sector context within which the NSWEC provides electoral services. On this point, the Electoral Commissioner has advised:

The NSWEC is not operating in a private sector environment but one in which its responsibility for the provision of electoral services to Councils is mandated by legislation. This same legislation also mandates that Councils are required to pay for the electoral services provided to them. In this legislative, public sector context, the 'clients' are the electors of NSW.<sup>218</sup>

4.43 Mr Barry went on to note that:

The development of such a 'Local Government Election Strategy' encompassing the principles underpinning Service Charters would ensure that the NSWEC publicly sets out how it will conduct its proposed operations, the NSWEC's client service standards and the clients rights and responsibility. The development of the Strategy would be undertaken in consultation with councils and other stakeholders. The publication of a Local Government Election Strategy prior to locking in arrangements for the election will provide all Councils with information on how it is proposed the election will be conducted and the opportunity to liaise with the NSWEC on these proposals.<sup>219</sup>

## Comment and recommendations

4.44 The Committee has expressed its full support for the role performed by the NSW Electoral Commission in conducting and administering the local government election process. It regards the NSWEC's role as particularly significant in terms of securing the integrity of the election process and the observance of consistent standards in election processes at both the state and local levels of government. The relationship between the NSWEC and its stakeholders is critical to the success of the Commission and its credibility in performing this role.

4.45 The NSWEC currently has a Guarantee of Service in relation to the provision of services generally, including:

- Provision of roll information

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<sup>216</sup> Letter from Mr Colin Barry, Electoral Commissioner to Committee Manager, dated 12 February 2010, p. 2.

<sup>217</sup> Letter from Mr Colin Barry, Electoral Commissioner to Committee Manager, dated 12 February 2010, p. 2.

<sup>218</sup> Letter from Mr Colin Barry, Electoral Commissioner to Committee Manager, dated 12 February 2010, p. 2.

<sup>219</sup> Letter from Mr Colin Barry, Electoral Commissioner to Committee Manager, dated 12 February 2010, p. 2.



- Provision of general electoral information
- Public education programs and services
- Publications and maps
- Conduct of election
- Election funding.<sup>220</sup>

The Guarantee notes that “The office’s success will depend on its ability to meet the needs and expectations of its customers”.<sup>221</sup> The latter include, but are not limited to, councils, electors, and political parties.

- 4.46 Submissions and evidence to this inquiry, and the observations of the consultant’s review conducted on behalf of the Committee, indicate that there is scope for the NSWEC to take further initiatives aimed at strengthening and improving its relationship with the various stakeholders in the local government area. In particular, the Committee considers that the Commission could develop a specific policy document in relation to the provision of services for local government elections. Such an initiative may promote a greater understanding on the part of stakeholders of the role performed by the NSWEC and assist communication between the NSWEC and stakeholders in relation to the conduct and administration of local government elections.
- 4.47 The Committee envisages that the charter would be modelled on the service charters and related principles applicable to Commonwealth agencies,<sup>222</sup> which function as ‘a strong performance measurement and accountability tool as [they] focus on customer service outcomes’.<sup>223</sup> It should cover important information relating to the nature of the role performed by the NSWEC in relation to local government elections, relevant standards of performance and service, stakeholder rights and responsibilities and avenues for feedback or complaint. As is the case with Commonwealth Government Service Charters, the proposed local government election service charter should be ‘a living document’ that evolves as the nature of the NSWEC’s role in this area changes and develops. The Committee notes that:
- A service charter is a public document that should be used as the driver for cultural change within the agency. This change can encompass client-focus, changed business practices, outcomes rather than process, better and more responsible communications, and improved relationships with clients.<sup>224</sup>
- 4.48 The Committee regards such a policy statement as one constructive way in which the NSWEC may be able to achieve a common understanding and recognition among stakeholders, including councils, council administration, electoral officials and electors, of its role in respect of the administration and conduct of local government elections. The principles underpinning the charter would involve monitoring performance and reporting against the standards developed, and reporting on client/stakeholder complaints and feedback.

<sup>220</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, Appendix 14, p.135.

<sup>221</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, Appendix 14, p.135.

<sup>222</sup> Commonwealth of Australia, *Client Service Charter Principles – June 2000* at <http://www.apsc.gov.au/charters/principles.pdf> (accessed 11 May 2010)

<sup>223</sup> Australian Public Service Commission, *Commonwealth Government Service Charters* at <http://www.apsc.gov.au/charters/> (accessed 8 February 2010)

<sup>224</sup> Commonwealth of Australia, *Client Service Charter Principles – June 2000* at <http://www.apsc.gov.au/charters/principles.pdf> (accessed 11 May 2010) p.6.

- 4.49 The Committee acknowledges that the Electoral Commission has already made significant efforts to report on such areas publicly in its annual reports and the comprehensive report it produces on the local government elections. Nevertheless, the Committee is of the view that the production of a single policy document in which the Commission clearly sets out its role and functions, and the related standards of performance, may help to promote greater understanding and awareness on the part of stakeholders.
- 4.50 The success of such an initiative may also depend on the extent of the consultations undertaken by the Commission when developing the service charter and subsequent dialogue with stakeholders throughout the lead up to the next local government elections. The Committee would stress that in making this recommendation it is not contemplating that development of the charter would involve the NSWEC in negotiations with stakeholders to reach a legally enforceable document.

### **RECOMMENDATION 7:**

The Committee recommends that:

- (a) the NSW Electoral Commission consider formulating a 'Service Charter for local government elections', to be developed in consultation with relevant stakeholders and modelled on the Commonwealth and State Government Service Charters for departments and agencies dealing with the public.
- (b) the proposed Service Charter be aligned to the corporate values of the NSW Electoral Commission around their four key result areas, as they relate to local government general elections.
- (c) the NSW Electoral Commission include in its report on the local government elections information on its performance in providing services for local government elections, benchmarked against the proposed Service Charter.

### **Regional Returning Officer model**

- 4.51 The NSWEC offered smaller councils in regional and rural areas the opportunity to share a returning officer for the election as a strategy to reduce the costs associated with employing a full-time RO for the full election period and to address recruitment issues in regional and rural areas. This was known as the Regional Returning Officer (RRO) model.
- 4.52 The NSWEC reported that 81 councils took the option to share a returning officer, and these councils formed 23 regions. The number of councils in each regional grouping varied from two councils to seven. The table below shows the number of regional groupings of each size.

**Table 2**<sup>225</sup>

Number of councils in regional Grouping	Number of regions of this size	%
Two	7	30.4
Three	7	30.4
Four	3	13.1
Five	4	17.4
Six	0	0.0
Seven	2	8.7
Total	23	100.0

- 4.53 The regional grouping with the most electors was in the Coffs Harbour region, servicing Coffs Harbour City Council, Bellingen Shire Council and Clarence Valley Council with a total of 91,137 electors.<sup>226</sup> While the largest geographic regional grouping serviced Cobar Shire Council, Bogan Shire Council, Bourke Shire Council, Brewarrina Shire Council, and Central Darling Shire Council, which covered 174,595 square km.<sup>227</sup>
- 4.54 According to the NSWEC, the RRO model reduced the costs for budget items such as RO and other staff salaries and RO office accommodation for councils, which could share the costs across councils with a RRO. The NSWEC also noted that:  
under the Regional Returning Officer model, the average cost [for RO employment, support staff and office accommodation] was \$1.23 per elector as compared to \$4.88 per elector if these same councils had not opted to share a Returning Officer. Costs were cut to less than a third on average for participating councils with savings of \$3.65 per elector accrued to those councils with the shared provision of returning officer services.<sup>228</sup>
- 4.55 The NSWEC survey showed that 77.6% of General Managers for council who had shared a returning officer were prepared to do so again in future elections.<sup>229</sup> The NSWEC survey of General Managers also found that while 86.2% of General Managers were neutral to positive about the availability of the RO to all councils, 13.8% reported difficulties with the accessibility of the RO.<sup>230</sup>
- 4.56 The Committee received submissions and heard evidence from councils who had participated in the RRO model. Councils' concerns centred on the accessibility of the RRO both physically and via the phone, the tyranny of distance for remote councils with a RRO, demands placed on council staff and resources where the RO was located in another LGA, issues of cost and concerns about the security of ballot paper transportation.
- 4.57 A primary area of concern for councils who had participated in the RRO model was where the RO was located in another LGA and candidates and electors were not able to easily contact or access the RO. Yass Valley Council (who shared a RO with Palerang Council and Queanbeyan Council) objected to the fact that the returning officer was only contactable by mobile phone, which was the cause of complaints to

<sup>225</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 64.

<sup>226</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, pp. 64 and 180.

<sup>227</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, pp. 64 and 180

<sup>228</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 137.

<sup>229</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 70.

<sup>230</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 71.

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- council by residents.<sup>231</sup> Cr Carmody, Mayor of Yass Valley Council, in evidence indicated that the use of a toll free number for the RO would have gone some way to addressing the issue for residents and candidates in contacting the RO.<sup>232</sup>
- 4.58 Mr Perkins, General Manager of Berrigan Shire Council, stated that as the Council has the second most aged population in NSW, residents do not regularly use technology such as the internet or mobile phones. The inability of electors to easily call or visit the RO created a feeling of dislocation for their residents.<sup>233</sup>
- 4.59 Related concerns were raised about the inability of electors and candidates to meet face to face with the returning officer where the RRO was based in another LGA. A number of councils highlighted the distance between their regional centre and the location of their RO creating problems for electors or candidates wishing to consult the RO, for example, residents of Griffith City Council “faced with an hour or an hour and 15 minute drive to Narrandera” to meet with the RO.<sup>234</sup> Mr Stubbs, Executive Officer of RAMROC, told the Committee that many candidates were “frustrated at not being able to meet face-to-face with the returning officer”.<sup>235</sup> Parkes Shire Council reported that their candidates did not have access to the RO, who was located 100km away, so they were unable to witness processes such as the ballot draw and candidate information seminars were not conducted for candidates in the council area.<sup>236</sup>
- 4.60 Another distance related issue raised was in relation to the count. Griffith Council raised concerns that scrutineering under the RRO model was difficult, particularly when there were no clear timeframes for the count. They argued that the distance and lack of predictability about when counts would be held was problematic.<sup>237</sup>
- 4.61 Councils with the RO located in their LGA reported greater satisfaction with the public accessibility of the RO. For example, Lismore City Council’s General Manager, Mr Wilson, said:
- Administratively, the joint returning officer worked for us because he was located in our city, easily accessible to our voters, our candidates, et cetera, so from that point of view we had no problems.<sup>238</sup>
- 4.62 Palerang Council also reported satisfaction with the model particularly due to the location of the RO and geographical factors: Palerang surrounds Queanbeyan where the RO was located, so it was as convenient as the town centre for residents.<sup>239</sup>
- 4.63 Suggestions were made to the Committee that having the RO visit other areas within the region would create a greater sense that the returning officer was serving their

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<sup>231</sup> Yass Valley Council, *Submission 18*, p. 1.

<sup>232</sup> Cr Nicholas Carmody, Mayor, Yass Valley Council, *Transcript of evidence*, 26 August 2009, p. 18.

<sup>233</sup> Mr Rowan Perkins, General Manager, Berrigan Shire Council, *Transcript of evidence*, 26 August 2009, p.

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<sup>234</sup> Mr Duncan McWhirter, Manager, Governance, Administration and Compliance, Griffith City Council *Transcript of evidence*, 26 August 2009, p. 32.

<sup>235</sup> Mr Raymond Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils, *Transcript of evidence*, 26 August 2009, p. 29.

<sup>236</sup> Mr Les Finn, Director of Corporate Services, Parkes Shire Council, *Transcript of evidence*, 26 August 2009, p. 19.

<sup>237</sup> Mr Duncan McWhirter, Manager, Governance, Administration and Compliance, Griffith City Council, *Transcript of evidence*, 26 August 2009, p. 31.

<sup>238</sup> Mr Graeme Wilson, Corporate Compliance Coordinator, Lismore City Council, *Transcript of evidence*, 26 August 2009, p. 44.

<sup>239</sup> Mr Peter Bascomb, General Manager, Palerang Council, *Transcript of evidence*, 26 August 2009, p. 24.

communities. The General Manager of Eurobodalla Shire Council, Mr Anderson, told the Committee that:

One of the issues is that many of the people who were involved in the elections, be they candidates or be they electors, believed that there was this veil of secrecy around a returning officer who they could never see. If the returning officer was actually able to spend some time in some of those areas somewhat remote from the returning officer's office, some of that veil of secrecy may have been removed and the perceptions that were out there that this process was being run from Sydney could have been evaporated and I think some of the complaints may have been able to be resolved earlier than what they actually had been.<sup>240</sup>

4.64 The model placed an administrative and staffing burden on councils who did not have the RRO located in their LGA. The NSWEC reported that they had to implement plans to deal with the “accessibility and logistical difficulties arising from one Returning Officer running several elections concurrently”<sup>241</sup>. These plans included arranging for councils to take nomination deposits from candidates.<sup>242</sup> The Committee’s evidence suggests that the alternate arrangements also included the administration of pre-poll voting and postal voting.<sup>243</sup>

4.65 For example, Upper Lachlan Shire Council submitted that 15% of all votes recorded for their LGA were pre-poll votes processed at council’s three offices at a cost to council with staff salaries, time and resources in addition to the amount invoiced by NSWEC.<sup>244</sup>

4.66 A number of councils reported to the Committee that they did not believe that there were significant savings when the extra work created for council staff was taken into account. Mr Finn, from Parkes Shire Council stated that:

Demonstrated through correspondence from the Commissioner, there was a savings per the information provided by the Commissioner but we would agree with Eurobodalla that when you take into account the masked costs of doing a lot of work for the regional returning officer on a daily basis, in essence, there probably was not a real large saving.<sup>245</sup>

4.67 Berrigan Shire Council submitted to the Committee that their costs were three times the historic costs of having a dedicated RO even though they shared the RO with six other councils. They proposed that consideration should be given to the necessity of employing a RO full time for 10 weeks as a means for containing costs.<sup>246</sup>

## Comment and recommendation

4.68 The Committee believes that the Regional Returning Officer model offered councils the opportunity to save money. It provides a solution to problems with recruiting suitably qualified individuals to fill a short-term role in every local government area in regional areas, and as such should be continued for future local government elections. However the Committee is of the opinion that there are a number of areas

<sup>240</sup> Mr Paul Anderson, General Manager, Eurobodalla Shire Council, *Transcript of evidence*, 26 August 2009, p. 18.

<sup>241</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 64.

<sup>242</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 64

<sup>243</sup> Berrigan Shire Council, *Submission 14*; Yass Valley Council, *Submission 18*; Upper Lachlan Shire Council, *Submission 31*; Parkes Shire Council, *Submission 9*.

<sup>244</sup> Upper Lachlan Shire Council, *Submission 31*.

<sup>245</sup> Mr Les Finn, Director of Corporate Services, Parkes Shire Council, *Transcript of evidence*, 26 August 2009, p. 16.

<sup>246</sup> Berrigan Shire Council, *Submission 14*.

in which the RRO model may be improved, such as accessibility of the RRO, use of landline or free call contact numbers for the RRO, transportation of ballot papers, and arrangements for pre-poll voting for those councils not hosting the RRO.

### **RECOMMENDATION 8:**

The Committee recommends that the following aspects of the Regional Returning Officer (RRO) model be given consideration by the NSW Electoral Commission in preparation for the 2012 local government elections:

- (a) the accessibility of RROs to the residents, candidates and staff of those councils not hosting the returning officer, including the possibility of the returning officer making visits to those other councils during the election period.
- (b) the use of a landline or free call contact number for all returning officers.
- (c) ballot paper transportation.
- (d) arrangements for pre-poll voting for those councils not hosting the RRO, including the possibility of employing part time electoral officials to cover those councils not hosting the RRO.

### **Rolls**

4.69 Under Chapter 10 of the *Local Government Act 1993* a roll of electors is to be prepared for local government elections. This roll is a composite roll, consisting of the following (s 301):

- *Residential roll* which is a roll of those residents of the area entitled to be enrolled as electors prepared by the Electoral Commissioner, and which may be based on the roll used in LA elections or for Commonwealth elections (s 298).
- *Non-residential roll* prepared by the general manager and confirmed by the Electoral Commissioner as being such, and which is comprised of those owners of rateable land who do not reside in the area (s 299).
- *Roll of occupiers and ratepaying lessees* prepared by the general manager and confirmed by the Electoral Commissioner as such, and which is made up of those who are occupiers<sup>247</sup> and those lessees who are liable, under the terms of their lease, to pay rates (s 300).

4.70 The non-residential roll and roll of occupiers and ratepaying lessees lapse after the election for which they are prepared and include the names of only those people who have applied for their names to be included for that election (s 299 (2) and 300(2)).

4.71 Section 303 (1) provides for a person to make a claim for inclusion on the roll or the amendment of any particulars entered on the roll, and lodge an objection to the inclusion of their name, or that of another person, or to any of the particulars entered on the roll against their name or that of another person. In the case of the Residential

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<sup>247</sup> Occupier is defined by the *Local Government Act 1993* as "(a) a person having the charge, management or control of premises, and (b) in the case of a building which is let out in separate occupancies or a lodging house which is let out to lodgers, the person receiving the rent payable by the tenants or lodgers, either on his or her own account or as the agent of another person, and, in the case of a vessel, means the master or other person in charge of the vessel."

roll a claim or objection would be made to the Electoral Commissioner and in the case of the non-residential roll and the roll of occupiers and ratepaying lessees, to the general manager.

- 4.72 Section 18A of the *City of Sydney Act 1988* requires the Electoral Commission to prepare and confirm the non-residential roll for the City of Sydney.
- 4.73 Within seven days, the Electoral Commissioner or general manager must: make a decision to allow or disallow the claim for inclusion, amendment or objection; make entries or alterations to the roll to give effect to that decision; and serve notice of the decision to the person lodging the claim or objection, and any person to whom a rejection relates (s 303 (2)). The review of any decision falls under the jurisdiction of the Administrative Decisions Tribunal (s 303 (3)) and the Commissioner or general manager is to make any changes to the roll, as necessary, to give effect to a decision of the ADT (s 303 (4)).
- 4.74 No changes can be made to the roll of electors between the closing date of an election and the end of polling day (s 303 (5)).
- 4.75 A person may not be enrolled more than once on a roll of electors for a particular ward (s 304 (1)). If a person is qualified for enrolment in more than one ward for an area, they are to be enrolled in the ward in which they are a resident, or if the person is not a resident in either ward, they are to be enrolled in the ward they specify in notice given to the general manager prior to the closing date for the election, or a ward chosen by the general manager if no such notice is given (s 304(2)).
- 4.76 The NSWEC's involvement in the preparation of non-resident rolls was limited to providing councils with parameters for the information required to determine eligibility to be listed on the rolls.<sup>248</sup> The NSWEC reported that at the close of rolls on 4 August 2008 there were 1,833 electors listed on the non-resident rolls for all councils.<sup>249</sup>

#### *Issues raised by Councils and General Managers*

- 4.77 The greatest concern expressed in relation to the rolls for local government elections was in regard to the non-residential roll and roll of occupiers and ratepaying lessees. Councils presented the administration of the non-residential roll as a burden and cost which they should not have to meet if the NSWEC was running the elections.<sup>250</sup>
- 4.78 Eurobodalla Shire Council has the largest non-residential roll of any council in NSW, with 421 electors listed for the 2008 local government elections. This is 23% of the total non-residential roll for the 2008 local government elections.<sup>251</sup> The General Manager of Eurobodalla Shire Council, Mr Anderson, outlined the process his council has to undertake to prepare this roll and the amount of staff time it requires. He quoted that "24 days of solid work" had been required to maintain the roll, writing to non-resident ratepayers 12 months out advising them of the election, their right to be listed on the roll and providing enrolment forms, placing advertisements, utilising the council's website and processing applications. Mr Anderson said an additional 14 days were spent notifying those who submitted applications too late that they had not

<sup>248</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 60.

<sup>249</sup> NSW Electoral Commission, *Report on the 2007 State Election*, 26 November 2007, p. 60.

<sup>250</sup> Mr Peter Bascomb, General Manager, Palerang Council, *Transcript of evidence*, 26 August 2009, p. 24 and Eurobodalla Shire Council, Submission 41.

<sup>251</sup> NSW Electoral Commission, *Report on the 2007 State Election*, 26 November 2007, p. 60.

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been included on the roll.<sup>252</sup> Mr Anderson stated that if the NSWEC were to conduct the elections, then the responsibility to prepare the non-resident roll should be theirs, not the council's.<sup>253</sup>

- 4.79 The Committee also heard evidence from councils who had experienced confusion when seeking advice on the preparation of the non-resident roll. For example, Kogarah Council reported that their General Manager had encountered problems accessing advice regarding the inclusion of potential candidates on non-resident rolls, when the general manager sought advice from the NSWEC they were told it was the Department of Local Government's responsibility, and vice versa.<sup>254</sup> The Committee notes Kogarah Council's observation that this lack of clarity diminishes confidence in the process, and that:

Consistent and definitive answers to such questions that would be faced by most councils, by one of the key authorities would seem to be appropriate and beneficial to all parties.<sup>255</sup>

*NSWEC perspective*

- 4.80 The Electoral Commissioner told the Committee of the Commission's involvement in preparing the non-resident rolls and the role the NSWEC could play in future local government elections:

It is an interesting conundrum. On the one hand you have councils making submission to you saying they want to run the elections and on the other hand the thing that they have responsibility for they want to hand it to me! Of course, I am happy to do it; it makes sense but I just put it to you, how does all this balance up in your deliberations when the very fundamental thing—where they actually have the information which I do not have about who are the ratepayers and the absentee ratepayers in their area—they want you to say "Well, maybe Colin should run all this for us". My expertise, they want to take over the running of the election. Yes, we can do it. In fact, they were honest they would be telling you that, in fact, we did most of it for them because they did not know how to put the stuff together. We did it for them. We set up a website for them so that they could go on and check. We are happy to do that.<sup>256</sup>

Comment and recommendation

- 4.81 The Committee considers the preparation of the non-resident roll to be an activity that councils are best positioned to undertake. The Committee notes the Electoral Commissioner's comments that the councils hold the information required to contact those potentially eligible for inclusion on the non-resident roll and to verify the eligibility of applicants through their ratepayer records. The Committee considers the provision of formal guidance by the NSWEC to councils about the information required to determine eligibility for inclusion on the roll to be a significant service which should continue.
- 4.82 The Committee would also like to see an improvement to the level of enrolment of non-resident ratepayers, and believes the NSWEC is well placed to provide advice

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<sup>252</sup> Mr Paul Anderson, General Manager, Eurobodalla Shire Council, *Transcript of evidence*, 26 August 2009, p. 21-2.

<sup>253</sup> Mr Paul Anderson, General Manager, Eurobodalla Shire Council, *Transcript of evidence*, 26 August 2009, p. 21-2

<sup>254</sup> Kogarah Council, *Submission 10*.

<sup>255</sup> Kogarah Council, *Submission 10*, p. 1.

<sup>256</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 9.



and assistance to councils on strategies to improve enrolment levels for the non-residential rolls.

- 4.83 The Committee did not consider sufficient evidence to enable it to draw conclusions about the proposal that only residents of a local government area be eligible to vote and stand as candidates in the local government area where they reside. Consequently, the Committee suggests that this issue should be considered as part of the recommended inquiry into the 2012 local government elections.

### **RECOMMENDATION 9:**

The Committee recommends that:

- (a) councils should continue to be responsible for the maintenance of the non-residential roll for local government general elections;
- (b) the NSWEC and Department of Local Government work to clarify the appropriate authority for providing advice to councils on inclusions and exclusions to the non-resident roll;
- (c) as part of the consultations with General Managers prior to the 2012 local government general elections, the Electoral Commissioner provide information to councils on strategies to improve enrolment levels in relation to non-residential electors; and
- (d) the NSW Electoral Commission continue to provide support for publication of information relating to the non-residential roll via the NSWEC website.

### **Nomination forms**

- 4.84 All candidates are required to lodge a Candidate Information Sheet (CIS) as part of the nomination form. The CIS must be signed by the candidate and witnessed by a Justice of the Peace.<sup>257</sup> The Greens argued that this is not the practice for state and federal elections, and that there have been no negative repercussions in these jurisdictions.<sup>258</sup> The Committee supports removal of the requirement for a Justice of the Peace to witness a candidate's nomination.

### **RECOMMENDATION 10:**

The Committee recommends that the requirement that a candidate's signature on a local government election nomination form be witnessed by a Justice of the Peace be discontinued.

<sup>257</sup> NSW Electoral Commission, *The nomination process*, [http://www.elections.nsw.gov.au/local\\_government\\_elections/candidates/the\\_nomination\\_process](http://www.elections.nsw.gov.au/local_government_elections/candidates/the_nomination_process), accessed on 24 May 2010.

<sup>258</sup> The Greens, *Submission 51*, p. 8.

## Voting

### Postal voting

4.85 Postal voting is currently available as an alternative method of voting for voters who meet certain criteria which render them unable to attend a polling booth or pre-poll voting centre. The Local Government (General) Regulation 2005 provides the qualifications for a person to make a postal vote at a local government election.<sup>259</sup>

4.86 The Regulation also provides for eligibility for ongoing registration as a general postal voter under the *Parliamentary Electorates and Elections Act 1912* to carry over to the local government elections. The eligibility requirements under the *Parliamentary Electorates and Elections Act 1912* at the time of the 2008 local government elections were as follows:

- An elector lives more than 20 kilometres, by the nearest practicable route, from a polling place;
- An elector who will not be within the State during any particular period;
- An elector who is a patient at a hospital where polling will not take place and who due to illness or infirmity is not able to travel from the hospital;
- An elector who due to illness or infirmity is not able to travel from their place of residence;
- An elector who will be caring for a person who is seriously ill or infirm, and who because of this is unable to travel from that place to a polling place;
- An elector being held in a correctional centre;
- An elector whom an Australian medical practitioner has certified, in writing, to be so physically incapacitated that the elector cannot sign the elector's name;
- An elector who is a silent elector; or
- An elector whose religious beliefs, or membership of a religious order, preclude them from attending a polling place for all or most of the hours of polling.<sup>260</sup>

### Universal postal voting

4.87 During the inquiry a number of participants advocated the introduction of universal postal voting as an option for the conduct of future local government elections. Universal postal voting means attendance voting is eliminated and each enrolled elector is automatically sent a postal voting pack, which can contain ballot papers, information on voting and other helpful material. This can be implemented state wide, as in Tasmania and South Australia, by council area, as in Victoria and Western Australia, or as an option offered to areas designated as a rural area, with either a part of a council area or the whole council area having postal voting only, as in Queensland.

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<sup>259</sup> Clause 313, Local Government (General) Regulation 2005

<sup>260</sup> Section 114AA, *Parliamentary Electorates and Elections Act 1912*.

## Universal postal voting for local government elections in other Australian jurisdictions

### Victoria

4.88 Under section 41A of the *Local Government Act 1989* (VIC) councils can choose to conduct elections by postal voting or attendance voting. The public notice of the election must state that postal voting will be the method of voting to be used if it is selected by council. The RO must deliver a voting package to each elector on the roll containing the following:

- a postal vote certificate or declaration.
- a ballot paper for postal voting.
- a reply paid envelope for the return of the certificate and ballot paper.
- voting instructions.
- notice of how and when the ballot paper must be returned.
- any document prescribed for the purposes of this paragraph.
- any other material that the returning officer thinks is appropriate.

4.89 According to the Victorian Electoral Commission (VEC), in the 2008 Victorian local government elections there was just over two weeks between the dispatch of voting packages (on Tuesday 11 November) until the date on which they were required to reach the election office (Friday 28 November).<sup>261</sup>

4.90 The VEC reported that under the Local Government (Electoral) Regulations 2005 (VIC) it is required that:

... the ballot packs are randomly mailed, at least 15 days before the last day of voting, with no more than 35% being mailed on any one day. Over the three-day period Tuesday, 11 November to Thursday, 13 November, the VEC mailed out 3,153,666 ballot packs for postal elections.<sup>262</sup>

4.91 The VEC reported some concerns about the time allowed for the return of ballot papers for people living in regional areas where mail delivery took an extra day and also where people collect their mail from the town centre. It recommended that:

... the Government considers extending the election timeline for postal elections – in particular, the preparation time for the assembly and despatch of high volumes of ballot packs, and the longer Australia Post delivery times that apply in some rural areas compared to that in metropolitan areas.<sup>263</sup>

### Western Australia

4.92 A combination of postal voting elections and attendance elections is in place for local government elections in WA. The *Local Government Act 1995* (WA) provides that local government can decide which method it will use to conduct their elections. The local government makes this decision by way of a council decision with an absolute majority (s 4.61).

<sup>261</sup> Victorian Electoral Commission (2008) *Media Release: Voting starts in the Alpine Shire Council elections*, [www.vec.vic.gov.au/media/mrAlpineVoting10nov2008.html](http://www.vec.vic.gov.au/media/mrAlpineVoting10nov2008.html), accessed 29/07/09.

<sup>262</sup> Victorian Electoral Commission, 'Part 1: Report of the conduct of the 2008 local government elections', *Report of local government electoral activity 2008-09*, October 2009, p. 28.

<sup>263</sup> Victorian Electoral Commission, 'Part 1: Report of the conduct of the 2008 local government elections', *Report of local government electoral activity 2008-09*, October 2009, p. 29.

Planning and administration

- 4.93 The Western Australian Electoral Commission (WAEC) is responsible only for the conduct of postal voting elections, while the Chief Executive Officer of the Council is responsible for the conduct of attendance elections. The Electoral Commissioner advised that the 'Initial policy bases for the involvement of the WAEC in the conduct of local government postal voting elections was the need for independence and transparency in the electoral process.'<sup>264</sup>
- 4.94 In the case of postal elections, the Local Government (Elections) Regulation 1997 requires that the RO provide a postal voting package to all electors on the roll. This package is to contain the following:
- postal voting instructions;
  - candidates' profiles;
  - advice that the electoral gifts register is available for inspection, by any voter prior to the election, at the relevant local government offices;
  - ballot paper initialed by an electoral officer;
  - ballot paper envelope;
  - elector's certificate; and
  - reply paid envelope addressed to the RO. (cl 43 (1))
- 4.95 The RO is to mail the packages out as soon as practicable after the close of nominations (cl 44).
- 4.96 The WAEC reported that 69 (of 139) councils used postal voting in 2009, up from 4 councils in 1995 when it was first trialled.<sup>265</sup> Voting in WA local government elections is not compulsory, and the WAEC argued that postal voting increased voter participation as compared to attendance voting, stating that 94% of those who voted in local government elections in 2009 did so in a postal voting election.<sup>266</sup>
- 4.97 The WAEC argued that postal voting provides the following advantages:
- Every elector is made aware that an election is being held;
  - There are no barriers to voting which encourages participation;
  - ....
  - Candidates profiles are provided to assist decision making;
  - Elected candidates can have confidence in their support base.<sup>267</sup>

*Queensland*

- 4.98 Under s 318 of the *Local Government Act 1993* (QLD) local government areas, which include a large rural or remote area or extensive island areas, may be Gazetted as having elections to be conducted by postal ballot. This can either be as a whole local government area, for one or more of the divisions of the area, or a part of the area marked on a publicly available map. In the 2008 local government elections 28 of

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<sup>264</sup> Letter from Mr Warwick Gately, Western Australian Electoral Commissioner to Committee Manager, 10 February 2010, p. 2.

<sup>265</sup> Letter from Mr Warwick Gately, Western Australian Electoral Commissioner to Committee Manager, p. 2.

<sup>266</sup> Western Australian Electoral Commission, 'WAEC – Local Government Elections', 2010, [http://www.waec.wa.gov.au/voting/local\\_government\\_elections/](http://www.waec.wa.gov.au/voting/local_government_elections/), accessed 22 April 2010

<sup>267</sup> Letter from Mr Warwick Gately, Western Australian Electoral Commissioner to Committee Manager, p. 2.

Queensland's 73 councils had full postal ballots. In these areas all electors received postal ballots automatically in the mail.<sup>268</sup>

### *South Australia*

- 4.99 Section 37 of the *Local Government (Elections) Act 1999* (SA) establishes full postal voting as the method of voting in local government elections. Section 38 of the Act provides that the RO must notify the public that voting in the election will be conducted entirely by postal voting, by way of a public notice in a local newspaper, at least 21 days before polling day.<sup>269</sup>
- 4.100 Section 39 stipulates that the RO must provide the following to every person on the roll:
- ballot papers;
  - an opaque envelope with a declaration to be completed by the voter of their date of birth, that the ballot paper contained displayed their vote, that they have not already voted, and that they are eligible to vote; and
  - an explanatory notice and candidate information which complies with regulations.
- 4.101 This package must be distributed to voters between 21 and 14 days before polling day, with the mail out commencing as close as possible to the 21st day.
- 4.102 The Act does not require the RO to verify the date of birth or any other information provided on the declaration, except in a manner they see fit or necessary (s 39 (10)). It also allows for the inclusion of ballot papers in the count where the declaration is incomplete or incorrect (i.e. wrong date of birth) at the discretion of the RO (s 39 (11)). The RO is responsible for ensuring the 'efficient receipt and safekeeping' of returned envelopes containing votes prior to the close of voting (s 44).

### *Tasmania*

- 4.103 Full postal ballots are used in Tasmanian local government elections. Under the *Local Government Act 1993* (TAS) voting packages containing the following are dispatched to every elector on the roll during the voting period:
- ballot paper;
  - voting instructions and instructions for the return of the ballot paper;
  - envelope or envelopes to be used for the return of the ballot paper; and
  - statements of candidates.
- 4.104 A polling period of ten days, excluding any Saturday, Sunday or public holiday, applies. Voting is voluntary in Tasmanian local government elections.

### **Support for universal postal voting**

- 4.105 Inquiry participants commented that universal postal voting would reduce the cost of local government elections, particularly due to the elimination of the need for polling booths and associated costs.<sup>270</sup> This view was put forward by regional councils such

<sup>268</sup> Electoral Commission of Queensland, 'Elections – Local Government Quadrennial Elections, 2008' <http://www.ecq.qld.gov.au/asp/index.asp?pgid=381#fpb>, accessed 30 July 2009.

<sup>269</sup> Polling day is the day on which voting closes under s 4(2) of the *Local Government (Elections) Act 1999* (SA).

<sup>270</sup> Mr Paul Tracey, *Submission 6*; Jason Horton, *Submission 23*; Allen Hampton, *Submission 24*; Mr Raymond Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils, *Transcript of evidence*, 26 August 2009, p. 28.

as Griffith City Council, Palerang Council, and Mid-Western Regional Council who had been dissatisfied with the cost of the 2008 local government elections.<sup>271</sup>

- 4.106 The NSW Electoral Commissioner, drawing on his experience as the Victorian Electoral Commissioner and discussions with VEC staff, argued that cost savings of approximately 15-20% could be made by implementing universal postal voting (with regional returning officers).<sup>272</sup>
- 4.107 Inquiry participants also asserted that universal postal voting may increase participation of voters in local government elections. Palerang Council put forward the examples of Victoria where they argue universal postal voting increases community participation, as well as Tasmania, where participation in elections has increased from 25% under attendance voting, to 60% since the implementation of universal postal voting, in a voluntary voting system.<sup>273</sup> The General Manager of Palerang Council, Mr Bascomb, posited that given the Victorian and Tasmanian examples 'postal voting has the impact of actually increasing participation in elections, which, in a democracy, is what we are all about'.<sup>274</sup>
- 4.108 Western Australia does not have compulsory voting for local government elections, and the WAEC has argued that universal postal voting shows an increase in voter participation when compared to attendance voting. The average statewide participation rate for elections conducted using postal voting in 2009 was 33.35%, with individual councils' participation rates ranging from 25.36% to 65.74%. The average statewide participation rate for attendance elections was 22.1%, with participation rates for individual councils ranging from 12.7% to 59.4%.<sup>275</sup> The WAEC stated that 94% of those who voted in local government elections in 2009 did so in a postal voting election.<sup>276</sup> This is significant considering only 69 of 139 WA councils used postal voting in 2009.<sup>277</sup>
- 4.109 Victoria provides an example of how universal postal voting can increase participation in general and also increase formal participation in local government elections. The Victorian Electoral Commission, in reporting on the conduct of the 2008 local government elections in Victoria, presented the following table showing the consistently high percentage of enrolled voters who cast a vote in postal voting elections, compared to attendance elections.

**Table 3**<sup>278</sup>

Local Government Elections	2002	2003	2004	2005	2004 & 2005	2008
Postal elections (a)	73.78	76.42	75.07	75.66	75.51	75.96

<sup>271</sup> Griffith City Council, *Submission 43*; Palerang Council, *Submission 50*; Mid-Western Regional Council, *Submission 53*.

<sup>272</sup> NSW Electoral Commission, *Answers to Questions on Notice*, provided 26 October 2009, p. 1.

<sup>273</sup> Palerang Council, *Submission 50*, p. 3.

<sup>274</sup> Mr Peter Bascomb, General Manger, Palerang Council, *Transcript of evidence*, 26 August 2009, p. 25.

<sup>275</sup> Western Australian Electoral Commission, 'WAEC – Local Government in Western Australia, 2010, [http://www.waec.wa.gov.au/voting/local\\_government\\_elections/local\\_government\\_in\\_western\\_australia.php](http://www.waec.wa.gov.au/voting/local_government_elections/local_government_in_western_australia.php), accessed 22 April 2010

<sup>276</sup> Western Australian Electoral Commission, 'WAEC – Local Government Elections', 2010, [http://www.waec.wa.gov.au/voting/local\\_government\\_elections/](http://www.waec.wa.gov.au/voting/local_government_elections/), accessed 22 April 2010.

<sup>277</sup> Letter from Mr Warwick Gately, Western Australian Electoral Commissioner to Committee Manager, p. 2.

<sup>278</sup> Victorian Electoral Commission, 'Part 1: Report of the conduct of the 2008 local government elections', *Report of local government electoral activity 2008-09*, October 2009, p. 42.

Attendance elections	64.62	71.16	55.65	72.80	67.59	70.03
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(a) 2008 figure excludes Melbourne City Council leadership team.

4.110 The VEC also stated that the rate of informal voting in attendance elections was 9.9%, while the rate for postal voting elections was 3.75%. They argue that this disparity has remained consistent since 2002.<sup>279</sup> The Committee was also interested in the VEC's analysis of the rate of informal voting in relation to the number of candidates running in an election. The following two tables show the rates of informal voting for both attendance and postal voting elections.

**Table 4: Informality rates compared to numbers of candidates for attendance elections<sup>280</sup>**

Candidates	% informal votes 2005	% informal votes 2008
2 - 5	6.89	6.07
6 - 10	9.78	8.26
11 - 15	15.23	12.59
> 15	21.09	18.24

**Table 5: Informality rates compared to numbers of candidates for postal voting elections<sup>281</sup>**

Candidates	% informal votes 2005	% informal votes 2008
2 - 5	2.59	2.05
6 - 10	3.38	2.72
11 - 15	4.67	4.05
> 15	7.76	6.28

4.111 The Committee believes this shows that postal voting can effect a reduction in informal voting, even in complex elections with a large number of candidates.

4.112 The Electoral Commission of Queensland informed the Committee that while the rate of participation for postal voting elections was lower, at 78.6%, than the rate for attendance voting, at 85%, the level of informal voting for postal voting was lower. This stood at 1.2% for mayoral elections and 2.7% for councillor elections, whereas for attendance voting, levels stood at 2.9% for mayoral and 4.1% for councillor elections.<sup>282</sup>

4.113 Inquiry participants also raised this as a benefit of postal voting elections. RAMROC's Executive Officer, Mr Stubbs, argued that the extra time electors have to complete a postal vote is significant as it "offers voters better convenience, time and flexibility to consider the candidate and to cast their vote", as well as being cost effective<sup>283</sup>.

<sup>279</sup> Victorian Electoral Commission, 'Part 1: Report of the conduct of the 2008 local government elections', *Report of local government electoral activity 2008-09*, October 2009, p. 41.

<sup>280</sup> Victorian Electoral Commission, 'Part 1: Report of the conduct of the 2008 local government elections', *Report of local government electoral activity 2008-09*, October 2009, p. 42.

<sup>281</sup> Victorian Electoral Commission, 'Part 1: Report of the conduct of the 2008 local government elections', *Report of local government electoral activity 2008-09*, October 2009, p. 42.

<sup>282</sup> Letter from Mr David Kerlake, Queensland Electoral Commissioner to Committee Manager, dated 11 December 2009, p. 1.

<sup>283</sup> Mr Raymond Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils, *Transcript of evidence*, 26 August 2009, p. 28.

4.114 On the other hand, the General Manager of Palerang Council commented about how voters may find postal voting less immediate than the distribution of how-to-votes at polling booths, stating that:

Certainly a number of arguments can be put. In the Victorian scenario a booklet goes out with the postal votes and that booklet is, if you like, the representations from the groups or individuals, with some indication of how to vote. Of course, the individual candidates and groups—rather than use the term parties—would be carrying on their normal advertising and so forth. It certainly does remove the ability for people to just pick up how-to-vote cards as they go through the door and follow that and walk out. The counter to that is that by not allowing them that process they perhaps have to think a bit more about what they are doing and vote rather than just copy. But in Victoria, as I have said, there is a process where a booklet goes with the voting material and that contains statements from the individual candidates and groups. So, yes, there are ways around it but it is not as direct as taking a how-to-vote card and copying it onto your ballot sheet.<sup>284</sup>

4.115 Parkes Shire Council and Griffith City Council were of the view that an increase in the number of voters applying for postal votes in their LGAs indicated that their voters would be receptive to universal postal voting.<sup>285</sup>

4.116 The NSWEC proposed that councils be provided the option to use either attendance or universal postal voting elections in their *Report on the 2008 Local Government Elections*.<sup>286</sup>

### **Opposition to universal postal voting**

4.117 Local Government Association President Cr McCaffery indicated that while there is no consistent view among members about universal postal voting, she does not support universal postal voting:

I think attendance at the election on the day, and the whole thing of campaigning, is a really important part of the democratic process. To me it really denigrates the kind of standing of local government. That is a personal view, because I know there is a mixed view among our members.<sup>287</sup>

4.118 The Shires Association's Senior Vice President, Cr Donald, agreed, telling the Committee that:

we believe that coming to the polling booth and casting a vote is by far a better way to have that eventuate and have interest in the candidates, enabling candidates to interact with electors on the day. It is a traditional and better way to go than just having it done via postal vote by mail. That makes it very informal and takes a lot of the interest and participation out of it.

Whilst I acknowledge that some other councils may prefer it that way, because they feel that representing their electors they are going to get more participation and more interest, we oppose it. We do not think it is right. We want to see elections maximised to be ones that entice people to stand, and one of the ways to do that is to know that your community is going to be there to support whoever they want face-to-face on the day, if they can cast their ballot at the polling booth in the traditional way other elections are carried out. Again, local government is the closest to the people. We represent people

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<sup>284</sup> Mr Peter Bascomb, General Manger, Palerang Council, *Transcript of evidence*, 26 August 2009, p. 26.

<sup>285</sup> Mr Les Finn, Director of Corporate Services, Parkes Shire Council, *Transcript of evidence*, 26 August 2009, p. 20 and Mr Duncan McWhirter, Manager, Governance, Administration and Compliance, Griffith City Council, *Transcript of evidence*, 26 August 2009, p. 32.

<sup>286</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 156

<sup>287</sup> Cr Genia McCaffery, President, Local Government Association of New South Wales, *Transcript of evidence*, 27 August 2009, p. 27.



far more adequately, personally and closely than the other two levels of government, so to make us different in that it could be done by postal vote we believe would be a wrong and backward step.<sup>288</sup>

- 4.119 Baulkham Hills Shire Council's General Manager Mr Walker argued that he did not think universal postal voting was an appropriate option for larger councils in metropolitan areas, even though he believed it was a feasible option in country councils.<sup>289</sup>
- 4.120 The Greens raised concerns that universal postal voting would provide an advantage to richer candidates who could afford individual mailouts to voters, "rather than more community-oriented candidates who are able to get their supporters in the community to stand at polling booths and hand out on the day."<sup>290</sup>
- 4.121 The Greens believe that universal postal voting would lead to a decrease in participation, particularly among young people who are not familiar with using the post. "I think you will also find that more wealthy and educated voters are more likely to vote, and poorer voters and voters from non-English speaking backgrounds are less likely to vote."<sup>291</sup>

### Decision making

- 4.122 Given that there was no consensus among inquiry participants regarding universal postal voting, the Committee approached its investigations based on the assumption that any move to introduce universal postal voting would have to be through a model where councils have an opt in capacity, like that used in Victoria and WA, rather than by replacing all attendance elections with postal voting elections statewide. RAMROC indicated that there was widespread support for universal postal voting among their member councils, as long as councils have the option to introduce it or not.<sup>292</sup>
- 4.123 The Committee took evidence from a number of councils on their preferred method for councils deciding to use universal postal voting as the means for conducting elections. Two main options were put forward: a plebiscite of voters or a resolution of the council.
- 4.124 Councils such as Eurobodalla Shire Council, Palerang Council, Hurstville Council and Lismore Council all told the Committee that they believed it was a decision that should be made with some clear determination of public opinion, which the plebiscite provides.<sup>293</sup> However, councils such as Yass Valley and RAMROC argued that council should make the decision.<sup>294</sup> RAMROC supported a decision making method whereby councils can make a decision and then consult with the community if it does

<sup>288</sup> Cr Ray Donald, Mayor Bogan Shire Council, *Transcript of evidence*, 27 August 2009, p. 51.

<sup>289</sup> Mr David Walker, General Manager, Baulkham Hills Shire Council, *Transcript of evidence*, 27 August 2009, p. 18.

<sup>290</sup> Mr Max Phillips, Former Campaign Coordinator Local Government Elections, The Greens, *Transcript of evidence*, 27 August 2009, p. 43.

<sup>291</sup> Mr Max Phillips, Former Campaign Coordinator Local Government Elections, The Greens, *Transcript of evidence*, 27 August 2009, p. 43.

<sup>292</sup> Mr Raymond Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils, *Transcript of evidence*, 26 August 2009, p. 31-2.

<sup>293</sup> Mr Paul Anderson, General Manager, Eurobodalla Shire Council, *Transcript of evidence*, 26 August 2009, p. 20; Mr Peter Bascomb, General Manager, Palerang Council, *Transcript of evidence*, 26 August 2009, p. 25; Mr Warren Park, Senior Manager, Administration and Public Officer, Hurstville City Council, *Transcript of evidence*, 26 August 2009, p. 46; and, Mr Graeme Wilson, Corporate Compliance Coordinator, Lismore City Council, *Transcript of evidence*, 26 August 2009, p. 46.

<sup>294</sup> Cr Nicholas Carmody, Mayor, Yass Valley Council, *Transcript of evidence*, 26 August 2009, p. 19.

not appear to be popular, so they can avoid incurring the cost of another attendance election.<sup>295</sup>

### **Comment and recommendation**

- 4.125 The Committee believes that universal postal voting would provide a cheaper alternative to attendance voting in certain local government areas, particularly in rural and regional parts of NSW. While the Committee heard evidence against universal postal voting from some councils, it considers that there was sufficient evidence to support consideration of an opt in system whereby those councils who choose to can continue to hold attendance elections.
- 4.126 The Committee believes that the Victorian model may be suitable for adaptation to NSW.

### **RECOMMENDATION 11:**

The Committee recommends that:

- (a) the *Local Government Act 1993* be amended to allow elections with universal postal voting for those councils who opt to use that method of election, in time for the 2012 local government elections.
- (b) the Government undertake consultation on the best method for councils to use to decide to opt into a universal postal voting system.
- (c) the NSWEC provide advice to the General Manager of local councils interested in universal postal voting as to the costs involved in taking up this option.

## **Polling day**

### **Ballot paper shortages and access to polling booths**

- 4.127 A number of councils, namely, Penrith City Council, Blacktown City Council, Gosford City Council, Parramatta City Council, Liverpool City Council, and Fairfield City Council indicated to the Committee that on polling day one or more of the polling booths in their LGA ran out of ballot papers.<sup>296</sup>
- 4.128 The NSWEC reported that 16 polling places, or 0.6% of polling places, across the state ran out of ballot papers for a period of time on election day.<sup>297</sup> In the NSWEC survey of general managers, 9.6% of respondents raised issues relating to the quantity of ballot papers at polling places.<sup>298</sup>
- 4.129 The NSWEC published the following table listing the polling places by local government areas that had shortages of ballot papers.

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<sup>295</sup> Mr Rowan Perkins, General Manager, Berrigan Shire Council, and Mr Raymond Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils, *Transcript of evidence*, 26 August 2009, p. 32.

<sup>296</sup> Penrith City Council, *Submission 5*; Blacktown City Council, *Submission 47*; Gosford City Council, *Submission 2*; Parramatta City Council, *Submission 20*; Liverpool City Council, *Submission 29*; Fairfield City Council, *Submission 52*.

<sup>297</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 121.

<sup>298</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 72.

**Table 6**<sup>299</sup>

Council	Polling places	Timing of shortage (minutes)
The Council of the Shire of Baulkham Hills	Thompsons Corner (West Pennant Hills Public School)	10
Blacktown City Council	Quakers Hill (Quakers Hill Public School)	90 (over two occasions)
	Quakers Hill North (Barnier Public School)	30
Blue Mountains City Council	Blackheath (Blackheath Public School)	Short period (no time estimate available)
	Faulconbridge (Springwood High School)	
Fairfield City Council	William Stimson (William Stimson Public School)	20
The Council of the Shire of Hornsby	Dural (Dural Public School)	30
Lake Macquarie City Council	Fassifern (Fassifern Public School)	10
Liverpool City Council	Greenway Park (Greenway Park Public School)	20
	Prestons (Prestons Public School)	30 after close of polls for electors in queue at 6pm
Parramatta City Council	Ermington Central (Rydalmere East Public School) – Elizabeth MaCarthur Ward	20
	Parramatta (Parramatta Town Hall)	Less than 10
Penrith City Council	Cranebrook (Samuel Terry Public School)	15
	Kemps Creek (Kemps Creek Public School)	30
Sutherland Shire Council	Oyster Bay (Oyster Bay Public School)	10
Woollahra Municipal	Bellevue Hill (Bellevue Hill Public School)	Short period (no time estimate)

4.130 Councils where ballot paper shortages were a problem questioned the methodology for predicting the number of votes projected for polling places and the application of this methodology to the number of ballot papers supplied. Penrith City Council argued that there was discrepancy between projected and actual numbers which was too great (80 to 150% in some polling places) and requested that the reasons for this discrepancy be investigated thoroughly by the NSWEC to ensure the same problems did not occur in 2012.<sup>300</sup>

4.131 The NSWEC reported that the two factors contributing to ballot paper shortages were “estimations by the NSWEC of elector turn out and management of the polling place”.<sup>301</sup> The NSWEC explained that:

Where a polling place had run out of ballot papers for short periods, it was not because the NSWEC did not have sufficient numbers of ballot papers but invariably due to communication issues such as delays in the Polling Place Manager notifying the Returning Officer of the need to replenish supplies, delays in transportation or elector turnout far exceeding estimations.<sup>302</sup>

4.132 The NSWEC also identified uneven distribution of turnout as a factor which may have contributed to ballot paper shortages. It reported that 4.1% of polling places exceeded projections by over 500 votes and 5.2% exceeded projections by 250 to 500 votes.<sup>303</sup> The results of the Commission’s analysis of the variation between

<sup>299</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 122.

<sup>300</sup> Cr James Aitken, Mayor, Penrith City Council, *Transcript of evidence*, 27 August 2009, p. 13.

<sup>301</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 122.

<sup>302</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 123.

<sup>303</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 123.

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projected and actual votes will be “built into future projection models and quality assurance strategies.”<sup>304</sup>

- 4.133 Gosford City Council reported that the polling booth at Gosford was closed for more than two hours on election day as a result of running out of ballot papers.<sup>305</sup> Gosford City Council’s Governance Officer, Ms Bragg, expressed confusion about why one of their booths ran out of ballot papers, given the voter turnout:

The projection for the Gosford polling booth was 2,200 and when I had a look at the results the total votes polled was 1,784, so I do not quite understand why.<sup>306</sup>

- 4.134 The Committee notes that Gosford City Council is not included in the Commission’s list of council areas affected by ballot paper shortages.

- 4.135 A number of councils suggested that specific liaison officers who act as ‘ward runners’ could be used to address problems of ballot paper and other material shortages on the day.<sup>307</sup>

- 4.136 Councils who were affected by ballot paper shortages expressed concern that when booths ran out of ballot papers voters were advised that they could ‘just get their name marked off’ to avoid a fine.<sup>308</sup> This was considered to be a denial of people’s right to vote. The NSWEC reported that:

Where shortages did occur, the Polling Place Manager advised electors of their options – either to wait for the delivery of ballot papers, seek directions to a nearby polling place where they could vote or to record their name in the Elections Excuse book to ensure they did not receive a penalty notice for failing to vote.<sup>309</sup>

- 4.137 A number of inquiry participants reported to the Committee that electors in their local government areas experienced long queues and waiting times on polling day, which they attributed to insufficient staffing of polling booths.<sup>310</sup>

### Comment and recommendation

- 4.138 The Committee considers any claim of a shortage of ballot papers to be serious. The Committee has noted the Electoral Commission’s explanation of the causes of the shortages, their relatively short duration and the measures that the NSWEC has already undertaken to modify future projection models. The Committee recommends that in preparation for the 2012 local government elections, the NSWEC carefully assess the methodology used to calculate projected voting figures and allocate ballot papers, the policies and procedures that are in place in the event ballot paper shortages occur, and the level of staffing required at polling booths.

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<sup>304</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 124.

<sup>305</sup> Gosford City Council, *Submission 2*.

<sup>306</sup> Ms Katherine Bragg, Governance Officer, Gosford City Council, *Transcript of evidence*, 27 August 2009, p. 21.

<sup>307</sup> Cr James Aitken, Mayor, Penrith City Council, *Transcript of evidence*, 27 August 2009, p. 13; and Mr Craig Dalli, Manager of Governance and Property, Blacktown City Council, *Transcript of evidence*, 27 August 2009, p. 19.

<sup>308</sup> Parramatta City Council, *Submission 20*; Liverpool City Council, *Submission 29*.

<sup>309</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 121.

<sup>310</sup> North Sydney Council, *Submission 34*; Shoalhaven City Council, *Submission 35*; Fairfield City Council, *Submission 52*; The Greens, *Submission 51*; and Liberal Party of Australia (NSW Division), *Submission 17*.

**RECOMMENDATION 12:**

The Committee recommends that prior to the 2012 local government elections, the NSWEC:

- (a) review the methodology used to calculate projected voting figures and allocate ballot papers for polling places.
- (b) review the policies and procedures in place to deal with any shortage of ballot paper that may occur on election day.
- (c) review the method for determining staffing levels for polling booths on election day, including multi-ward and multi-council polling places.

**Absent voting**

4.139 The Committee received some evidence supporting the introduction of absent voting for local government elections. However, the evidence received from the Electoral Commissioner indicated that there were a number of practical barriers, including the number of ballot papers of varying sizes that would either need to be available or printed at polling places. The Electoral Commissioner also warned that the benefit and demand for absent voting should be considered against an increase in costs.<sup>311</sup> The Committee considers that this issue warrants further investigation.

4.140 The Committee intends to request that the NSW Electoral Commission prepare a report for the Committee's consideration on absent voting in local government elections, with specific reference to the issues involved in providing for absent voting, possible remedies to any obstacles preventing the implementation of absent voting, costs to local councils, and relevant arrangements in other jurisdictions.

**How-to-vote cards**

4.141 Under clause 356C(7) of the Local Government (General) Regulation 2005 a how-to-vote card does not comply with the regulation if it contains voting directions relating to two or more local government areas. The Committee received evidence that this created difficulties for some parties during the 2008 local government elections in relation to multi-council polling places.<sup>312</sup>

**RECOMMENDATION 13:**

The Committee recommends that the Electoral Commissioner examine multi-council how-to-vote cards for multi-council polling places, with a view to allowing multi-council how-to-vote cards.

<sup>311</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, pp. 8-9.

<sup>312</sup> The Greens, *Submission 51*, p. 8.

## Accessible voting

4.142 Through the course of the inquiry the Committee collected evidence from stakeholders regarding difficulties experienced by those electors with a disability in casting their vote at the 2008 local government elections, in particular those electors with reduced physical mobility and those who were blind or had low vision. Following the 2007 NSW State election, the Committee's report made the following recommendation:

RECOMMENDATION 14: That the Committee request a reference in the life of the 54<sup>th</sup> Parliament to further, comprehensively review the *Parliamentary Electorates and Elections Act 1912*, including future options for voting using new technologies.<sup>313</sup>

4.143 Submissions and evidence from Vision Australia, People With Disability Australia (PWD) and the NSW Disability Discrimination Legal Centre (NSWDDLC) highlighted concerns that while advances had been made since the 2007 NSW State election to cater for those with a disability at the 2008 election local government elections, many disabled voters were still unable to cast a secret and independently verifiable vote.

4.144 While estimates of total numbers of blind or low vision persons in Australia vary, it is clear that vision impairment affects a large number of individuals across the country. The Australian Bureau of Statistics estimated that in 2003 there were 22,600 people in Australia with total loss of sight and 261,800 who had partial loss of sight. The Fred Hollows Foundation puts the total figure of Australians who are blind or have low vision at 293,000. Vision Australia estimated in 2002 that approximately 3.5 million Australians have difficulty accessing standard printed material for a variety of reasons.<sup>314</sup>

## Voting rights for disabled persons

4.145 The Local Government (General) Regulation 2005 stipulates that an elector "[goes] alone to an unoccupied space set aside for voting at the polling place, and privately record his or her vote there on the ballot-paper."<sup>315</sup> However, prior to the 2008 local government elections, the primary means by which a blind or visually impaired person could submit their vote was by the appointment of another individual of their choosing to assist them in completing the ballot paper, provided for in a separate and contradictory section of the same Regulation.<sup>316</sup>

4.146 In the 2008 case of *Fittler vs NSW Electoral Commission and anor (No. 2)*, the NSW Administrative Decisions Tribunal (NSWADT) concluded that the NSW Electoral Commission's (NSWEC) failure to provide a ballot paper in Braille for Mr Darren Fittler to vote secretly at the NSW State Election in 2007 was unlawful discrimination.<sup>317</sup> Subsequent to this ruling, Braille voting forms were supplied to electors who were blind or had low vision at the 2008 local government elections.

4.147 Vision Australia expressed their concern that under the current legislation, 'people who are blind or have low vision bear the responsibility to cast a vote, but are not

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<sup>313</sup> NSW Joint Standing Committee on Electoral Matters, *Administration of the 2007 NSW Election and Related Matters*, May 2008, p. 44.

<sup>314</sup> All statistics derived from the Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 44.

<sup>315</sup> Clause 342 (a), Local Government (General) Regulation 2005. The *Parliamentary Electorates and Elections Act 1912* contains an equivalent provision at section 103 which applies to State elections.

<sup>316</sup> Clause 388, Local Government (General) Regulation 2005. Again the *Parliamentary Electorates and Elections Act 1912* contains equivalent provisions at sections 108 (1-2) and 108A.

<sup>317</sup> NSWADT 116 (2008).

universally afforded the right to cast that vote in secret'.<sup>318</sup> The NSWDDL and PWD expressed similar views, alleging that the legislation was in breach of Section 24 of the *Disability Discrimination Act 1992* (Cth):

While the sections [108 & 108A of the *Parliamentary Electorates and Elections Act 1912*] aim to assist people with disability by enabling them to be assisted by another person, they fail to provide for reasonable adjustments for people with disability so that a vote may be cast independently and in secret on an equal basis with other voters.<sup>319</sup>

- 4.148 Under Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR), to which Australia is a signatory, elections undertaken by State parties must provide 'universal and equal suffrage and shall be held by secret ballot'.<sup>320</sup> Furthermore, Article 29 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) mandates that State parties must protect 'the rights of persons with disabilities to vote by secret ballot in elections and public referendums'.<sup>321</sup> Australia ratified the Convention and it came into force on 16 August 2008. Following on from this, Mr Dean Price, Advocacy Projects Manager of People With Disability Australia, expressed his concern that, 'full and independent access to the electoral system is not available to all residents of New South Wales,' and that this can be deemed as 'a violation of fundamental human rights'.<sup>322</sup>
- 4.149 In 2006 the NSWEC developed an Equal Access to Democracy Plan in consultation with disability advocacy groups, aimed at promoting and improving access for people with a disability to electoral services and the electoral process. The Plan was first implemented at the 2007 State Election and reviewed before the 2008 local government elections.<sup>323</sup> Although mindful of the NSWADT ruling and initiatives to trial and introduce technologies such as Electronically Assisted Voting in other States and at Federal level, the NSWEC reported that it was restricted in its delivery of such outcomes for the assistance of disabled voters by state legislation. Other initiatives such as the provision of large print information, user-friendly pencils and hand-held magnifiers were implemented in polling places across NSW.<sup>324</sup>

### Braille voting initiatives

- 4.150 At the 2008 local government elections 52 blind or visually impaired persons able to read Braille were provided with separate ballot papers. The papers were marked in Braille with names of all standard candidates and a raised tactile square box to the left of each name in which the voter could mark or write the numbers corresponding to their chosen candidates.<sup>325</sup> The NSWEC worked in collaboration with Vision Australia to develop these ballot papers and also to mail 'How to Vote' and 'Electoral Information' brochures in audio CD format to approximately 5000 blind or visually impaired people on Vision Australia's database.<sup>326</sup>

<sup>318</sup> Ms Susan Thompson, Advocacy Officer, Vision Australia, *Submission no. 64*, p. 2.

<sup>319</sup> NSW Disability Discrimination Legal Centre and People With Disability Inc., *Submission no. 60*, p. 8.

<sup>320</sup> United Nations High Commissioner for Human Rights, *International Covenant on Civil and Political Rights*, General Assembly resolution 2200A (XXI), December 1966, Art. 25.

<sup>321</sup> United Nations High Commissioner for Human Rights, *Convention on the Rights of Persons with Disabilities*, General Assembly resolution 61/106, December 2006, Art. 29.

<sup>322</sup> Mr Dean Price, Advocacy Projects Manager, People With Disability Australia, *Transcript of Evidence*, 27 August 2009, p. 55.

<sup>323</sup> NSW Electoral Commission, *Annual Report 2006-2007*, p. 37.

<sup>324</sup> NSW Electoral Commission, *Equal Access to Democracy Plan for the 2008 Local Government Elections*, May 2008, pp. 13-14.

<sup>325</sup> Ms Susan Thompson, Advocacy Officer, Vision Australia, *Submission no. 64*, p. 2.

<sup>326</sup> *Ibid*, p. 5.

- 4.151 Although the reception of this innovation has been largely positive by those who can read Braille, a number of concerns were raised relating to how the ballot papers were structured and how many electors who were blind or had low vision would benefit.<sup>327</sup> Vision Australia have expressed their concern that 'blindness and low vision is, in the main, a disability of ageing, and Braille use in the population of people who are blind or have low vision is relatively low'.<sup>328</sup> For this reason, hard-copy Braille cannot be considered a long-term solution to the challenge of providing a secret and independently verifiable vote to the majority of visually impaired people.<sup>329</sup> Nonetheless, Vision Australia welcomed the initiative and acknowledged its value as a cost-effective option for the NSWEC.<sup>330</sup>
- 4.152 Another issue to emerge from the use of Braille ballot papers was the decision to use Grade 1 or uncontracted Braille. The NSWEC, in collaboration with Vision Australia, elected to print the papers in Grade 1 'with the view to it being accessible to a greater number of Braille voters'.<sup>331</sup> This decision displeased a number of electors proficient in Grade 2 or contracted Braille, as many find dealing with Grade 1 tiresome and pattern recognition in Grade 2 is often long entrenched. The NSWEC reported that 71.9% of the electors surveyed who used Braille ballot papers at the 2008 elections indicated a preference for the use of Grade 2 Braille.<sup>332</sup>
- 4.153 Concerns were also raised regarding the necessity under current legislation to mark consecutively ordered numbers in squares corresponding to an elector's preferred candidates on the paper as a rigidity that provided a further challenge for those completing Braille ballot papers.<sup>333</sup> Mr Vaughan James Roles, Client, Vision Australia stated that many Braille users have no capacity to write any more than their own name and so the marking of numbers in boxes can be a major impediment to completing their ballot paper independently and secretly whilst having confidence in its accuracy.<sup>334</sup> Also, Mr Roles expressed his concern that the need to memorise many numbers on numerous pages made voting below the line almost impossible for a visually impaired person who was not able to independently verify that their numbers were legible to a sighted person and that they had not lost track of their numbering sequence.<sup>335</sup> Mr Fittler also voiced his trepidation about voting below the line for this reason.<sup>336</sup>
- 4.154 With regard to the possibility of utilising other Braille voting initiatives, Vision Australia noted that the Queensland Government had trialled a Braille ballot paper that allowed visually impaired persons to record their vote using Braille. Other Braille readers had to be engaged to read these votes for election officials, which presented confidentiality issues within the secret ballot. Given the small number of blind voters in each electorate, there was a far greater possibility that another blind person

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<sup>327</sup> Mr Darren Fittler, Management Committee Member, NSWDDL, *Transcript of evidence*, 27 August 2009, p. 57.

<sup>328</sup> Ms Susan Thompson, Advocacy Officer, Vision Australia, *Submission no. 64*, p. 3.

<sup>329</sup> *Ibid.*

<sup>330</sup> Mr Vaughan James Roles, Client, Vision Australia, *Transcript of evidence*, 27 August 2009, p. 57.

<sup>331</sup> Ms Susan Thompson, Advocacy Officer, Vision Australia, *Submission no. 64*, p. 3.

<sup>332</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, October 2009, p. 28.

<sup>333</sup> See *Parliamentary Electorates and Elections Act 1912 (NSW)*, s 103 (2-4).

<sup>334</sup> Mr Vaughan James Roles, Client, Vision Australia, *Transcript of evidence*, 27 August 2009, p. 57.

<sup>335</sup> *Ibid.*

<sup>336</sup> Mr Darren Fittler, Management Committee Member, NSWDDL, *Transcript of evidence*, 27 August 2009, p. 57.



reading the ballot papers may be able to identify a particular individual's ballot papers simply by identifying their electorate of origin.<sup>337</sup>

### Physical accessibility issues

4.155 According to the NSWEC through the NSWEC's Equal Access to Democracy Plan, concerted efforts have been made to improve upon the accessibility of polling places for disabled persons and elderly persons with reduced mobility.<sup>338</sup> At the 2007 State Election, only 269 of 2,678 polling places (10%) were fully wheelchair accessible.<sup>339</sup> A number of disability groups called for an improvement in this statistic, including the NSWDDLC, PWD and the Physical Disability Council.<sup>340</sup> In response to these concerns, the Committee made the following recommendation:

RECOMMENDATION 10: That the New South Wales Electoral Commission consider developing a target of one fully wheelchair accessible polling booth for each electorate as part of its Equal Access to Democracy Plan and that the Commission endeavour to advertise fully accessible polling booths well in advance of each election.<sup>341</sup>

4.156 The Committee is pleased to note a considerable increase in the number of disabled access facilities provided at the 2008 local government elections, where 549 (21.1%) polling places were wheelchair accessible and 1,103 (42.5%) accessible with assistance.<sup>342</sup> Despite these increased numbers, there remained a significant number of Local Government Areas that were without a wheelchair accessible polling place.<sup>343</sup>

4.157 Mr Price, PWD's Project Manager, called for a more considered approach to the process of choosing polling place venues to lease and argued that it is imperative that all be fully compliant with Australian Standard 1428: Design for Access and Mobility, Part 2.<sup>344</sup>

4.158 The NSWEC reported that because it does not own the polling place venues and only leases them for a short period around election time, it is difficult to ensure that as many as possible are wheelchair accessible.<sup>345</sup> However, Mr Price suggested that more planning by the NSWEC well in advance of each election could yield major benefits in the availability of accessible polling places for disabled persons.<sup>346</sup> The NSWDDLC reported receiving a number of complaints about wheelchair access at the 2008 elections, arguing that accessibility is reliant upon both the features of the polling place venue and its location:

<sup>337</sup> Vision Australia, *Submission 64*, p. 4.

<sup>338</sup> NSW Electoral Commission, *Equal Access to Democracy Plan for the 2008 Local Government Elections*, May 2008, pp. 12.

<sup>339</sup> NSW Joint Standing Committee on Electoral Matters, *Administration of the 2007 NSW Election and Related Matters*, May 2008, p. 30.

<sup>340</sup> NSW Joint Standing Committee on Electoral Matters, *Administration of the 2007 NSW Election and Related Matters*, May 2008, pp. 30-1.

<sup>341</sup> NSW Joint Standing Committee on Electoral Matters, *Administration of the 2007 NSW Election and Related Matters*, May 2008, p. 32.

<sup>342</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 29.

<sup>343</sup> A full list of council/ward boundary & polling place maps for the 2008 Local Government elections with those which were wheelchair accessible marked as such is available at <http://www.lg.elections.nsw.gov.au/GoogleMaps/>

<sup>344</sup> Mr Dean Price, Advocacy Projects Manager, People With Disability Australia, *Transcript of Evidence*, 27 August 2009, p. 56.

<sup>345</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 29.

<sup>346</sup> Mr Dean Price, Advocacy Projects Manager, People With Disability Australia, *Transcript of Evidence*, 27 August 2009, p. 56.

It is also imperative that polling venues be close to accessible transport nodes. An accessible building may be of no use if the cost of getting there is prohibitively expensive, such as having to get an accessible taxi because of the unavailability of accessible public transport.<sup>347</sup>

- 4.159 Legislative changes have also been proposed as a means to improve general levels of accessibility for disabled persons and those who are blind or have low vision. As part of the *Local Government (General) Amendment (Elections) Regulation 2008* changes were made to allow electors with a disability to apply for a pre-poll vote prior to the 2008 elections, as recommended by the NSWEC.<sup>348</sup> Previously, electors with a disability could only vote at Local Government elections as a postal or ordinary voter.
- 4.160 The NSWDDL and PWD expressed concern that for state elections disabled persons held no special right to apply for postal voting and were only eligible if they lived more than 8 kilometres from their nearest polling place. Given that the vast majority of polling places are not suitable for disabled persons, necessary transport to the nearest accessible polling place was in many cases very expensive and inconvenient as it was frequently greater than 8 kilometres from the voter's place of residence and often outside their electorate.<sup>349</sup> The Committee is pleased to note that the *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009*, amends the *Parliamentary Electorates and Elections Act 1912* to allow disabled voters to apply for a postal vote at State elections.<sup>350</sup> The Bill has been passed but the Act has yet to commence.
- 4.161 The NSWDDL and PWD also raised the issue of postal voting for those whose disability makes attending a post office problematic or for those who live in remote areas with a weekly postal service. These electors could benefit from the revision of the electoral timetable and from amendments to legislation to allow for a postal vote to be applied for and electoral details to be updated electronically, via the NSWEC's website.<sup>351</sup> The possibility of such amendments to Federal legislation and the development of digital signature technology have been discussed by the Australian Electoral Commission (AEC) and the Federal Joint Standing Committee on Electoral Matters, although reservations have been raised about the AEC's ability to verify the integrity of information submitted electronically.<sup>352</sup>

#### **RECOMMENDATION 14:**

The Committee recommends that more priority be given to disability access for polling places.

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<sup>347</sup> NSW Disability Discrimination Legal Centre and People With Disability Inc., *Submission 60*, p. 7.

<sup>348</sup> *Local Government (General) Amendment (Elections) Regulation 2008*, under the *Local Government Act 1993 (NSW)*, June 2008, explanatory note (n).

<sup>349</sup> NSW Disability Discrimination Legal Centre and People With Disability Inc., *Submission 60*, p. 7.

<sup>350</sup> *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 No 102*, under the *Parliamentary Electorates and Elections Act 1912 (NSW)*, December 2009, s 114 (i).

<sup>351</sup> NSW Disability Discrimination Legal Centre and People With Disability Inc., *Submission 60*, pp. 7-8.

<sup>352</sup> Proof Committee Hansard, Joint Standing Committee on Electoral Matters, *Reference: Conduct of the 2007 Federal Election and Matters Related Thereto*, 11 May 2009, pp. 8-11.

## Electronic voting

- 4.162 Submissions and evidence from the NSWDDL, PWD and Vision Australia have highlighted a significant level of support among peak disability groups for electronic voting (e-voting) and internet voting (i-voting) initiatives as a means by which voting options for electors could be expanded. Technological advancements in voting techniques could be of particular use not only to those with a disability restricting their physical mobility, but also those who are visually impaired or have print disabilities, are deaf-blind, are unable to use their arms or hands, are illiterate, or who have a low level of proficiency in the English language. Electronic voting can be divided into two main models: electronically assisted voting (EAV), which occurs on Electoral Commission owned and operated computer terminals on a closed local area network in a specific location; and i-voting online over a wide-area network, being either a public network such as the internet, or a private network such as the Australian Defence Force's Defence Restricted Network.
- 4.163 A number of countries have used EAV in national, state and local government elections, including the United States, France, India and Canada. Remote electronic voting, whether by telephone, internet or email, as opposed to regular postal voting has been utilised in elections in countries such as the United Kingdom, Switzerland, France and Estonia.<sup>353</sup>
- 4.164 The Victorian, Tasmanian and Federal governments have conducted trials of EAV over recent years, while the ACT has offered the technology to voters for three consecutive elections since 2001.<sup>354</sup> Extensive legislative changes were made in the ACT to provide for the introduction of both electronic voting and counting, ranging from fairly straightforward alterations relating to ballot papers<sup>355</sup> to more complex changes to the design, specification and approval processes involved.<sup>356</sup> The ACT Electoral Commission reported high costs in implementing EAV in 2001.<sup>357</sup> However, increased cost-effectiveness has been reported over the following two elections in 2004 and 2008. This has largely been due to the reduction in initial costs such as the development of the eVACS software and the reusability of necessary computer hardware both within the public service and at subsequent elections. In 2004, the Commission noted that electronic voting and counting produced a cost saving:
- The Commission also found additional funds from within the Commission's normal budget using savings generated by various initiatives, particularly reducing the scrutiny costs through electronic voting and counting.<sup>358</sup>
- 4.165 Making electronic voting available to all voters attending electronic voting centres, rather than just vision-impaired voters, has also helped to increase the cost-effectiveness of electronic voting. The number of voters using electronic voting has increased markedly at each ACT election. The number of those using the technology in pre-polling booths increased from 20,722 in 2004 to 36,323, or 80.5% of total pre-

<sup>353</sup> Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 9.

<sup>354</sup> Ms Susan Thompson, Advocacy Officer, Vision Australia, *Submission 64*, pp. 4-5.

<sup>355</sup> *Electoral Act 1992 (ACT)*, s 114 (5) and s 120 (2-4).

<sup>356</sup> *Electoral Act 1992 (ACT)*, ss 118 A and B.

<sup>357</sup> ACT Electoral Commission, *The 2001 ACT Legislative Assembly Election: Electronic Voting and Counting System Review*, 19 June 2002, p. 23.

<sup>358</sup> ACT Electoral Commission, *The 2001 ACT Legislative Assembly Election: Electronic Voting and Counting System Review*, 19 June 2002, p. 23.

poll voters in 2008. The total number of votes cast by computer rose from 28,169 in 2004 to 43,820 in 2008. This is equivalent to 81.7% of votes cast at computer voting centres and 19.9% of all votes cast.<sup>359</sup> The number of postal votes received also increased dramatically, from 6,532 in 2004 to 9,599 in 2008, with electors taking advantage of new, simplified processes for applying for postal votes including on-line and phone applications.<sup>360</sup>

4.166 The ACT Electoral Commission reported that electronic voting technology has brought benefits not just for electors, but also the Commission:

These innovations combined to provide electoral services to the greatest number of ACT electors since self-government was introduced, with the result provided in the shortest time ever. The final result for the election was announced on Saturday, 25 October 2008, 7 days after polling day. These outstanding results reflect the productivity and accuracy which come with careful use of electronic technologies.<sup>361</sup>

4.167 When assessing electronic voting on a strictly cost per vote basis, it is considerably more expensive than regular paper voting. However, the ACT experience suggests that costs savings can be made in counting, scrutineering and other areas, while providing a more environmentally-friendly outcome and achieving a higher degree of confidence in the accuracy and integrity of results.<sup>362</sup> A Victorian Parliamentary Committee review of the 2006 State election has supported the continuation of electronic voting trials at future Victorian State elections.<sup>363</sup>

4.168 The Federal Joint Standing Committee on Electoral Matters released an interim report of the inquiry into the conduct of the electronic voting trials at the 2007 Federal Election in March 2009. Despite a strong positive response to the initiative by those who participated in the trial, with 97% of respondents to the evaluation survey reporting that they were *satisfied* or *very satisfied* with the use of the technology,<sup>364</sup> the Federal Committee recommended that use of the electronic voting machines be discontinued:

RECOMMENDATION 4: Given the high average cost per vote of \$2,597 for electronically assisted voting compared to an average cost per elector of \$8.36, at the 2007 federal election and a concern that participation will not increase to sustainable levels, the committee recommends that electronically assisted voting for electors who are blind or have low vision should not be continued at future federal elections.<sup>365</sup>

4.169 The Federal Committee expressed concerns that the costs were unsustainable, as fewer than expected electors utilised the machines during the trial and that it was unlikely that sufficient momentum could be generated to lift participation levels.<sup>366</sup>

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<sup>359</sup> ACT Electoral Commission, *Report on the ACT Legislative Assembly Election 2008*, September 2009, p. 35.

<sup>360</sup> ACT Electoral Commission, *Report on the ACT Legislative Assembly Election 2008*, September 2009, p. 2.

<sup>361</sup> ACT Electoral Commission, *Report on the ACT Legislative Assembly Election 2008*, September 2009, p. 11.

<sup>362</sup> ACT Electoral Commission, *Report on the ACT Legislative Assembly Election 2008*, September 2009, p. 11.

<sup>363</sup> Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 8

<sup>364</sup> Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 51.

<sup>365</sup> Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 51

<sup>366</sup> Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 63.

The Federal Committee did concede, however, 'that it is difficult to place a monetary value on being able to cast a secret ballot – something that most of us take for granted'.<sup>367</sup>

- 4.170 Vision Australia has voiced concerns regarding the Federal Committee's report, noting that the 29 sites used for the trial constituted only 0.36% of the total number of polling places across Australia.<sup>368</sup> Vision Australia has advocated for a further expansion of electronic voting trials in order to realise the full potential of the initiative:

Vision Australia is still firmly of the view that if a collaborative approach were taken, utilizing the developments achieved in all states and the commonwealth, and if an electronically assisted voting system were available to all voters (as it is in the ACT), then the system could be far more cost effective.<sup>369</sup>

- 4.171 Both Vision Australia and the Human Rights and Equal Opportunity Commission have suggested that EAV should be expanded so that it is available in as many locations as possible and each electorate should have at least one polling place with e-voting capability.<sup>370</sup> The NSWDDLC and PWD claimed that the assessment of the 2007 election trials by the Federal Committee was inadequate and that a discontinuation of the trials would contravene Australia's commitment under the ICCPR and CRPD, as well as its legal obligation to non-discrimination as established in the *Disability Discrimination Act 1992* (Cth).<sup>371</sup> Federal Senator Bob Brown has also expressed concern regarding Recommendation 4 of the interim Federal Committee report:

Instead of abandoning electronically assisted voting, Australia should be promoting it for disadvantaged voters, on the established principle that the more who use it, the cheaper it gets. In abandoning the electronic system trialled in 2007, a recommendation should have followed specifying which of the computer-assisted voting systems already in use in the Australian Capital Territory and overseas should be ready for trial at next year's national election.<sup>372</sup>

- 4.172 For electronic voting trials to be implemented in NSW, legislative change would be needed to the *Parliamentary Electorates and Elections Act 1912*. The Committee also notes that the NSW Electoral Commissioner has expressed reservations about the cost-effectiveness of e-voting.<sup>373</sup> Mr Barry stated in 2008 that 'establishing kiosk type voting is expensive and there is not a high degree of elector take up'.<sup>374</sup> Given the high average cost per vote of \$2,597 for electronically assisted voting at the 2007 Federal election, there would appear to be considerable foundation to assumptions that the introduction of EAV in NSW would be relatively expensive. However, the Federal Committee in their report did acknowledge the fact that:

<sup>367</sup> Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 2.

<sup>368</sup> Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 56.

<sup>369</sup> Vision Australia, *Submission 64*, p. 5.

<sup>370</sup> Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 56.

<sup>371</sup> NSW Disability Discrimination Legal Centre and People With Disability Inc., *Submission no. 60: Annexure 1: Report on the 2007 Federal Election Electronic Voting Trials*, p. 2.

<sup>372</sup> Senator Bob Brown, *Dissenting Report – Report on the 2007 Federal Election Electronic Voting Trials*, 10 March 2009, p. 1.

<sup>373</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 11 March 2008, p. 20.

<sup>374</sup> NSW Electoral Commission, *Answers to Questions on Notice*, 28 March 2008, Question 3a, p. 3.

While turnout of electors at the electronically assisted voting trial, at 881, was well below expectations, it is clear that increasing participation by even several hundred would have significantly lowered the average cost per vote. For example, had turnout been at the higher end of expectations (1,550 electors), the average cost would have fallen from \$2,597 to \$1,425 per vote.<sup>375</sup>

- 4.173 The overall cost of providing Braille ballot papers was \$24,862 at the 2008 local government elections, which equates to \$478 per registered Braille ballot paper applicant.<sup>376</sup> This is markedly more expensive than the overall average cost per elector of \$5.71.<sup>377</sup> It is clear that the introduction of initiatives to enable all electors their right to cast secret and independently verifiable comes at considerable expense. However, as evidenced by the experiences of the ACT Electoral Commission, the cost effectiveness of these initiatives increases at each election and yields other positive outcomes. Given the substantial cost of the provision of Braille voting papers for the benefit of a limited number of electors, there is certainly foundation to calls for the NSWEC to continue its consideration of EAV and other initiatives for the benefit of a broader range of electors in the future.
- 4.174 The Committee notes that the *Parliamentary Electorates and Elections Amendment Act 2010* commenced on 28 April 2010. This legislation requires that the NSW Electoral Commissioner investigate internet voting for vision-impaired persons and other disabled persons.

## Counting the vote

- 4.175 The NSWEC reported that there were no successful Court challenges to the election results and two recounts were conducted with no change to the outcome in either election.<sup>378</sup> Twelve recounts were undertaken for the 2004 local government elections.<sup>379</sup>

## Local counts

- 4.176 Counts for all mayoral elections, councils or wards with proportional representation and no groups above the line, optional preferential elections, referenda and polls were conducted locally under the direction of ROs. The NSWEC reported that 167 elections were counted locally, comprising:
- 105 councillor elections for 73 councils
  - 27 mayoral elections
  - 17 referendum questions for 15 councils
  - 17 poll questions for 8 councils.<sup>380</sup>
- 4.177 A recount was also undertaken locally in Leeton Shire Council (for A Ward).<sup>381</sup>
- 4.178 A software program and training for local counts were provided to returning officers and polling place managers.<sup>382</sup> According to Mr Antony Green, the:

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<sup>375</sup> Federal Joint Standing Committee on Electoral Matters, *Report on the 2007 Federal Election Electronic Voting Trials*, March 2009, p. 59.

<sup>376</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 142.

<sup>377</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 132.

<sup>378</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, October 2009, p. 12.

<sup>379</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2008, p. 113.

<sup>380</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 110.

<sup>381</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections: Bogon Shire Council*, 31 August 2009, p. 57.

Electoral Commission provides them [ROs] with a computer program. The counts are typed into a computer system, which then tells them the next candidate to exclude or how many random samples of votes to take from a bundle of votes. So there is a little program which administers the count. They are actually doing the counting.<sup>383</sup>

- 4.179 While the Committee did not receive much evidence regarding the time taken to conduct local counts, however, Yass Valley Council submitted that the count took longer than normal. They reported that the count was usually completed Saturday night or Sunday morning, but in 2008 the count did not commence until Monday morning.<sup>384</sup>
- 4.180 The Committee acknowledges this complaint, however it is relevant to note that that under the Local Government (General) Regulation 2005, the count cannot progress to the distribution of preferences until the close of postal votes, which is 6.00 pm on the Monday after polling day.<sup>385</sup>

### Central count

- 4.181 Those councils with group voting squares for their councillor elections, requiring counting of above the line preferences, had their ballot papers sent to the NSWEC Local Government Counting Centre, in Riverwood, for data entry and computerised counting. Computerised counting for local government elections was commenced following the introduction of above the line preferential voting in the 2004 election, as:

ATL preferential voting complicated the counting process, by introducing multiple streams of preferences which needed to be tracked to ensure that streams that exhausted (did not show a preference for a continuing candidate), were identified, isolated, and removed from the count at the appropriate time.

It was considered that this would complicate the manual counting process to such an extent that the risk of error in identifying exhausted streams, recording these and factoring them into the transfer formula calculation was so great that it would threaten the integrity and timeliness of the count. The decision was therefore taken to bring all LG elections with group voting squares to a central counting centre to be computer counted.<sup>386</sup>

- 4.182 In their report on the local government elections, the NSWEC explained that:

If there are three or more councillors to be elected and there are Group Voting Squares, specially developed software with a front end data entry module is required to count and distribute preferences. The complexity associated with proportional representation counts where electors have the ability to vote preferentially Above The Line in group voting squares requires the individual preference streams to be tracked separately through the count. The more preferences above the line, the more complex and time consuming the counts become. These counts could not be reliably conducted without appropriate software.

For example, a ballot paper with only three Group Voting Squares has the potential for 15 combinations of preference markings which means each combination would need to be tracked individually through the preference distribution process to ensure that it was exhausted at the appropriate time. Many councils had between five and 12 Group Voting Squares. As a result, there was the potential for thousands of Above The Line voting combinations in a single election.

<sup>382</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 109.

<sup>383</sup> Mr Antony Green, *Transcript of evidence*, 27 August 2009, p. 36.

<sup>384</sup> Cr Nicholas Carmody, Mayor, Yass Valley Council, *Transcript of evidence*, 26 August 2009, p. 22.

<sup>385</sup> Section 350, Local Government (General) Regulation 2005

<sup>386</sup> NSW Electoral Commission, *Answers to Questions on Notice*, provided 26 August 2009, p. 11

Planning and administration

Unfortunately, the cost of providing this software and supporting it with technical expertise is too much for individual councils. A central Local Government Counting Centre was established for this reason. The software used at this facility was especially designed to identify each 'category' of Above The Line vote and exhaust it at the appropriate time.<sup>387</sup>

- 4.183 The counting centre processed ballot papers for 165 elections and one recount, for 66 councils, with 1.3 million ballot papers' data entered by 400 operators who worked over two eight hour shifts per day. Data entry commenced on Tuesday 16 September and was completed on Monday 22 September.<sup>388</sup>
- 4.184 Each ballot paper was data entered twice and checked for inconsistencies. Where inconsistencies were identified, a third occasion of data entry occurred for verification. Data entry totals were also confirmed against election night figures to check completeness and accuracy of figures.<sup>389</sup>

*External review of the count*

- 4.185 The NSWEC reported to the Committee that they established an observation team to "observe the NSWEC's preparation, planning and operation of the computer count".<sup>390</sup> The team consisted of Glenda Frazer, Manager Elections Services, Victorian Electoral Commission (Chair), Peter Coulton, Director Corporate Services, Local Government and Shires Association of NSW and Wayne Trudgen, Principal Policy Officer, Department of Local Government.<sup>391</sup> The observation team reported that they had

no overall concerns with the NSWEC count process.... Clear, precise procedures were in place and seemed to be followed. Ballot paper management and reconciliation, considered to be of the utmost importance by all team members, was well executed and raised no concerns. The team was impressed with the count process and could not fault it, and feel that scrutineers and candidates should have no concerns regarding process, transparency and integrity of the central count conducted by the NSWEC.<sup>392</sup>

- 4.186 The Observation Team did report concern with poor communication from the NSWEC to councils and candidates about the scheduling and process of counts. According to the Team, they

could not see any clear rationale as to what guided the decisions and order in which councils were counted. While we observed no issue with this, it is suggested that those councils who were counted "last" may have struggled to understand why.

Additionally, the NSWEC could not make a detailed count schedule available to them to allow for planning of the observation timetable and to allow the team to get an understanding of the anticipated number of count days.<sup>393</sup>

- 4.187 In evidence, the LGSA expressed confusion about the priority list, arguing that councils were unaware of how the order for the count was determined:

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<sup>387</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 58.

<sup>388</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 111 and 185.

<sup>389</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 112.

<sup>390</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 110.

<sup>391</sup> Report on Observation of NSW Electoral Commission Central Vote Count September 2008 Local Government Elections, p. 2.

<sup>392</sup> Report on Observation of NSW Electoral Commission Central Vote Count September 2008 Local Government Elections, p. 9.

<sup>393</sup> Report on Observation of NSW Electoral Commission Central Vote Count September 2008 Local Government Elections, p. 8.



The question has been asked; why were they last? They could have been last because their name was drawn out of a hat; they went from Z to A. They do not really care; we do not know. That information needs to get out to the councils urgently. The lists, the schedules or whatever, or however they do it, we do not care, but the information needs to be passed on.<sup>394</sup>

- 4.188 The Electoral Commissioner told the Committee that the priority list was a continual work in progress. Mr Barry advised that, because the determining factor for a central count was the existence of above the line groups, the NSWEC was unable to determine how many elections would require central counting until the close of nominations, and until that time they could only make an estimated guess.<sup>395</sup> Even after the close of nominations the determination of the priority list was still an inexact science. The Electoral Commissioner stated that:

The central count was done at Riverwood, so we took the view that the councils that were closest to Riverwood would get those ballot papers in first and we would get them through the process. I took the view that the City of Sydney would be done first. Referring to the other councils, they were largely decided on how long we thought it was going to take to get ballot papers to Sydney and to process them. As I said, there was no divine wisdom or any science in it; it was a matter of saying, "We think historically these councils have above-the-line voting, so we know they will definitely be having their ballot papers brought to Sydney." I would have to say that there was no science to it and there was no divine wisdom.<sup>396</sup>

- 4.189 The NSWEC told the Committee that they attempted to ensure rural areas were not disadvantaged in the development of this priority list. Mr DeCelis stated that both Sydney metropolitan and rural councils' counts were being conducted at the same time from the start.<sup>397</sup>

- 4.190 According to the NSWEC, the priority list was continually revised to cope with delays in the count, or delays in ballot papers being delivered to the counting centre. Mr DeCelis advised that:

It would be inefficient to suggest that once a priority list is established we stick to it hard and fast. We had to be flexible enough to deal with delays in the vehicles and with some counts being processed quicker than others and some slower than others. We also had to deal with the fact that some returning officers took longer to reconcile than what was expected.<sup>398</sup>

- 4.191 Councils such as Eurobodalla Shire Council were dissatisfied with the length of time it took for results to become available, with very little understanding among candidates of when the results would be available providing further frustration.<sup>399</sup>

<sup>394</sup> Mr Peter Coulton, Director, Corporate Services, Local Government and Shires Association, *Transcript of evidence*, 27 August 2009, p.28.

<sup>395</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 7.

<sup>396</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 8.

<sup>397</sup> Mr Brian DeCelis, Director, Funding and Disclosures, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 8.

<sup>398</sup> Mr Brian DeCelis, Director, Funding and Disclosures, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 9.

<sup>399</sup> Mr Paul Anderson, General Manager, Eurobodalla Shire Council, *Transcript of evidence*, 26 August 2009, p. 22.

4.192 The confusion relating to the priority list may have been allayed with greater communication. For example, Mr Coulton, Director of Corporate Services for the LGSA, who was a member of the Observation Team, told the Committee that:

A comment was made at some point when we were out there that we can push the count back but we cannot accelerate it if we are running ahead of schedule. You say, "Hang on, that does not make any sense. Why on earth can't you do that?" They said, "The answer is simple: it is about scrutineers. Scrutineers are locked in to come tomorrow at 11 o'clock. If we pull the vote forward, then when people turn up it is already done and dusted." That is fantastic. That is the answer to the question. It is a logical answer to a basic question. That is the sort of information that needs to get out to the scrutineers, to the candidates and to the punters.<sup>400</sup>

4.193 The Electoral Commission told the Committee that it recognised that improvements need to be made to the communication between the NSWEC, councils and candidates regarding the progress of counts.<sup>401</sup>

4.194 The Committee received submissions and heard evidence from councils for whom the time taken to complete the central count was a problem separate to their positioning on the priority list. Councils including Waverley Council, Blacktown City Council, Penrith City Council, Parramatta City Council, and Shoalhaven City Council expressed disappointment with the time it took to declare results for central counts of up to ten days, as compared to the time it had taken previously with local counts, which had been declared within four or five days of election day.<sup>402</sup> While other councils or stakeholders, such as Armidale Dumaresq Council and Our Sustainable Future, expressed dissatisfaction about the time it had taken without indicating how long it had taken to count the vote in their LGAs in previous elections.<sup>403</sup>

4.195 NSWEC has advised that the count was not slow, and that the central count was completed three days ahead of schedule. According to the NSWEC, some counts will be done first, others last and that concern about the count comes from the councils whose count occurred last.<sup>404</sup>

4.196 The Committee received evidence that the Central Count also created problems for candidates from outside the Sydney metropolitan area wanting to arrange scrutineers. The location of the central count at Riverwood meant scrutineers were unable or unwilling to attend the count. Camden Council raised this as an issue particularly affecting independent candidates. They argued that it placed independent candidates at a disadvantage because they could not provide scrutineers due to the short notice given by the NSWEC regarding the time and location of a count, which often occurred late in the evening. This meant that independent candidates were unable to attend, while major parties with more supporters were able to attend.<sup>405</sup>

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<sup>400</sup> Mr Peter Coulton, Director, Corporate Services, Local Government and Shires Association, *Transcript of evidence*, 27 August 2009, p.28.

<sup>401</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 3; and NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, October 2009, p. 57.

<sup>402</sup> Parramatta City Council, *Submission 20*; Penrith City Council, *Submission 5*, p. 1; Waverley Council, *Submission 33*; Mr Craig Dalli, Manager of Governance and Property, Blacktown City Council, *Transcript of evidence*, 27 August 2009, p. 19; Cr Gareth Ward, Deputy Mayor, Shoalhaven City Council, *Transcript of evidence*, 26 August 2009, p. 38.

<sup>403</sup> Armidale Dumaresq Council, *Submission 3* and Our Sustainable Future, *Submission 8*.

<sup>404</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 7.

<sup>405</sup> Camden Council, *Submission 32*, p. 4.

4.197 Our Sustainable Future, a far north coast based political party registered to run in local government elections, submitted that the central count made it impossible to scrutineer, particularly for those living in rural and regional areas, stating that:

This deprives local politically-active scrutineers from repeatedly viewing the fall of preferences on individual ballots as they are sorted and counted. This can give strong feedback on what influenced voters during campaigns, in a way that final preference totals cannot.<sup>406</sup>

4.198 The Committee raised concerns about the inability for small groups, parties and independents to scrutineer the central count with Mr Barry, who responded by outlining the steps taken by the Commission to inform stakeholders about the process:

**Mr BARRY:** ... it is extremely challenging. That is all I can say. Bearing in mind that we do not know which of these counts are coming to Sydney until the close of nominations, we provide as much information as we can on the website. We also created a DVD and put that on the website so that people could see how the counts are done.

I introduced the observation team to deal with that very issue of the confidence in the integrity of this system. We had an independent person from the Victorian Electoral Commission as chair and the team included an officer from the Department of Local Government and a representative from the Local Government and Shires Associations. That is what I did to give the public confidence that there is integrity in this process. I do not recall any complaints coming to the Commission about the integrity of the centralised count.

I know there is general unhappiness in that people want their local election conducted locally. We are happy to talk about that and to explain it if it is not clear. However, having decided that the count must be data entered and having explained why we cannot do it locally at the moment, is there integrity around the whole process in the central count? I think there is.

**Ms DIANE BEAMER:** I have no doubt that there is integrity in the process. Members have probably scrutineered hundreds of times and watched people doing their very best in the counting of ballots. However, there is something integral in the idea that a candidate has someone in the room who can verify that it was done properly. The idea of having an independent body oversighting it is fine, but I can imagine that that is one of the complaints about it being centralised—that is, we do not have local scrutineers involved.

**Mr BARRY:** I fully understand that.<sup>407</sup>

4.199 The Greens submitted to the Committee that the number of scrutineers required to adequately observe the data entry was too high and that there was an inability to observe the sorting of ballot papers before they are sent to the central counting centre.<sup>408</sup>

4.200 Many councils argued that the central count should be eliminated, with all counts conducted locally to allow candidates' scrutineers access and ensure timely delivery of results. The NSWEC argues that technological constraints meant that the software program used to conduct the computerised count could only be used in one location for the 2008 local government elections. The NSWEC has stated that the software system used for the Legislative Council and local government counts is

<sup>406</sup> Our Sustainable Future, *Submission 8*, p.1.

<sup>407</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, and Ms Diane Beamer, MP, *Transcript of evidence*, 26 August 2009, p. 14

<sup>408</sup> The Greens, *Submission 51*.

being redeveloped, and as result of this redevelopment the system may be able to be deployed for local counts in the 2012 local government elections.<sup>409</sup> However, the Committee notes the NSWEC's argument that local counting, or the introduction of 'regional counting centres', would come at an increased cost to councils. The Electoral Commissioner informed the Committee that:

We have 250 to 300 data entry operators at the central counting centre at Riverwood running over two shifts. What you will end up with is we would have to transport infrastructure to a regional centre; we would have to set up computers, ballot papers. You would still have to go through the same process.

**CHAIR:** Could you explain the process and the infrastructure?

**Mr BARRY:** The infrastructure is a server and a number of terminals to be able to data enter the ballot papers. Every ballot paper has to be double data entered. They are pre-sorted into batches so that when they are data entered we know that there are 50 ballot papers in a batch, each batch is numbered and then they are data entered into the system. All of that is done in a central location at the moment on a large scale so there is the economy of scale. When you take that process and decentralise it across the State—I cannot remember off the top of my head how many individual councils' ballot papers came to Sydney—

**Mr ROBERT COOMBS:** There are 151, are there not?

**Mr DeCELIS:** Roughly half.

**Mr BARRY:** Half, so there are 70-odd councils. If you decentralise that to 70 locations, you are going to increase the cost. Admittedly you would not do that in the Sydney area, that is true, but in the case of regional centres, we have built the system so that in the future we can set up regional counting centres. We can give councils the choice: "If you want to have it conducted locally, that is the cost. If you want the ballot papers sent to Sydney, that is the cost."<sup>410</sup>

## Comment and recommendation

- 4.201 The Committee notes that the Government has funded the NSW Electoral Commission to redevelop the Legislative Council counting system and any proposals that emerge from this process can be used for local government elections to enable the count to be conducted at a regional level.
- 4.202 The Committee is of the belief that, if regional deployment of the computerised counting software is a possibility for the 2012 local government elections then the NSWEC should provide the option of a local computerised count to Councils during the consultation process. The NSWEC should provide detailed information to General Managers about the costs of local counts and highlight potential difficulties, such as finding the data entry staff required and sourcing suitable computer hardware. Councils would then need to consider these cost and resourcing factors alongside benefits unrelated to costs, such as ability for local scrutineers to attend the count in regional areas, when making their decision.

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<sup>409</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 7.

<sup>410</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, p. 7-8.

**RECOMMENDATION 15:**

The Committee recommends that the Electoral Commissioner:

- (a) provide advice to General Managers as part of the consultation process in the lead up to the 2012 local government elections on the option of a local computerised count where required, including detailed information about the costs and resourcing issues.
- (b) report on any initiatives undertaken by the NSW Electoral Commission toward improving counting and publication of results in the Commission's next report on the local government elections in 2012.

## Random sampling

- 4.203 The method for counting votes under a proportional system for local government elections is set out in Schedule 5 of the Local Government (General) Regulation 2005. The method of counting and preference distribution set out in Schedule 5 replicates that used for the Legislative Council, as set out in Schedule 6 of the *Constitution Act 1902*. This method involves the use of random sampling as method to distribute preferences from candidates who achieve a full quota.
- 4.204 Random sampling is a consistent source of confusion in respect of both the Legislative Council and local government elections. Three main areas of concern were raised by inquiry participants: the inability to replicate a count in which random sampling was used; the complexity which random sampling introduces and the requirement for computerised counting; and the fact that all votes are not counted in preference distributions carried out using random sampling.
- 4.205 The Joint Standing Committee on Electoral Matters *Report on Inquiry into the Administration of the 2003 Election and Related Matters* recommended:
- That the issue of abolishing random sampling as the method for the counting and transferring of votes for the Legislative Council be considered by the government as part of the review of the Parliamentary Electorates and Elections Act 1912.<sup>411</sup>
- 4.206 In this report, the Committee argued strongly for the abolition of random sampling as the method for transferring surplus votes in the Legislative Council, stating that:
- random sampling should be abandoned as the method for counting the votes. The Committee considers that random sampling is outdated in the age of computers and that whilst the statistical error of an unrepresentative sample is low ... it would be preferable if a full distribution of the preferences from all votes was conducted rather than a random selection of the last bundle of votes a candidate receives.<sup>412</sup>
- 4.207 During the current inquiry, Bogan Shire Council submitted that this method of preference distribution was unfair and may lead to a different result if repeated.<sup>413</sup> Antony Green submitted similar arguments, but extrapolated from the lack of a

<sup>411</sup> "Recommendation 34" from Joint Standing Committee on Electoral Matters, *Inquiry into the Administration of the 2003 Election and Related Matters*, September 2005, p. 100.

<sup>412</sup> Joint Standing Committee on Electoral Matters, *Inquiry into the Administration of the 2003 Election and Related Matters*, September 2005, p. 99.

<sup>413</sup> Bogan Shire Council, *Supplementary Submission 61a*. p.2.

guarantee that the vote can be counted twice with the same result to claim that group voting ATL means the ballots need to be data entered into a computer to ensure the random sample is done correctly. Mr Green asserts that computer counts do not produce an accurate and repeatable result, rather ensuring random sampling, so it cannot even conduct the same count twice and produce the same result.<sup>414</sup>

4.208 The NSWEC addressed concerns raised about the problems with replicating the count. Mr DeCelis stated that while it is theoretically correct that a count could be conducted again with a different result, based on his experience he considers that this would be a rare occurrence:

I can perhaps recall in my experience one instance where a result has been changed, but I have to say I cannot be convinced that is because of random sampling but just because of a miscount.<sup>415</sup>

4.209 Mr DeCelis highlighted the fact that recounts for proportional representation are only a recount of first preference votes, and it is only if there is a variation in the first preference count that a distribution of preference is undertaken. He argues that

If we are required to go on and do a distribution of preferences because the first preferences vary, yes, the possible outcome is the random sampling could affect the outcome.<sup>416</sup>

4.210 The NSWEC rejected the assertion that random sampling complicated the above the line count to the point of requiring central counting. According to Mr DeCelis:

Firstly, random sampling is always focused as to the point that creates the complexity and difficulty in these counts and that is not in itself correct. Random sampling is something that takes place in all of these types of counts. They occur in local government elections. They also occur, as you are probably aware, in the Legislative Council. It is not the random sampling process that makes this type of counting complex, particularly in respect of local government. It was the move, if I recall, commencing at the 2004 local government elections, when the Government introduced preferential voting above the line. Prior to that there was still voting above the line in local government elections but you were permitted to vote one only above the line. When they introduced preferential voting above the line for local government, that increased the complexity to the point where manual counting was no longer a practical option for the Commission to pursue without risk, and the risk was not, we believed, manageable. So, random sampling is not the issue; it is the preferential voting above the line.<sup>417</sup>

4.211 The Electoral Commissioner stated that random sampling could be removed:

I do not think there are any compelling reasons to retain random sampling. The mere fact that we are discussing it, I think, and the confusion it creates there are no reasons to retain it and, yes, it could be removed.<sup>418</sup>

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<sup>414</sup> Mr Antony Green, *Submission 39*.

<sup>415</sup> Mr Brian DeCelis, Director, Funding and Disclosures, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 6.

<sup>416</sup> Mr Brian DeCelis, Director, Funding and Disclosures, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 6.

<sup>417</sup> Mr Brian DeCelis, Director, Funding and Disclosures, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 6.

<sup>418</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 6.

- 4.212 In subsequent correspondence, the Electoral Commissioner confirmed his 'support for the move to a form of proportional representation that does not require random sampling.'<sup>419</sup>
- 4.213 The Electoral Commissioner noted that, in the case of local government elections, changing the method of preference distribution from random sampling would simply involve an amendment to Schedule 5 of the Local Government (General) Regulation 2005.<sup>420</sup>
- 4.214 If random sampling were to be removed a new method for preference distribution would need to be introduced. Mr Green put forward the fractional method as an alternative counting system for preference distribution. Mr Green explained the fractional method as follows:
- ...you count all the votes, count the preferences, determine the size of the surplus and then distribute all the preferences with a reduced value. In the case of my earlier example where you have got one and a half quotas of votes and one third of the votes are therefore surplus, all the ballot papers would be distributed to other candidates, but they would be transferred at the value of one third of their face value. Currently what happens is one third of the ballot papers are sampled and then that one third transferred at full value. The advantage of doing the fractional method where you transfer them at a reduced value is every vote gets counted, and, if you had to, you could count the votes again.<sup>421</sup>
- 4.215 In correspondence the Electoral Commissioner outlined the main differences between random sampling and the fractional method as follows:
- In the fractional method, all surplus votes from an elected candidate are distributed at a fractional value which means the number of 'votes' distributed, represents a fraction of the 'ballot papers';
  - In random sampling, a number of ballot papers selected at random from the ballot papers being distributed, are transferred at full value, with the balance going into the quota;
  - It is argued that the very nature of random sampling is unfair;
  - Because of random sampling, it is almost certain that in a recount situation, a different random selection would occur, thus potentially providing a different result in terms of which candidates are elected;
  - The fractional method would guarantee a repeatable result in a recount situation (provided the initial and second 1<sup>st</sup> preference counts are identical);
  - In the fractional method, large counts can be complicated by the fact that multiple bundles of transferred ballot papers will have different transfer values at each count and tracking and recording (in a non computer assisted count) can be complex and prone to error;
  - There are a number of variations to the fractional method used in Australia and the 'best fit' for NSW LG elections would need to be determined; and
  - A computer system would need to be developed to count the NSW LG elections (especially in undivided councils where up to 15 councillors are elected). The current NSWEC proportional representation vote counting software could not be

<sup>419</sup> Letter from Mr Colin Barry, Electoral Commissioner to Committee Manager, dated 12 February 2010, p. 4

<sup>420</sup> Letter from Mr Colin Barry, Electoral Commissioner to Committee Manager, dated 12 February 2010, p. 4.

<sup>421</sup> Mr Antony Green, *Transcript of evidence*, 27 August 2009, p. 35.

utilised. The scope of the functionality required, the cost, and the timeliness of development, testing and delivery would need to be considered.<sup>422</sup>

### Comment and recommendation

- 4.216 The Committee notes that it has previously recommended the removal of random sampling as the method of counting in Legislative Council elections, and that the Electoral Commissioner has expressed the view that there are no reasons to retain it, particularly considering the confusion it engenders.
- 4.217 In view of the Electoral Commissioner's comments, the Committee recommends that the NSWEC investigate the feasibility of abolishing the random sampling method for preference distribution and the alternative fractional methods currently available, and calculate the costs associated with moving to technology that would support an alternative method.

### **RECOMMENDATION 16:**

The Committee recommends that the NSW Electoral Commission investigate the feasibility of abolishing the random sampling method for preference distribution and the alternative fractional methods currently available, and calculate the costs associated with moving to technology that would support an alternative method.

### Above the line voting

- 4.218 Above the line preferential voting was introduced in the 2004 local government elections, following the amendment of the *Local Government Act 1993*, to bring the above the line voting procedures for local government elections into line with those used for the Legislative Council.<sup>423</sup>
- 4.219 Section 308A of the *Local Government Act 1993* provides that two or more nominated candidates can apply to be listed as a group on the ballot paper, where two or more councillors are to be elected. These candidates can also request a group voting square (for above the line voting), if the following conditions have been met:
- In an area not divided into wards, the number of candidates in the group is at least half the number of candidates to be elected;
  - In an area divided into wards, the number of candidates in the group is at least equal to the number of candidates to be elected; and
  - More than one group has requested a group voting square.
- 4.220 Section 308A(5) provides that an application for the name of a political party to appear beside the name of a candidate on the ballot paper may also request that the name of the party (or a composite name) be printed on the ballot paper adjacent to the candidates' group voting square.
- 4.221 Voters can vote below the line by indicating their preferences for individual candidates, or above the line, where they indicate preferences for groups. Section 308B provides that a voter may vote above the line by marking "1" in any of the group voting squares above the line, and that they can then, if they wish, indicate

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<sup>422</sup> Letter from Mr Colin Barry, Electoral Commissioner to Committee Manager, dated 12 February 2010, p.

<sup>423</sup> The Hon Harry Woods, Second Reading Speech, Local Government Amendment Bill, Legislative Assembly, 31 October 2000, *Hansard*, p. 9376.



preferences for other groups of candidates by numbering them consecutively. The number “1” indicates a voter’s first preference is for the first candidate to appear in that group, with the subsequent preferences going to the other candidates in the group in the order listed on the ballot paper. If they number “2” and so on, their preferences are for the groups in the order in which they number them and then within those groups the candidates in the order in which they are listed.

4.222 When above the line preferential voting was introduced for local government in 2000, the then Minister for Local Government, The Hon Harry Woods, stated that:

This proposal allows the voter, and I stress the voter, to determine preferences by showing one or more preferences for groups or parties in the square above the line. This gives control of the allocation of preferences between groups or parties to the voter, instead of to the group or party. Alternatively, the voter may allocate his or her preferences by numbering the candidates below the line. Whether voting above or below the line, the voter chooses where preferences are allocated. This proposal will reflect voters' intentions more accurately than the current system.<sup>424</sup>

4.223 Inquiry participants expressed concern over a number of aspects of group voting squares including the impact it has on the number of candidates nominating to form groups and the consequent increase in work required to administer the elections, problems with exhausted ballots with only a first preference indicated, and the inequity it creates for independent candidates.

4.224 A number of inquiry participants also claimed that above the line group voting squares are problematic because they encourage a large number of candidates to nominate in order to get the group voting square above the line.<sup>425</sup>

4.225 Our Sustainable Future, a political party registered to run in local government elections, submitted that the requirement for four candidates to nominate to get group status<sup>426</sup> means candidates with no expectation of being elected are nominating to ensure a lead candidate or smaller team are eligible for a group voting square. They argue that the number of candidates on the ballot paper makes it “hard to communicate clearly to the electorate” and confuses voters.<sup>427</sup>

4.226 RAMROC raised a similar point, with the Executive Officer, Mr Stubbs, presenting the following evidence:

Perhaps using Albury as an example, people want to form teams of five because it gets them above the line and they see that as an advantage on the ballot paper. I know they have difficulty getting particularly the last two, and those last two have to incur expense and time, and put in the effort and all that sort of thing, knowing full well they are probably not going to be elected.<sup>428</sup>

4.227 Port Stephens Council’s General Manager, Mr Gesling stated that the group voting squares placed a burden on ratepayers due to the number of candidates running in each election, stating that it:

increases the costs to the ratepayers and also delays the outcome of the election. Council questions if this is really necessary at the local government level. For the past

<sup>424</sup> The Hon Harry Woods, Second Reading Speech, Local Government Amendment Bill, Legislative Assembly, 31 October 2000, *Hansard*, p. 9376.

<sup>425</sup> Allen Hampton, *Submission 24*; and, Dorothy Smith, *Submission 25*.

<sup>426</sup> The required number of candidates varies (Section 308A, *Local Government Act 1993*)

<sup>427</sup> Our Sustainable Future, *Submission 8*, p. 2.

<sup>428</sup> Mr Raymond Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils, *Transcript of evidence*, 26 August 2009.

two elections, Port Stephens has been in the top two with regard to the number of candidates. At the 2008 election the number was 78.<sup>429</sup>

4.228 Mr Gesling went on to claim that 'By removing the group voting, the community's wishes are more likely to be evident through the elected officials and not merely as a result due to second preference on a group ticket.'<sup>430</sup>

4.229 RAMROC gave evidence that the council should have a role in deciding what the number of candidates required to be listed above the line is, and that this decision should be made with reference to the number of people likely to be elected from one group:

...hypothetically perhaps three above the line is reasonable, because it is possible that a very popular candidate, a mayor, can drag two others in. When we have had some very popular mayors like that who have stood on tickets, generally I think ... they have been able to get one in, and I think on one occasion they got two in but after absolutely dominating the primary vote. To me it seems that three is probably a reasonable figure for that.<sup>431</sup>

4.230 The Greens recommended to the Committee that group voting squares be abolished in local government elections to make the ballot papers simpler, reduce large candidate groups nominating to get a square above the line, and to return the focus to individual candidates, away from party politics, thus empowering voters.<sup>432</sup> Mr Chris Maltby, Registered Officer, from The Greens said:

at the local government level group voting squares are an unnecessary complexity. They are intended to be an assistance to voters, and they certainly are an assistance to voters in the Senate and Legislative Council elections, but at the local government election where there are a small number of candidates they make it more complicated than they make it easier. Then they add this other level of complexity with counting, requiring more of the counting centre to do counts for many ward councils and so forth.<sup>433</sup>

4.231 Our Sustainable Future raised concerns with the optional preferential nature of the above the line voting. They submitted that above the line voting should be full or partial preferential, not optional, to ensure votes are not exhausted at "1", claiming that many are exhausted because of the elimination of registered preference flows.<sup>434</sup>

4.232 Cr Cassidy, Mayor of Ashfield Council raised the inability of independent groups of candidates to use the word "Independent" above the line as confusing for voters and a disadvantage to independent candidates. He stated that

Independent candidates were prohibited from having the word "independent" above the line to indicate the No. 1 candidate was independent. This means that people who were voting independent and were voting for Ted Cassidy would vote below the line and vote 1 Ted Cassidy, which many of them did—almost 50 per cent, I might add. That vote would be ruled as invalid because they did not vote for the required number of candidates. That could—it did not in my instance but it did in previous elections—result in independent candidates failing to be elected because their electors were not given

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<sup>429</sup> Mr Peter Gesling, General Manager, Port Stephens Council, *Transcript of evidence*, 26 August 2009, p. 56.

<sup>430</sup> Mr Peter Gesling, General Manager, Port Stephens Council, *Transcript of evidence*, 26 August 2009, p. 56.

<sup>431</sup> Mr Raymond Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils, *Transcript of evidence*, 26 August 2009, p. 31.

<sup>432</sup> The Greens, *Submission 51*.

<sup>433</sup> Mr Chris Maltby, Registered Officer, The Greens, *Transcript of evidence*, 27 August 2009, p. 42.

<sup>434</sup> Our Sustainable Future, *Submission 8*.

full information as to the fact that they must vote 1, 2 or 3. If they were allowed to vote 1 above the line for that independent candidate the vote would be ruled as a valid vote. To me, that is blatant discrimination against independent candidates aimed at discouraging those candidates and aimed at ensuring, as far as possible, they do not get elected.<sup>435</sup>

4.233 Mr Antony Green argued that the 12-month waiting period for local government party registration was unfair and advantages state registered parties running in local government elections. He argued that the waiting period for party status affects those who run in groups and can not get access to a named square above the line (an entitlement of registered parties). This confuses voters, and possibly leads to informal below the line voting where voters look for the 'John Smith' independent group and can only find his name below the line, and only vote "1" below the line, resulting in an informal vote.<sup>436</sup> Mr Green put forward the Tasmanian House of Assembly nomination procedures as a solution – candidates need 10 nominators, parties need 100 members, and groups of independents can have a named square above the line if they have the same number of nominators, 100, as members required to register a party.<sup>437</sup>

### Comment

4.234 The Committee notes the contribution of inquiry participants in relation to various aspects of above the line preferential voting. However, after careful assessment of the views that were put, the Committee has concluded that any change to above the line voting would involve fundamental alteration of the electoral system in use for local government elections. In the view of the Committee, such change would necessitate a comprehensive and wide-ranging inquiry into the advantages and disadvantages of the current system and proposed alternatives. Extensive public and stakeholder consultation would be required.

### FINDING 1:

The Committee finds that changes to the above the line preferential voting system in use for local government elections would require further examination, including wider canvassing of stakeholder opinion, such as that of political parties, candidates and electors.

### Voting system for election of councillors

4.235 The Committee did not consider the voting systems in local councils in any great detail, and received very limited evidence on this issue. Currently, optional preferential voting is used where one or two councillors are to be elected, and proportional representation is used where three or more councillors are to be elected. It was submitted that where two councillors are to be elected, a proportional voting system may better reflect the intentions of voters, rather than the existing optional preferential voting system. Given the limited evidence received, the Committee agreed that this should be considered as part of the review of the 2012 local government election.

<sup>435</sup> Cr Ted Cassidy, Mayor, Ashfield Municipal Council, *Transcript of evidence*, 27 August 2009, p. 5.

<sup>436</sup> Antony Green, Submission 39, p. 1.

<sup>437</sup> Antony Green, Submission 39, p. 1.

## Recounts

- 4.236 Any candidate can request a recount. Candidates must submit requests in writing to the RO within 24 hours of being notified of the election result. The request must set out the reasons for the count, and be signed by the candidate. A deposit to cover the costs of the recount must also be lodged.<sup>438</sup> If there is a change to the result, the deposit is returned to the candidate.<sup>439</sup> The Electoral Commissioner can also direct a recount.<sup>440</sup> During the 2008 local government elections two recounts were conducted, with no change to the outcome of either election.
- 4.237 The cost to candidates wishing to request a recount was raised as an issue during the inquiry, particularly in cases where a small number of votes determined the result. It was acknowledged that the Electoral Commissioner currently has discretion to direct that a recount be conducted at no cost to the candidate.<sup>441</sup> In their submission to the inquiry, The Greens recommended that:
- ‘A pre-determined close election result trigger for a free recount of the vote needs to be created. If there are significant count irregularities then the margin for a free recount may be larger with such a recount invoked at the discretion of the relevant electoral official, or upon payment for the cost of the recount by the person(s) requesting it.’<sup>442</sup>
- 4.238 The Committee believes that this matter warrants further consideration, and will consider preparing an outline of issues, on which it will seek a response from the Electoral Commissioner. Some of these issues may include:
- The frequency with which close ballots occur, for instance in the case of elections determined by less than 10 votes and less than 50 votes.
  - The costs that would be involved for councils where recounts are conducted.
  - Recounts arising from manual counts and data entry counts.
  - The impact of the size of the council area.
  - Approaches taken in other relevant jurisdictions.
- 4.239 The Committee defers making findings and recommendations on this issue until it has had an opportunity to consider the Electoral Commissioner’s response and seek input from local councils and stakeholders.

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<sup>438</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 112.

<sup>439</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 13-14.

<sup>440</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 112.

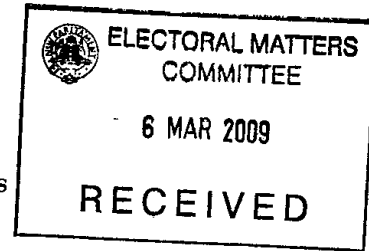
<sup>441</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 13-14.

<sup>442</sup> The Greens, *Submission 51*, p. 11.

## Appendix 1 – Correspondence from the Premier



Premier of New South Wales  
Australia



TCO/22139 – LB

– 2 MAR 2009

Ms Cherie Burton MP  
Chairperson  
Joint Standing Committee on Electoral Matters  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Ms Burton

I am writing to refer certain matters to the Joint Standing Committee on Electoral Matters (the “Committee”) for inquiry.

Under the Committee’s terms of reference, the Committee may:

“(2) ...inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister that relate to:

- (a) The following electoral laws:
  - (i) *Parliamentary Electorates and Elections Act 1912 (other than Part 2);*
  - (ii) *Election Funding Act 1981; and*
  - (iii) *Those provisions of the Constitution Act 1902 that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than sections 27, 28 and 28A);*
- (b) *The administration of and practices associated with the electoral laws described at (a)*”.

I wish to refer all matters that relate to (a) and (b) above in respect of the September 2008 Local Government Elections to the Committee for any inquiry the Committee may wish to make, including in relation to the costs of the 2008 Local Government elections.

I note that section 21AA(2) of the *Parliamentary Electorates and Elections Act 1912* (the “PE&E Act”) provides that the Electoral Commissioner has the responsibility of administering the PE&E Act and any provisions of any other Act, so far as they relate to the enrolment of electors, the preparation of rolls of electors, and the conduct of elections.

Section 21AA(3) also provides that, in addition to the functions conferred or imposed by the PE&E Act, the Electoral Commissioner has the functions conferred or imposed on him by or under any other Act.

Additional functions are conferred upon the Electoral Commissioner under Part 6 of the *Local Government Act 1993* for the purpose of conducting Local Government elections.

I am advised, therefore, that to the extent that section 21AA(2) of the PE&E Act confers upon the Electoral Commissioner a general responsibility for administering electoral provisions contained in other Acts, the Committee is entitled to inquire into and report on those provisions, including matters arising under the *Local Government Act 1993* so far as they relate to the conduct of local government elections.

I believe that the Committee's oversight of State elections is of substantial benefit in terms of transparency and accountability. I see no reason why the same degree of oversight should not be applied to Local Government elections in the interests of transparency.

I would be grateful if the Committee could report on the outcome of its inquiry within 12 months of the date of this referral.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nathan Rees', written in a cursive style.

**Nathan Rees MP**  
Premier



## Premier of New South Wales

Mr Robert Furolo MP  
Chairperson  
Joint Standing Committee on Electoral Matters  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000



11 MAR 2010

Dear Mr Furolo *Rob,*

I refer to your letter of 15 February 2010 requesting an extension of time for the Joint Standing Committee on Electoral Matters (the "Committee") to report to Parliament on its inquiry into the 2008 local government elections.

I appreciate that the reporting date for the Committee's inquiry into the 2008 local government elections coincides with the conduct of its inquiry into a public funding model for NSW election campaigns. I also acknowledge that the latter inquiry involves complex matters that require detailed consideration by the Committee, and that the Committee is required to report to Parliament on the outcome of its inquiry by 12 March 2010.

Accordingly, I do not object to your request for an extension of time until 1 June 2010 for the Committee to report to Parliament on its inquiry into the 2008 local government elections. I note your advice that the Committee may not need until 1 June 2010, and I trust that the Committee will endeavour to report to Parliament as soon as possible.

I look forward to receiving the Committee's report in due course.

Yours sincerely

**Kristina Keneally MP**  
Premier

## Appendix 2 – Submissions

Submission No.	Submission maker	Publication Status
1	Baulkham Hills Shire Council	Public
2	Gosford City Council	Public
3	Armidale Dumaresq Council	Public
4	Dubbo City Council	Public
5	Penrith City Council	Public
6	Mr Paul Tracey	Public
6a	Mr Paul Tracey	Partly Confidential
7	Singleton Council	Public
8	Our Sustainable Future	Public
8a	Our Sustainable Future	Public
9	Parkes Shire Council	Public
10	Kogarah Council	Public
11	Hurstville City Council	Public
12	Randwick City Council	Public
13	Muswellbrook Shire Council	Public
14	Berrigan Shire Council	Public
15	Australian Business Party	Public
16	Lane Cove Council	Public
17	Liberal Party of Australia (NSW Division)	Public
18	Yass Valley Council	Public
19	Homelessness NSW	Public
20	Parramatta City Council	Public
21	Dr Alan Graeme Wells	Partly Confidential
22	Cr Mike Tuffy	Public
23	Mr Jason Horton	Public
24	Mr Allen Hampton	Public
25	Ms Dorothy Smith	Public
26	Mr Bruce Berry	Public
27	Wentworth Shire Council	Public
28	Mr Lennard Roberts	Public
29	Liverpool City Council	Public
30	Campbelltown City Council	Public
31	Upper Lachlan Shire Council	Public
32	Camden Council	Public
33	Waverley Council	Public
34	North Sydney Council	Public
35	Shoalhaven City Council	Public
36	Tamworth Regional Council	Public
37	Auburn Council	Public
38	Port Stephens Council	Public
39	Mr Antony Green	Public
40	Ku-Ring-Gai Council	Public
41	Eurobodalla Shire Council	Public
42	Willoughby City Council	Public
43	Griffith City Council	Public
44	Mr Barry Richard Benson	Confidential
45	B R Gray	Public
46	Wellington Council	Public
47	Blacktown City Council	Public



Submission No.	Submission maker	Publication Status
48	NSW Commission for Children and Young People	Public
49	Riverina And Murray Regional Organisation of Councils (RAMROC)	Public
50	Palerang Council	Public
51	The Greens	Public
52	Fairfield City Council	Public
53	Mid-Western Regional Council	Public
54	Clarence Valley Council	Public
55	Blayney Shire Council	Public
56	Ashfield Council	Public
57	Albury City Council	Public
58	Ashfield Council, Office of the Mayor	Public
59	Lismore City Council	Public
60	NSW Disability Discrimination Legal Centre and People with Disability Australia	Public
61	Bogan Shire Council	Public
61a	Bogan Shire Council	Public
62	Mr Mark Corrigan	Public
63	Blue Mountains Greens	Public
64	Vision Australia	Public
65	Hornsby Shire Council	Public
66	Local Government Association of NSW and Shires Association of NSW	Public
66a	Local Government Association of NSW and Shires Association of NSW	Public
67	Sydney City Council	Public
68	Election Funding Authority	Public
69	Mr John B Jensen	Public
70	Strathfield Council	Public
71	City of Botany Bay	Public
72	Western Division of the Shires Association of NSW	Public

## Appendix 3 – Witnesses

Date	Witness	Position	Organisation	
<b>Wednesday 26 August 2009</b> Parliament House, Sydney	Mr Colin Barry	Electoral Commissioner and Chair of Election Funding Authority	NSW Electoral Commission / Election Funding Authority	
	Mr Trevor Follett	Director, Finance and Administration		
	Mr Brian DeCelis	Director, Funding and Disclosures		
	Dr Liz Coombs	Leader, Performance Reporting Team		
	<b>ROUNDTABLE: Regional Returning Officer Model</b>			
	Mr Paul Anderson	General Manager	Eurobodalla Shire Council	
	Mr Les Fin	Director, Corporate Services	Parkes Shire Council	
	Cr Nic Carmody	Mayor	Yass Valley Council	
	Mr Peter Bascomb	General Manager	Palerang Council	
	<b>ROUNDTABLE: RAMROC and member councils</b>			
	Mr Ray Stubbs	Executive Officer	Riverina and Murray Regional Organisation of Councils (RAMROC)	
	Ms Judy Charlton	Director, Corporate Services	Albury City Council	
	Mr Rowan Perkins	General Manager	Berrigan Shire Council	
	Mr Duncan McWhirter	Manager, Governance, Administration and Compliance	Griffith City Council	
	Cr Gareth Ward	Deputy Mayor	Shoalhaven City Council	
	<b>ROUNDTABLE: Polling locations and pre-poll voting centres</b>			
	Mr Warren Park	Senior Manager, Administration	Hurstville City Council	
	Mr Graeme Wilson	Corporate Compliance Coordinator	Lismore City Council	
	Mr Paul Tracey			
	<b>ROUNDTABLE: Returning Officers – accommodation and other issues</b>			
	Ms Petra Tinker	Manager, Governance and Customer Service	Fairfield City Council	
	Mr Peter Gesling	General Manager	Port Stephens Council	
	Cr James Treloar	Mayor	Tamworth Regional Council	
<b>Thursday, 27 August 2009</b> Parliament House, Sydney	Mr Robert Hogan	Divisional Manager, Governance, Administration, and Executive Support	Waverley Council	
	<b>ROUNDTABLE: Operation of the Election Funding and Disclosures Act 1981</b>			
	Cr Ted Cassidy PSM	Mayor	Ashfield Council	

Date	Witness	Position	Organisation	
	Mr Michael Sewell	Director of Business Services	Campbelltown City Council	
	Cr Kate Lamb	Councillor	Willoughby City Council	
	Cr Jim Aitken OAM	Mayor	Penrith City Council	
	Mr Alan Stoneham	General Manager		
	<b>ROUNDTABLE: General administration of the elections</b>			
	Mr Dave Walker	General Manager	Baulkham Hills Shire Council	
	Mr Craig Dalli	Manager Governance and Property	Blacktown City Council	
	Ms Kathy Bragg	Governance Officer	Gosford City Council	
	Mr John Clark	Director, Corporate	Ku-ring-gai Council	
	Cr Genia McCaffery	President	Local Government Association of NSW	
	Mr Peter Coulton	Director Corporate Services	Local Government and Shires Association of NSW	
	Miss Skye Smith	Executive Officer		
	Mr Antony Green			
	Mr Chris Maltby	Registered Officer	The Greens (NSW)	
	Mr Max Phillips	Campaign Co-ordinator, 2008 Local Government Elections		
Dr Norman Thompson	Member, Electoral Funding Working Group			
Mr Hugh Ermacora	President and Registered Officer	Our Sustainable Future		
Cr Ray Donald	Mayor	Bogan Shire Council		
Cr Kevin Ryan	Councillor			
Mr Darren Fittler	Vice-President	NSW Disability Discrimination Legal Centre		
Ms Joanna Shulman	Principal Solicitor			
Mr Dean Price	Advocacy Projects Manager	People with Disability Australia		
Mr Vaughan Roles	Client Representative	Vision Australia		
<b>Monday, 26 October 2010</b> Parliament House, Sydney	Mr Colin Barry	Electoral Commissioner/Chair Election Funding Authority	NSW Electoral Commission	
	Mr Trevor Follett	Director, Finance and Administration		
	Mr Brian DeCelis	Director, Funding and Disclosures		
	Dr Liz Coombs	Director, Performance		

## Appendix 4 – Minutes

### **Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.8)**

Wednesday 1 April 2009 at 10.07am

Room 814-15, Parliament House

#### **1. Members present**

Ms Burton (Chair), Mr Harwin, Ms Gardiner, and Ms Beamer.

In attendance: Jasen Burgess, Dora Oravec, Amy Bauder and Emma Wood.

#### **2. Apologies**

Mr Coombs, Ms Fazio and Ms Rhiannon

#### **3. \*\*\***

#### **4. Inquiry into the 2008 local government elections**

##### **i. Referral of inquiry from the Premier.**

The Chair spoke to the Premier's letter of 2 March 2009, previously circulated. The letter refers all matters in relation to the September 2008 local government elections to the Committee for inquiry, with particular reference to the costs of these elections.

Discussion ensued.

##### **ii. Inquiry terms of reference.**

The Committee noted the terms of reference for the inquiry, previously circulated.

##### **iii. Draft advertisement calling for submissions.**

Resolved, on the motion of Mr Harwin, seconded Ms Gardiner, that the circulated advertisement calling for submissions to the inquiry into the 2008 local government elections be approved and placed in the press.

##### **iv. Stakeholders invited to make submissions.**

Prior to the meeting, the Committee was provided with a list of stakeholders that the Chair had invited to make a submission to the inquiry.

The Chair asked members whether there were any additional stakeholders they wished to invite to make a submission.

Mr Harwin agreed to provide a list of witnesses that gave evidence before the Legislative Council's Select Committee on Electoral and Political Party Funding for the Chair to consider inviting to make a submission to the inquiry into local government elections.

##### **v. Briefing on 2008 local government elections.**

The Committee noted the briefing on the 2008 local government elections provided by the secretariat and previously circulated.

##### **vi. Conduct of inquiry.**

The Committee considered the draft inquiry timeline previously circulated. It was agreed that the Committee would meet in late June to consider submissions in order to give inquiry participants sufficient time to make submissions.

Mr Harwin drew to the Committee's attention the fact that in addition to the three weeks of sittings in September the Legislative Council would be holding estimates hearings that would involve Committee members. The Committee therefore agreed to hold hearings in late August, and not in September as indicated in the draft timeline.

##### **vii. Resolution to publish Premier's letter.**

Resolved, on the motion of Ms Beamer, seconded Mr Harwin, that the letter from the Premier dated 2 March 2009 and referring the inquiry into the 2008 local government elections to the Committee be published.

#### **5. \*\*\***

Deliberations concluded, the meeting closed at 10.13 am.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.9)**

Wednesday 3 June 2009 at 10.09 am  
Room 1254, Parliament House

**1. Members present**

Mr Harwin, Ms Rhiannon, Mr Coombs and Ms Beamer, Ms Fazio (from 10.15am), and Mr Furolo (from 10.15am).

In attendance: Les Gonye, Jasen Burgess, Amy Bauder and Emma Wood.

**2. Apology**

Ms Gardiner.

3. \*\*\*

4. \*\*\*

5. \*\*\*

**6. Minutes**

Resolved, on the motion of Mr Harwin, seconded by Ms Beamer, that the minutes of the deliberative meeting of 1 April 2009 be confirmed.

**7. Inquiry into the 2008 local government elections****i. Distribution of correspondence and late submissions.**

The secretariat distributed to members correspondence dated 6 May 2009 from the Department of Premier and Cabinet regarding the inquiry into the 2008 local government elections. The secretariat also distributed late submissions that had been received after the closing date of 13 May 2009.

**ii. Rescheduling of meeting of 25 June 2009**

In order to enable the new Chair to attend, the Committee agreed that the meeting scheduled for 10am 25 June 2009 to consider submissions and decide on witnesses for the hearings on 26 and 27 August 2009 be re-scheduled to 10am, Wednesday 24 June 2009.

Ms Fazio and Mr Furolo joined the meeting.

Mr Furolo assumed the Chair.

**iii. Submission 24 – Mr Allan Hampton**

The Committee noted that Mr Allan Hampton, author of submission 24, had made a submission on 12 May 2009 and had subsequently made another submission on 13 May 2009 that corrected errors in the first submission. Mr Hampton requested that the second submission replace the first submission. The Committee agreed to Mr Hampton's request.

**8. General business**

There being no general business, the meeting adjourned at 10.16am until 10am Wednesday, 24 June 2009 in Room 814-15, Parliament House.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.10)**

Wednesday 24 June 2009 at 10.02 am  
Room 814-15, Parliament House

**1. Members present**

Mr Furolo (Chair), Ms Fazio (Deputy Chair), Mr Coombs, Ms Gardiner, Mr Harwin and Ms Rhiannon.

In attendance: Les Gonye, Helen Minnican, Jasen Burgess, Amy Bauder and Emma Wood.

**2. Apology**

Ms Beamer.

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Mr Furolo gave his apologies for arriving late at the previous committee meeting.

**3. Minutes**

Resolved, on the motion of Mr Harwin, seconded by Mr Coombs, that the minutes of the deliberative meeting of 3 June 2009 be confirmed.

**4. Inquiry into the 2008 local government elections**

**i. Consideration of submissions, previously circulated.**

Submissions nos 1-68 and summaries of submissions, previously circulated for information. Late submission no. 69 was distributed at the meeting.

Also distributed at the meeting were briefing papers on:

- Legislative and policy changes relating to the costs of local government elections; and
- Consolidated summary of council submissions.

**ii. Consideration of briefing paper on the inquiry potential lines of inquiry and witnesses**

Briefing paper on the conduct of the inquiry, previously circulated for consideration.

**iii. Consideration of witnesses for upcoming hearings:**

Mr Harwin raised the issue of postal voting and possible witnesses on this issue. Discussion ensued. The Committee requested the Secretariat prepare and circulate a paper on postal voting in local government elections in other jurisdictions, and including possible witnesses for the Committee to invite to give evidence. The Committee discussed the selection of witnesses and the witnesses proposed in the briefing paper.

Resolved, on the motion of Mr Harwin, seconded Ms Fazio, that the following witnesses be invited to give evidence to the Committee in relation to its inquiry into the 2008 local government election:

- The NSW Electoral Commissioner (also in his capacity as Chair of the Election Funding Authority) / NSW Electoral Commission
- Liberal Party of Australia (NSW Division)
- The Greens (NSW)
- Mr Antony Green
- People with Disability/Disability Discrimination Legal Centre
- Vision Australia
- The Australian Business Party
- Our Sustainable Future
- Mr Paul Tracey
- the Local Government and Shires Associations (LGSA)

With regard to the inclusion of local councils as witnesses to the inquiry, the Committee discussed various options for hearings from as many councils as possible on as wide a range of issues as possible.

The Committee agreed that the Secretariat, in consultation with the Chair, would distribute a draft hearing schedule for the Committee's consideration. The schedule would include all of the witnesses resolved by the Committee and local councils according to the following principles:

- that as many councils as possible be represented in the hearings;
- that roundtables of councils and also regional organisations of councils (ROCs) be utilised, where appropriate;
- that the hearing program cover a wide a range of the issues raised in the local council submissions.

Providing there is consensus among the members of the Committee, the hearing schedule circulated would be adhered to. The need for further public hearings would be considered in light of the timetable.

Resolved, on the motion of Ms Fazio, seconded Mr Coombs, that where necessary the Chair write to the Speaker seeking approval for funds to cover the cost of travel expenses for witnesses so as to enable them to attend the public hearings on 26 and 27 August 2009 to give evidence in relation to the Committee's current inquiry.

**iv. Publication of submissions:**

The following resolutions were resolved in globo, on the motion of Ms Fazio, seconded Mr Harwin:

Resolution a.

That submission 44 remain confidential, as per the notation on the submission, and not be published on the Committee's website.

**Resolution b.**

- i. That certain sections of submission 21 from Dr Alan Graeme Wells, remain confidential and the submission be published in part by the Committee, as per the version circulated, pending the publication of the ADT's decision in Tuffy v Vaughan; Weate and Gill.
- ii. That the Committee review this publication order when the ADT's decision becomes available.

**Resolution c.**

- i. That submissions 1-20, 22-43, and 45-69 be published in full.
- ii. That all of the submissions be published be posted on the Committee's website.

**v. Resolution to send questions on notice to NSW Electoral Commission.**

Resolved, on the motion of Mr Coombs, seconded Ms Fazio, that:

- 1) the Committee send questions on notice to the NSW Electoral Commission, with a request that it provide answers to the Committee one week prior to the public hearings;
- 2) the questions on notice be circulated to the Committee for approval via a Memorandum and, subject to general consensus, be forwarded to the NSWEC by 22 July 2009.

The Committee discussed the process for sending questions on notice. Additional questions can be submitted by members of the Committee to the Secretariat.

**vi. NSWEC report on the 2008 local government elections**

Letter sent by the Chair to Electoral Commissioner, dated 16 June 2009, seeking clarification as to the status of the NSWEC's report on the 2008 local government elections and the terms of the Electoral Commissioner's advice, both previously circulated.

Resolved, on the motion of Ms Fazio, seconded Mr Coombs, that the Committee publish the NSWEC's Report on the 2008 local government elections on the Committee's website.

**vii. Correspondence from the Department of Premier and Cabinet dated 6 May 2009**

Resolved, on the motion of Ms Fazio, seconded Mr Coombs, that the Committee publish on its website correspondence from the Department of Premier and Cabinet, dated 6 May 2009, in response to an invitation to make a submission, including the attachments to the letter.

**viii. Proposed consultancy**

The Chair spoke to the proposal to engage a consultant to review the costs of the 2008 local government elections and the suggested terms of reference for the consultancy, as circulated to Committee members prior to the meeting.

Discussion ensued.

Resolved, on the motion Mr Coombs, seconded Mr Harwin:

- 1) That the Committee:
  - i. engage a consultant to provide independent expert auditing and financial advice in relation to the current inquiry into the 2008 local government elections;
  - ii. adopt the consultancy terms of reference, distributed previously, as follows -
    - (a) an examination of the appropriateness of the systems in place for identifying and recording the costs associated with the conduct of the 2008 LGEs;
    - (b) a review of the costs incurred by the NSWEC in connection with the conduct of the 2008 LGEs to verify what costs have been passed on to Councils and the extent and cause of any shortfall not passed on;
    - (c) ascertaining whether any costs have been passed on to Councils that are not directly related to the conduct of the 2008 LGEs;
    - (d) examining the application of the NSWEC's activity based costing model for the LGEs, its accuracy, and the efficiency of the model in terms of the recovery of election costs;
    - (e) confirming if the costs that have been passed on to Councils in connection with the 2008 LGEs, pursuant to s.296 (7) of the Local Government Act 1993, are reasonable;
    - (f) identifying the scope for improvements to the current activity based costing model for the elections, in particular, possible options for cost savings;
    - (g) reviewing the implementation of previous recommendations made in the Walter Turnbull audit report entitled, "Review of Local Government Election Pricing – Final Report" (July 2008);
    - (h) examining any other matters regarding the financial arrangements that the consultant considers relevant to bring to the attention of the Committee.

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- iii. advise the NSW Electoral Commissioner of the consultancy;
  - iv. form a Monitoring Group, comprising the Chair, and two other members of the Committee (one Opposition member; one Government member), to:
    - a) monitor progress of the consultancy and deal with any issues arising in relation to the specification or the conduct of the consultancy;
    - b) liaise with the NSWEC about the parameters and conduct of the consultancy; and
- 2) That the Chair write to the Speaker seeking approval for funds to be made available for the consultancy.

The Committee agreed that one of the additional matters to be covered under (h) in the terms of reference for the consultancy was an examination of the costings for the 2008 elections for a number of selected local councils, to be determined.

**5. General business**

The Committee discussed further the ordering of witnesses for the public hearings on 26 and 27 August and the consultancy arrangements.

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The meeting adjourned at 10.25am until 10am Wednesday, 26 August 2009 in the Jubilee Room, Parliament House.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.11)**

Wednesday 26 August 2009 at 10.05 am  
Jubilee Room, Parliament House

**1. Members present**

Mr Furolo (Chair), Ms Fazio (Deputy Chair), Ms Beamer, Mr Coombs, Ms Gardiner, Mr Harwin and Ms Rhiannon.

In attendance: Les Gonye, Jasen Burgess, Amy Bauder and Victoria Maigre.

**2. Public Hearing: Inquiry into 2008 local government elections**

The press and the public were admitted.

Mr Colin Anthony Barry, Electoral Commissioner, New South Wales Electoral Commission (NSWEC) and Chair, Election Funding Authority (EFA), affirmed; Mr Trevor Alan Follett, Director, Finance and Administration, NSWEC, affirmed; Mr Brian Vincent DeCelis, Director, Funding and Disclosures, NSWEC, sworn; and, Dr Elizabeth Mary Coombs, Leader, Performance Reporting Team, NSWEC, sworn; all examined.

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The NSW Electoral Commission provided a document titled "Joint Standing Committee into Electoral Matters, Wednesday 26 June, 2009" to the Committee.

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Evidence concluded.

Cr Nicholas Carmody, Mayor, Yass Valley Council, sworn; Mr Les Finn, Director of Corporate Services, Parkes Shire Council, sworn; and, Mr Paul James Anderson, General Manager, Eurobodalla Shire Council, affirmed; all examined.

Evidence concluded.

Mr Peter John Bascomb, General Manager, Palerang Council, affirmed and examined.

Evidence concluded.

Mr Raymond Oscar Stubbs, Executive Officer, Riverina and Murray Regional Organisation of Councils (RAMROC), sworn; Mr Duncan James McWhirter, Manager, Governance, Administration and Compliance, Griffith City Council, sworn; Ms Judith Ann Charlton, Director, Corporate Services, Albury City Council, sworn; and, Mr Rowan Perkins, General Manager, Berrigan Shire Council, affirmed; all examined.

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Mr Stubbs provided two documents titled "Joint Standing Committee Inquiry on Electoral Matters – Introductory Notes" and "RAMROC Schedule of 2004 and 2008 Electoral Costs" to the Committee.

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Evidence concluded.



Cr Gareth James Ward, Deputy Mayor, Shoalhaven City Council, sworn and examined.  
Evidence concluded.

Mr Graeme Nevile Wilson, Corporate Compliance Coordinator, Lismore City Council and Mr Warren James Park, Senior Manager Administration and Public Officer, Hurstville City Council, both sworn and examined.  
Evidence concluded, the witnesses and public withdrew.

### **3. Deliberation**

#### **i. Minutes**

Resolved, on the motion of Mr Coombs, seconded Ms Beamer that the minutes of the deliberative meeting of 26 June 2009 be confirmed.

#### **ii. Publication of submissions.**

Resolved, on the motion of Ms Beamer, seconded Ms Rhiannon, that the following submissions be published:

- Submission 8a from Our Sustainable Future.
- Submission 70 from Strathfield Municipal Council.
- Submission 71 from the City of Botany Bay.
- Submission 61a from Bogan Shire Council.

#### **iii. Publication of NSWEC answers to questions on notice**

Resolved, on the motion of Ms Beamer, seconded Ms Rhiannon:

- That the answers to questions on notice received from the NSW Electoral Commission and the Election Funding Authority on Wednesday 19 August 2009 be published and uploaded to the Committee's website, and that the Committee's question 2d to the NSWEC be amended as requested by the Electoral Commissioner.
- That the EFA submission to the inquiry be revised as requested by the Election Funding Authority and the version of the submission on the Committee's website be updated accordingly.

Mr Coombs moved, seconded Ms Rhiannon that, to reflect the fact that the NSWEC has amended the relevant section of its report, question on notice 2d to the NSWEC be revised as follows:

*2d. The NSWEC's report recommends streamlining and simplification of the local government pre-poll process, including dispensing with the envelopes for Declared Institution ballots and pre-poll voting (p.157). Similar recommendations for Declared Institution ballots were made in the Committee's report on the 2007 State Election (JSCEM report no. 1/54). What is the Government's position on this proposal?*

Discussion ensued.

Upon which Ms Beamer moved, seconded Ms Rhiannon that the resolution be amended to replace the question "What is the Government's position on this proposal?" with the following: "What is the Electoral Commission's understanding of the Government's position on this proposal?"

Amendment, put and passed.

Motion, as amended, put and passed.

#### **iv. Resolution to publish the transcript**

Resolved, on the motion of Mr Harwin, seconded Mr Coombs, that the corrected transcript of the public hearing of 26 August 2009 be published and uploaded to the Committee website.

#### **v. General business**

The Chair informed the Committee that Mr Mark Neeham, State Director, Liberal Party of Australia (NSW Division) requested that his appearance before the Committee be re-scheduled. The Committee agreed to postpone taking evidence from Mr Neeham until it takes further evidence from the Electoral Commissioner.

The Clerk-Assistant (Committees) distributed a memorandum regarding the tender for the consultancy on the costs of the 2008 local government elections for the consideration of the Committee.

### **4. Continuation of public hearing: Inquiry into 2008 local government elections**

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The press and public were admitted.

Mr Paul James Tracey, affirmed and examined.

Mr Tracey provided a supplementary submission 6a to the Committee.

Evidence concluded.

Cr James Morison Treloar, Mayor, Tamworth Regional Council, sworn; Mr Peter Gregory Gesling, General Manager, Port Stephens Council sworn; and, Ms Petra Tinker, Manager, Governance and Customer Services, Fairfield City Council, affirmed; all examined.

Ms Tinker provided documents to the Committee.

Evidence concluded, the witnesses and public withdrew.

The Committee adjourned at 5:15pm, until 9.45am Wednesday 27 August 2009.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.12)**

Thursday 27 August 2009 at 9.57am

Jubilee Room, Parliament House

**1. Members present**

Mr Furolo (Chair), Ms Beamer, Ms Gardiner, Mr Harwin and Ms Rhiannon.

In attendance: Les Gonye, Jasen Burgess, Amy Bauder and John Miller.

**2. Apologies**

Ms Fazio (Deputy Chair) and Mr Coombs.

**3. Public Hearing: Inquiry into 2008 local government elections**

The press and the public were admitted.

Mr Robert Hogan, Divisional Manager, Governance, Administration, and Executive Support, Waverley Council, sworn and examined.

Evidence concluded.

Cr Ted Cassidy PSM, Mayor, Ashfield Council, sworn; Mr Michael Sewell, Director of Business Services, Campbelltown City Council, affirmed; and, Cr Kate Lamb, Councillor Willoughby City Council, affirmed; all examined.

Evidence concluded.

Cr James Ashley Aitken, Mayor, Penrith City Council and Mr Alan Edward Stoneham, General Manager, Penrith City Council, both sworn and examined.

Penrith City Council provided a supplementary submission 5a to the Committee.

Evidence concluded.

Mr David Walker, General Manager, Baulkham Hills Shire Council, sworn; Ms Katherine Anne Bragg, Governance Officer, Gosford City Council, sworn; Mr John Michael Clark, Director, Corporate, Ku-ring-gai Council, sworn; and, Mr Craig Lawrence Dalli, Manager of Governance and Property, Blacktown City Council, affirmed; all examined.

Evidence concluded.

Cr Genia McCaffery, President, Local Government Association of New South Wales (LGSA), sworn; Mr Peter James Coulton, Director, Corporate Services, LGSA, affirmed; and, Ms Skye Lorelle Smith, Executive Officer, LGSA, affirmed; all examined.

Evidence concluded.

Mr Antony John Green, private citizen, affirmed and examined.  
Evidence concluded.

Mr Christopher Henry Maltby, Registered Officer, The Greens (New South Wales), Mr Max Phillips, former Greens Local Government Election Campaign Coordinator, and Dr Norman Lee Thompson, Member, The Greens Election Funding Working Group and Director, The Greens Political Donations Research Project, all affirmed and examined.

Dr Thompson provided a document to the Committee

Evidence concluded.

Resolved, on the motion of Mr Harwin, seconded Ms Beamer that the Committee deliberate in private to consider the document tabled by Dr Thompson.

The witnesses and public withdrew.

#### **4. Deliberation**

The Committee deliberated upon the material provided by Dr Thompson.

The Committee agreed to seek considered advice from the Clerk-Assistant (Committees) in relation to the material, prior to its publication.

#### **5. Continuation of public hearing: Inquiry into 2008 local government elections**

The press and public were admitted.

Mr Hugh Ronald Ermacora, President and Registered Officer, Our Sustainable Future, affirmed and examined.

Mr Ermacora provided documents titled "Our Sustainable Future Policy Platform 2008", "Our Sustainable Future Executive Committee Meeting Minutes" (for the dates 28 March 2009 and 30 May 2009) and a letter from Our Sustainable Future to the Premier dated 25 August 2009.

Evidence concluded.

Cr Raymond Lindsay Donald, Mayor, Bogan Shire Council and Cr Kevin Michael Ryan, Councillor, Bogan Shire Council, both sworn and examined.

Evidence concluded.

Mr Darren David Fittler, Management Committee Member, New South Wales Disability Discrimination Legal Centre (DDLCC), sworn; Mr Vaughan James Roles, Client Representative, Vision Australia, sworn; Ms Joanna Shulman, Principal Solicitor, New South Wales Disability Discrimination Legal Centre, affirmed; and, Mr Dean Price, Advocacy Projects Manager, People with Disability Australia (PWD), affirmed; all examined.

Evidence concluded, the witnesses and public withdrew.

#### **6. Deliberation**

##### **i. Resolution to publish the transcript of the public hearing of 27 August 2009.**

Resolved, on the motion of Ms Gardiner, seconded Mr Harwin, that the corrected transcript of the public hearing of 27 August 2009 be published and uploaded to the Committee's website, with the exception of the evidence from The Greens on which advice from the Clerks is sought.

##### **ii. Resolution to publish documents provided to the Committee**

The following resolutions were resolved in globo, on the motion of Ms Rhiannon, seconded Mr Harwin:

Resolution a.

That the following documents provided to the Committee be authorised for publication and be uploaded to the Committee's website:

- "Joint Standing Committee Inquiry on Electoral Matters – Introductory Notes" and "RAMROC Schedule of 2004 and 2008 Electoral Costs" provided by Mr Ray Stubbs on 26 August 2009.
- Documents provided by Ms Petra Tinker on 26 August 2009
- Document provided by NSW Electoral Commission on 26 August 2009
- "Our Sustainable Future Policy Platform 2008" provided by Mr Hugh Ermacora on 27 August 2009.

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Resolution b.

- 1) That, as requested by Cr Ryan of Bogan Shire Council in his evidence to the Committee on 27 August 2007, submission 61 from Bogan Shire Council be amended to remove the word “straight preferential” from point 4 line 2 and replace it with the word “optional preferential”.
- 2) That the amended submission 61 be authorised for publication and uploaded to the Committee’s website.

**iv. Resolution to publish supplementary submissions**

Resolved, on the motion of Mr Harwin, seconded Ms Gardiner that supplementary submissions 6a from Mr Paul Tracey and 5a from Penrith City Council be published in full and uploaded on the Committee’s website.

**v. Inquiry schedule, including any future hearings**

An updated inquiry timeline was distributed by the secretariat.

The Committee discussed seeking further information from Electoral Commissions in other jurisdictions regarding the postal voting in local government elections.

The Committee agreed to write to the NSWEC requesting detailed costing information on a per voter basis in regional areas of Victoria and comparisons of costs for similar areas in NSW.

Resolved, on the motion of Ms Rhiannon, seconded Ms Gardiner, that the Committee:

- take further evidence from the Electoral Commissioner at a future date;
- advise the LGSA that it has considered the arguments put forward in relation to its request concerning regional and rural hearings and, in view of the extent that councils have participated in the inquiry and the wide range of issues examined, it does not propose travelling to regional and rural areas to take more evidence.

**vi. Consultancy on election costs**

Correspondence from the NSWEC dated 16 July 2009 regarding the consultancy on election costs for the 2008 local government elections was previously circulated to Committee members.

The Committee deliberated on the consultancy on costs for the 2008 local government elections.

The Committee agreed to accept the bid from PKF Chartered Accountants and Business Advisors to undertake the consultancy on the costs of the 2008 local government elections. The Committee agreed that it would meet with PKF to highlight for it the specific issues for consideration.

**vii. General business**

The Committee adjourned at 5.15pm, sine die.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.13)**

Thursday 24 September 2009 at 4.37pm

Waratah Room, Parliament House

**1. Members present**

Mr Furolo (Chair), Ms Beamer, Mr Coombs, Ms Fazio, Ms Gardiner, Mr Harwin and Ms Rhiannon.

In attendance: Les Gonye, Jasen Burgess, Amy Bauder and Emma Wood.

**2. Confirmation of the minutes**

Resolved, on the motion of Ms Beamer, seconded Mr Coombs, that the minutes of the meetings of 26 and 27 August be confirmed.

**3. Inquiry into 2008 local government elections**

**Publication of documents**

**i. Consideration of documents provided by Mr Hugh Ermacora at the public hearing on 27 August 2009**

Resolved, on the motion of Ms Beamer, seconded Mr Coombs, that:

- the documents titled “Our Sustainable Future Executive Committee Meeting Minutes” (for the dates 28 March 2009 and 30 May 2009) provided by Mr Ermacora at the public hearing on 27 August 2009 remain confidential, in accordance with Mr Ermacora’s request.

- the letter from Our Sustainable Future to the Premier, dated 25 August 2009, and provided by Mr Ermacora at the public hearing on 27 August 2009, be authorised for publication and uploaded on the Committee’s website.

**ii. Consideration of the document included in Mr Paul Tracey’s supplementary submission 6a titled “Australia Post Proposal to Local Government NSW for Universal Postal Voting”**

Resolved, on the motion of Ms Beamer, seconded Ms Fazio, that the document titled “Australia Post Proposal to Local Government NSW for Universal Postal Voting” included in Mr Tracey’s supplementary submission 6a be considered confidential and be omitted from the published version.

**iii. Consideration of the NSWEC’s request that the Crown Solicitor’s charge out rate be omitted from response 1a of its answers to questions on notice, received 19 August 2009.**

Resolved, on the motion of Ms Beamer, seconded Mr Coombs, that all words after “Auditor General” be omitted from paragraph 1 of response 1a in the answers to questions on notice, in accordance with the NSWEC’s request for confidentiality.

**iv. Consideration of the publication of The Greens’ documents and transcript from the public hearing on 27 August 2009.**

The Committee noted the following document, previously circulated: “Advice in Relation to the Committee’s request from the meeting held on Thursday 28 August 2009”, relating to the publication of the document from Dr Norman Thompson of The Greens and the transcript of evidence from The Greens, from the Clerk-Assistant (Committees).

**a. Publication of the document provided by Dr Norman Thompson at the public hearing on 27 August 2009.**

Mr Harwin moved, seconded Mr Coombs, that the document provided to the Committee by Dr Thompson at the public hearing on Thursday 27 2009 be authorised for publication and uploaded to the Committee’s website, with the exception of Attachments 1 and 4.

Upon which Ms Rhiannon moved that the resolution be amended to delete the words “with the exception of Attachments 1 and 4”.

The amendment was not acceptable to the mover.

Amendment, put and passed.

Motion, as amended, put and passed.

**b. Publication of the transcript of The Greens’ evidence given at the public hearing on 27 August 2009.**

Resolved, on the motion of Ms Rhiannon, seconded Mr Coombs, that the corrected transcript of The Greens’ evidence from the public hearing on Thursday 27 August be authorised for publication and uploaded to the Committee’s website.

**v. Resolution to publish answers to questions taken on notice at the public hearings held on 26 and 27 August 2009.**

Answers to questions taken on notice at the public hearings from the NSW Electoral Commission, Gosford City Council and Blacktown City Council, previously circulated.

Resolved, on the motion of Ms Fazio, seconded Mr Coombs, that answers to questions taken on notice received from the following organisations be authorised for publication and uploaded to the Committee’s website:

- a. NSW Electoral Commission
- b. Gosford City Council
- c. Blacktown City Council.

**vi. Resolution to publish supplementary submission 66a from the Local Government Association of NSW and the Shires Association of NSW**

Supplementary submission 66a from the Local Government Association of NSW and the Shires Association of NSW, previously circulated.

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Resolved, on the motion of Ms Gardiner, seconded Ms Beamer, that supplementary submission 66a from the Local Government Association of NSW and the Shires Association of NSW be authorised for publication and uploaded to the Committee's website.

**Proposed public hearing**

**vii. Proposed date for a public hearing with the NSW Electoral Commission and the Liberal Party of Australia (NSW Division)**

The Committee agreed to hold the public hearing at 1pm on Monday 26 October 2009.

**viii. Questions on notice to the Electoral Commissioner and Chair of the Election Funding Authority for the upcoming hearing**

Draft questions on notice, previously circulated.

Resolved, on the motion of Ms Fazio, seconded Mr Coombs, that questions on notice be sent to the Electoral Commissioner and Chair of the Election Funding Authority, with a request that a response be provided a week prior to the public hearing.

The Committee agreed to request that the NSW Electoral Commission resubmit their answers to questions taken on notice at the public hearing on the 26 August 2009 with the tables reformatted in chronological order, rather than the current alphabetical by council order.

The Committee adjourned at 4.44pm, until 1pm Monday 26 October 2009.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.14)**

Monday 26 October 2009 at 2.00 pm

Room 814-5, Parliament House

**1. Members present**

Mr Furolo (Chair), Mr Coombs, Ms Gardiner, Mr Harwin and Ms Rhiannon.

In attendance: Pru Sheaves, Amy Bauder and Les Gonye.

**2. Apologies**

Ms Beamer and Ms Fazio

**3. Public Hearing: Inquiry into 2008 local government elections**

The press and the public were admitted.

Mr Colin Anthony Barry, Electoral Commissioner, New South Wales Electoral Commission (NSWEC) and Chair, Election Funding Authority (EFA), affirmed; Mr Trevor Alan Follett, Director, Finance and Administration, NSWEC, affirmed; Mr Brian Vincent DeCelis, Director, Funding and Disclosures, NSWEC, sworn; and, Dr Elizabeth Mary Coombs, Leader, Performance Reporting Team, NSWEC, all on previous oath or affirmation, further examined.

Evidence concluded, the witnesses and public withdrew.

**4. Deliberation**

**i. Minutes**

Resolved, on the motion of Mr Coombs, seconded Ms Gardiner that the minutes of the meeting of 24 September 2009 be confirmed.

**ii. Publication of Transcript.**

Resolved, on the motion of Ms Rhiannon, seconded Mr Harwin, that the corrected transcript of the public hearing of 26 October 2009 be authorised for publication and uploaded to the Committee's website.

**iii. Publication of NSWEC answers to questions on notice**

Resolved, on the motion of Mr Harwin, seconded Mr Coombs that the answers to questions on notice received from the NSW Electoral Commission and the Election Funding Authority on Wednesday 7 October 2009 be authorised for publication and uploaded to the Committee's website.

**iv. Publication of Revised Attachments to earlier NSWEC answers to questions on notice**

Resolved, on the motion of Ms Rhiannon, seconded Mr Coombs, that the revised version of attachments A and B of the NSW Electoral Commission's answers to questions taken on notice at the public hearing held 26 August 2009 be authorised for publication and uploaded to the Committee's website.

**v. Briefing from PKF Chartered Accountants**

The Chair reported that he and Mr Harwin, as members of the Committee's consultancy monitoring group, held a preliminary briefing with auditors from PKF Chartered Accountants on Tuesday 20 October 2009.

Mr Tom Fazio, Ms Louise Taylor and Ms Courtney Licciardo, auditors of PKF Chartered Accountants, were admitted and briefed the committee on the progress of the audit review of the NSWEC methodology and framework for charges back to councils for the conduct of the 2008 Local Government elections.

**vi. General Business**

The Chair informed the Committee of a general timetable for the preparation and circulation of a draft report to meet the early March 2010 reporting date.

The Committee adjourned at 3:50pm, until a date to be determined.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.16)**

Wednesday, 9 December 2009 at 4.00pm  
Waratah Room, Parliament House

**1. Attendance**

Members present: Mr Furolo (Chair), Ms Beamer, Mr Coombs, Ms Gardiner, Mr Harwin, Ms Rhiannon, Mr Veitch.

In attendance: Helen Minnican, Carly Sheen, Amy Bauder and Emma Wood.

2. \*

**3. Deliberation**

- i. \*\*\*
- ii. \*\*\*
- iii. \*\*\*

**iv. Inquiry into the 2008 local government elections**

Resolved, on the motion of Ms Gardiner, seconded Mr Coombs that NSW Electoral Commission answers to questions on notice at the public hearing held on 26 October 2009, and submission 72 be authorised for publication and uploaded to the Committee's website.

- v. \*
- vi. \*

The Committee adjourned at 5.50pm, until a date to be determined.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.19)**

Monday, 15 February 2010 at 10.00am  
Room 1102, Parliament House

**1. Attendance**

Members present: Mr Furolo (Chair), Ms Beamer, Mr Coombs, Ms Gardiner, Mr Harwin, Ms Rhiannon, Mr Veitch.

In attendance: Helen Minnican, Carly Sheen, Dora Oravec and Emma Wood.

2. \*\*\*

**3. Inquiry into the 2008 local government elections**

Correspondence received - The Committee noted receipt of correspondence received from the Queensland Electoral Commissioner, in response to the Chair's letter of 25 November 2009, previously distributed.

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Inquiry update – The Committee discussed the status and conduct of the inquiry and agreed that the Chair write to the Premier requesting that the current reporting date of 2 March 2010 be extended to 1 June 2010, and indicating that the Committee will report as soon as possible on the inquiry.

4. \*\*\*

The Committee adjourned at 1.00pm, until 22 February 2010 at 10.00am.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.20)**

Monday, 22 February 2010 at 10.00am

Waratah Room, Parliament House

**1. Attendance**

Members present: Mr Furolo (Chair), Ms Beamer, Mr Coombs, Ms Gardiner, Mr Harwin, Ms Rhiannon, Mr Veitch.

In attendance: Helen Minnican, Carly Sheen, and Amy Bauder.

Also present: Ian Rakafia and Albert Kabui (parliamentary officers, National Parliament of Solomon Islands)

**2. Confirmation of the minutes**

Resolved on the motion of Mr Coombs, seconded Mr Harwin, that the minutes of the deliberative meeting held on 15 February 2010 be confirmed.

3. \*

**4. Deliberative meeting**

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**c. Inquiry into the 2008 local government elections**

The Committee noted receipt of the following items of correspondence in relation to the 2008 local government elections inquiry:

- Correspondence received from Western Australia Electoral Commission (previously circulated);
- Correspondence received on from NSWEC on the consultant's report from November 2009. The Chair advised that the Secretariat was in the process of assessing the correspondence and other relevant information to advise the Committee on possible findings and recommendations for inclusion in the Chair's draft report – the correspondence would be distributed with a briefing shortly. The Committee agreed to consider both items of correspondence in detail at a later deliberative meeting.

d. \*\*\*

The Committee adjourned at 1.34pm, until 26 February 2010 at 11.00am.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.29)**

Friday 21 May 2010 at 9.35am

Room 1254, Parliament House

**1. Attendance**

Members present: Mr Furolo (Chair), Mr Veitch, Ms Beamer, Ms Gardiner, Mr Harwin, Ms Rhiannon.

In attendance: Helen Minnican, Carly Sheen, Amy Bauder, Dora Oravec.

**2. Apologies**

Mr Coombs.

**3. Inquiry into the 2008 local government elections**

The Committee discussed the distribution of the Chair's draft report and agreed to reconvene on Monday 24 May 2010 at 11.00am to allow Committee members more time to consider the report.

The Committee adjourned at 9.45am, until 24 May 2010 at 11.00am.



**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.30)**

Monday, 24 May 2010 at 11.05am

Room 1254, Parliament House

Proceedings conducted by electronic means pursuant to Standing Order 295.

**1. Attendance**

Members present at Parliament House: Mr Furolo (Chair), Ms Gardiner, Mr Harwin, Ms Rhiannon, Mr Veitch.

Member via teleconference: Ms Beamer

In attendance: Helen Minnican, Carly Sheen, Amy Bauder, Dora Oravec, Vanessa Pop.

**2. Apologies**

Mr Coombs.

**3. Confirmation of the minutes**

Resolved on the motion of Mr Harwin, seconded Mr Veitch, that the minutes of the meetings held on 29 April and 21 May 2010, be confirmed.

**4. Inquiry into the 2008 local government elections**

The Committee proceeded to consider the Chair's draft report (previously circulated) and schedule of amendments, updated to include amendments to the Executive Summary arising from the meeting on 21 May. The Committee also considered proposed amendments from Ms Rhiannon and Mr Harwin.

The Chair spoke to the updated schedule of amendments, as previously circulated.

Resolved on the motion of Ms Gardiner, seconded Ms Beamer, that the following amendments contained in the schedule be adopted and included in the Committee's report:

**List of recommendations** (also appearing in the body of the report)

Insert the word 'appropriate' before the word 'Minister' in Recommendation 2(a).

Insert the word 'State' before the words 'Government Service Charters' in Recommendation 6(a) and make consequential amendments to the body of the report.

**Executive Summary**

Insert in the Executive Summary after the first sentence in the 3rd paragraph the following words:

'The Committee's inquiry was conducted in the context of significant concern and anxiety on the part of councils across the State in relation to the conduct and administration of the 2008 local government elections. The inquiry resulted from efforts by the Local Government and Shires Association (LGSA) to convey to the Government and the public the level of dissatisfaction on the part of individual councils about the cost of the election and the implementation of full cost recovery. In particular, Councils strongly objected to the costs that were well above what they had paid to the NSWEC in relation to the conduct of the previous local government elections.

In the lead up to the inquiry, media reports on the local government elections focused on the increase in charges<sup>443</sup> and the fairness of the increase in light of 'rate pegging' by the government, which limits councils' capacity to increase income. Councils raising this issue included Tamworth, Maitland, Bathurst, and Armidale Dumaresq.<sup>444</sup> Complaints regarding the conduct of the election also were raised in the media, including:

<sup>443</sup> 'Our \$260,000 election', *Manning River Times*, 27 June 2008,

<http://taree.yourguide.com.au/news/local/news/general/our-260000-election.799050.aspx>, accessed 18 March 2009; L. Ashworth, 'Commission's ballot box rort', *Lithgow Mercury*, 24 June 2008,

<http://lithgow.yourguide.com.au/news/local/news/general/commissions-ballot-box-rort/795378.aspx>, accessed 16 March 2009; P. Barrett, 'The price of democracy', *Armidale Express*, 23 June 2008,

<http://armidale.yourguide.com.au/news/local/news/general/the-price-of-democracy/794658.aspx>, accessed 18 March 2009.

<sup>444</sup> D. Gregory, 'Revolt by councils – we won't pay up', *The Sun-Herald*, Sunday 8 March 2009, p. 35; B. Snedden, 'Cost to count your vote', *Maitland Mercury*, 3 September 2008,

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- understaffing of polling booths<sup>445</sup>;
- polling places running out of ballot papers<sup>446</sup>;
- too little or poor advertising of the date of elections and of the location of polling places<sup>447</sup>; and
- incorrect information provided to candidates on election results.<sup>448</sup>

The Committee ensured that all of these issues were examined carefully when inviting submissions and hearing from witnesses, including the NSW Electoral Commission.'

The second sentence in the third paragraph of the Executive Summary, commencing with the words "All councils were...evidence before the Committee" be made a new paragraph.

**Introduction** - Insert the following paragraph after paragraph 1.5:

In preparing its submission to the inquiry, the Local Government and Shires Association (LGSA) called upon its members to provide information and feedback on their experience of the elections.<sup>449</sup> This information was reflected in the LGSA's submissions and evidence to the Committee's inquiry. The Committee was, therefore, cognisant that the issues raised during the inquiry stemmed from concerted efforts by the LGSA and councils to air their concerns and have issues addressed. Consequently, these views were considered by the Committee at all stages of the inquiry and have informed its deliberations on the report and recommendations.

**Chapter 1** – Omit the following words from paragraph 3.68:

'The table below is a collation of this information as provided in submissions from councils.'

And insert instead:

'The table below collates figures provided in council submissions and where councils did not provide figures information was used from other sources, including the NSW Electoral Commission's Report on the 2008 local government elections.'

**Chapter 4** – Delete paragraph 4.1.

Insert the words "used for the Legislative Council and local government counts" after the words, 'The NSWEC has stated that the software system' in paragraph 4.193.

The Chair opened discussion on the amendments proposed to the report by Mr Harwin, as distributed. Mr Harwin spoke to the amendments. Discussion ensued.

**Chapter 4** - Resolved on the motion of Mr Harwin, that the words 'The LGSA expressed opposition to universal postal voting' be omitted from paragraph 4.113.

**Chapter 4** - Resolved on the motion of Mr Harwin, that the word 'model' be inserted after the word 'Victorian' in paragraph 4.122.

The Chair opened discussion on the amendments proposed to the report by Ms Rhiannon, previously distributed.

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<http://www.maitlandmercury.com.au/news/local/news/general/cost-to-count-your-vote/1261208.aspx>, accessed 17 March 2009; Wood, B. 'Election bill soars by 349pc', *Western Advocate*, 5 June 2008, <http://www.westernadvocate.com.au/news/local/news/general/election-bill-soars-by-349pc/783642.aspx>, accessed 17 March 2009; P. Barrett, 'The price of democracy', *Armidale Express*, 23 June 2008, <http://armidale.yourguide.com.au/news/local/news/general/the-price-of-democracy/794658.aspx>, accessed 18 March 2009.

<sup>445</sup> 'NSW council elections under scrutiny', *Government News*, Thursday 12 March 2009, <http://www.governmentnews.com.au/2009/03/12/article/ZNIWKTHOWY.html>, accessed 18 March 2009.

<sup>446</sup> Ibid; and 'Election bill row', *The Sunday Telegraph*, Sunday 14 December 2008, p. 24.

<sup>447</sup> 'Mayor says council should run election', *Liverpool Champion*, 5 November 2008, <http://liverpool.yourguide.com.au/news/local/news/general/mayor-says-council-should-run-election/1351676.aspx>, accessed 18 March 2009; 'A vote of no confidence', *The Sydney Morning Herald*, 4 November 2008, p. 24.

<sup>448</sup> 'A vote of no confidence', *The Sydney Morning Herald*, 4 November 2008, p. 24.

<sup>449</sup> LGSA, 'Item 17: Inquiry into 2008 Local Government elections', *Local Government Weekly*, 10/09, 13 March 2009, p. 24.

Cost to councils of conducting election – Ms Rhiannon moved that Recommendation 3 be deleted and the following words inserted instead:

‘Recommendation 3: That the cost of NSW Local Government elections be funded by the NSW Government as part of the NSW Electoral Commission’s budget.’

Discussion ensued. Question put.

The Committee divided.

Ayes: Ms Rhiannon

Noes: Mr Furolo, Ms Beamer, Ms Gardiner, Mr Harwin, Mr Veitch

Question negatived.

The non-residential roll – Ms Rhiannon moved that Recommendation 8(a)-(d) be deleted and the following words inserted instead:

‘Recommendation 8: That only residents of a local government area be eligible to vote and stand as candidates in the local government area where they reside.’

Discussion ensued. Question put.

The Committee divided.

Ayes: Ms Rhiannon

Noes: Mr Furolo, Ms Beamer, Ms Gardiner, Mr Harwin, Mr Veitch

Question negatived.

Moved Mr Furolo, seconded Ms Beamer, that the following words be inserted in the report and that the amendment be circulated to members for concurrence:

‘The Committee did not receive sufficient evidence to enable it to draw conclusions about the proposal that only residents of a local government area be eligible to vote and stand as candidates in the local government area where they reside. Consequently, the Committee suggests that this issue should be considered as part of the recommended inquiry into the 2012 local government elections.’

Discussion ensued. Question put.

Amendment agreed to.

Above the line voting for councils with wards – Ms Rhiannon moved that Finding 1 be omitted and the following recommendation be inserted instead:

‘Recommendation: Group Voting Squares and above the line voting be abolished for council elections with wards where more than one candidate is to be elected.’

Discussion ensued. Question put.

The Committee divided.

Ayes: Ms Rhiannon

Noes: Mr Furolo, Ms Beamer, Ms Gardiner, Mr Harwin, Mr Veitch

Question negatived.

Two-councillor per ward system - Ms Rhiannon moved that the following recommendation be inserted in the report:

‘Recommendation: The NSW Government should legislate to require a minimum of three councillors per ward for councils with wards.’

Discussion ensued. Question put.

The Committee divided.

Ayes: Ms Rhiannon

Noes: Mr Furolo, Ms Beamer, Mr Veitch

Abstained: Mr Harwin, Ms Gardiner

Question negatived.

Resolved on the motion of Ms Beamer, seconded Mr Veitch that:

- this issue be included as a specific subject of inquiry in the recommended inquiry into the 2012 local government elections and that the report be amended accordingly;
- the following words to be inserted in the body of the report:

**Voting system for election of councillors**

The Committee did not consider the voting systems in local councils in any great detail, and received very limited evidence on this issue. Currently, optional preferential voting is used where one or two councillors are to be elected, and proportional representation is used where three or more councillors are to be elected. It was submitted that where two councillors are to be elected, a proportional voting system may better reflect the intentions of voters, rather than the existing optional preferential voting system. Given the limited evidence received, the Committee agreed that this should be considered as part of the review of the 2012 local government election.

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Popularly elected mayors - Ms Rhiannon moved that the following recommendation be inserted in the report:

‘Recommendation: The election of popularly elected mayors be changed so that the mayoral ballot elects the mayor from among those councillors elected in the normal manner.’

Discussion ensued. Question put.

The Committee divided.

Ayes: Ms Rhiannon

Noes: Mr Furolo, Ms Beamer, Ms Gardiner, Mr Harwin, Mr Veitch

Question negated.

Public funding of local government elections – Ms Rhiannon moved that the following recommendation be inserted in the report:

‘Recommendation: That the candidate funding system used for NSW parliamentary elections be extended to NSW local council elections, using a 4% vote threshold but potentially at a lower per-vote rate.’

Question put.

The Committee divided.

Ayes: Ms Rhiannon

Noes: Mr Furolo, Ms Beamer, Ms Gardiner, Mr Harwin, Mr Veitch

Question negated.

Registration of parties - Ms Rhiannon moved that the following recommendation be inserted in the report:

‘Recommendation: That parties that have been registered for 10 years only be required to fulfil continuation of registration requirements by 30 June of every second year beginning in 2010 so that continued registration is confirmed prior to each state and local government general elections.’

Question put.

The Committee divided.

Ayes: Ms Rhiannon

Noes: Mr Furolo, Ms Beamer, Ms Gardiner, Mr Harwin, Mr Veitch

Question negated.

The Committee agreed that:

- the body of the report be amended to indicate that the Committee will consider the issue of registration of parties as part of its forthcoming inquiry into the public funding of local government elections; and
- accordingly, the following words be inserted in the body of the report:

The Committee intends to consider issues of public funding for local government elections in greater detail as part of a follow-up inquiry. This will allow for further investigation of issues raised as part the current inquiry, including the registration of political parties.

Improved nomination forms - Ms Rhiannon moved that the following recommendation be inserted in the report:

‘Recommendation: That the requirement that a candidate’s signature on a local government election nomination form be witnessed by a Justice of the Peace be discontinued.’

Discussion ensued.

Question put.

Amendment agreed to.

Request to form a Group - Ms Rhiannon moved that the following recommendation be inserted in the report:

‘Recommendation: That the “Request to form a Group” form be reviewed with a clear space provided on the form to write the name of the group. The composite name request section should be on a separate form or clearly specify that it is not to be used by candidates running on a single party ticket.’

Discussion ensued.

Ms Rhiannon withdrew her amendment, as the Committee agreed that the Chair write to the Electoral Commissioner highlighting concern about the issue and seeking his advice.

Access - Ms Rhiannon moved that the following recommendation be inserted in the report:

‘Recommendation: That more priority be given to disability access for polling places.’

Question put. Amendment agreed to.

Joint electorate how-to-votes and shared polling booths – Ms Rhiannon spoke to her proposed amendment that the following recommendation be inserted in the report:

‘Recommendation: The Electoral Commission either allow joint-electorate how-to-votes or not have joint electorate polling booths in future elections.’

Discussion ensued.

The Chair moved that the following recommendation be inserted in the report:

‘Recommendation: The Electoral Commissioner be asked to examine multi-ward and multi-council how-to-vote cards in dual-ward or dual-council polling places, with a view to allowing joint electorate or joint ward how-to-vote cards.’

Question put. Amendment agreed to.

Absent voting - Ms Rhiannon spoke to her proposed amendment that the following recommendation be inserted in the report:

‘Recommendation: That use of on-demand printing of ballot papers be investigated with a view to allowing absent voting in local government elections.’

Discussion ensued.

The Chair moved that the report be amended to include the following:

‘That the NSW Electoral Commission prepare a report for the Committee’s consideration on absent voting in local government elections, with specific reference to the issues involved in providing for absent voting, possible remedies to any obstacles preventing the implementation of absent voting, costs to local councils, and relevant arrangements in other jurisdictions.’

Question put. Amendment agreed to.

Inadequate notification of the election – Ms Rhiannon moved that the following recommendation be inserted in the report:

‘Recommendation: That a higher proportion of the NSW Government’s advertising budget be spent advertising the next local government general election in the fortnight preceding polling day.’

Discussion ensued. Question put.

Amendment agreed to.

Contact with polling officials - Ms Rhiannon spoke to her proposed amendment that the following recommendation be inserted in the report:

‘Recommendation: That where possible the phone line to contact the Returning Officer be a land line.’

Discussion ensued.

The Chair moved that Recommendation 7(b) be amended by omitting the words ‘the RRO’ and inserting instead the words ‘all Returning Officers’.

Question put. Amendment agreed to.

Training of polling booth staff - Ms Rhiannon spoke to her proposed amendment that the following recommendation be inserted in the report:

‘Recommendation: That more time and money should be spent training staff, particularly on the choices available to voters when allocating preferences, and the differences between the voting systems used in local, State and Federal elections.’

Discussion ensued.

The Chair moved that the following words be inserted in the report:

The Committee considers that the post-election survey could also provide a useful measure of elector opinions about the knowledge and helpfulness of polling place staff. Where shortcomings are identified, the Electoral Commissioner should report to the Committee on what action is proposed to improve training of polling place staff.

Discussion ensued. Question put.

Amendment agreed to.

Ms Rhiannon moved that the original proposed amendment be adopted.

Question put.

Ayes: Ms Rhiannon

Noes: Mr Furolo, Ms Beamer, Ms Gardiner, Mr Harwin, Mr Veitch

Question negated.

Waiting times - Ms Rhiannon spoke to her proposed amendment that the following recommendation be inserted in the report:

‘Recommendation: That staffing levels at joint ward polling booths be reviewed by the Electoral Commission and appropriately increased.’

Discussion ensued.

Ms Rhiannon moved that the following words be inserted in Recommendation 10(c), ‘including multi ward and multi council polling places.’

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Discussion ensued. Question put.  
Amendment agreed to.

Local counting – The Chair addressed the Committee on the amendment proposed by Ms Rhiannon that the following recommendation be inserted in the report:

‘Recommendation: Counting should be done in local returning offices.’

Discussion ensued.

Ms Rhiannon withdrew her proposed amendment.

Recounts - Ms Rhiannon spoke to her proposed amendment that the following recommendation be inserted in the report:

‘Recommendation: A pre-determined close election result trigger for a free recount of the vote needs to be created. If there are significant count irregularities then the margin for a free recount may be larger with such a recount invoked at the discretion of the relevant electoral official, or upon payment for the cost of the recount by the person(s) requesting it.’

Discussion ensued.

The Committee agreed that the report be amended to indicate that:

- the Committee would consider preparing an outline of relevant issues (to be compiled by the Secretariat), which would be provided to the Electoral Commissioner for a response;
- that the issues on which the Electoral Commissioner’s advice be sought are to include:
  - The frequency with which close ballots occur, for instance in the case of elections determined by less than 10 votes and less than 50 votes.
  - The costs that would be involved for councils where recounts are conducted.
  - Recounts arising from manual counts and data entry counts.
  - The impact of the size of the council area.
  - Approaches taken in other relevant jurisdictions
- The Committee defers making findings and recommendations on this issue until it has had an opportunity to consider the Electoral Commissioner’s response and seek input from local councils and stakeholders, as considered necessary.

The Committee agreed to advise the Premier of its decision in this regard.

**Adoption of the report**

Resolved on the motion of Mr Furolo, seconded Mr Veitch, that:

- a. the draft report, as amended, be the Report of the Committee, subject to consensus on the updated schedule of amendments to be circulated to Committee members, and that it be signed by the Chair and presented to each House;
- b. the Committee reconvene via teleconference in the event that there are any objections to the updated schedule of amendments, as circulated;
- c. the Chair, the Committee Manager and the Senior Committee Officer be permitted to correct minor, stylistic, typographical and grammatical errors.

5. \*\*\*

There being no further items of business, the deliberations concluded at 12.26pm and the Committee adjourned sine die.

**Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no.31)**

Monday, 31 May 2010 at 10.06am

Room 1254, Parliament House

Proceedings conducted by electronic means pursuant to Standing Order 295.

**1. Attendance**

Member present at Parliament House: Mr Furolo (Chair).

Members via teleconference: Mr Coombs, Ms Beamer, Ms Rhiannon.

In attendance: Helen Minnican, Carly Sheen, Amy Bauder, Dora Oravec, Vanessa Pop.

**2. Apologies**

Ms Gardiner, Mr Harwin, Mr Veitch.

**3. Confirmation of the minutes**

Resolved on the motion of Ms Beamer that the minutes of the meeting held on 24 May 2010, be confirmed.

**4. Inquiry into the 2008 Local Government Elections**

The Committee agreed to adopt the following amendments contained in the updated schedule of amendments, as previously circulated:

Insert after para 4.30 and before Recommendation 5:

**Communication with electors**

The Committee acknowledges that the NSWEC implemented communication initiatives for the 2008 local government elections, including:

- the distribution of 940,806 election information brochures;
- provision of voter information in 24 languages; and
- the placing of 163 press advertisements in a mix of general, multilingual and Aboriginal press throughout NSW, 3,244 radio advertisements, and 260 'live reads'. 217 different local newspapers used with at least one newspaper from each council area.<sup>450</sup>

However, a number of inquiry participants expressed concern that there was insufficient community awareness of the 2008 local government elections.

**Recommendation 5**

Insert before 'That a higher': 'The Committee recommends'

Delete after 'local government' the word 'general'

Insert after Recommendation 9 and before Recommendation 10:

**Nomination forms**

All candidates are required to lodge a Candidate Information Sheet (CIS) as part of the nomination form. The CIS must be signed by the candidate and witnessed by a Justice of the Peace.<sup>451</sup> The Greens argued that this is not the practice for state and federal elections, and that there have been no negative repercussions in these jurisdictions.<sup>452</sup> The Committee supports removal of the requirement for a Justice of the Peace to witness a candidate's nomination.

**Recommendation 10**

Insert before 'That the requirement': 'The Committee recommends'

Insert after Recommendation 12:

**Absent voting**

The Committee received some evidence supporting the introduction of absent voting for local government elections. However, the evidence received from the Electoral Commissioner indicated that there were a number of practical barriers, including the number of ballot papers of varying sizes that would either need to be available or printed at polling places. The Electoral Commissioner also warned that the benefit and demand for absent voting should be considered against an increase in costs.<sup>453</sup> The Committee considers that this issue warrants further investigation.

Amend para 4.136:

Insert the following words before 'That the' in the first line 'The Committee intends to request'

Insert after para 4.136:

**How-to-vote cards**

Under clause 356C(7) of the Local Government (General) Regulation 2005 a how-to-vote card does not comply with the regulation if it contains voting directions relating to two or more local government areas. The Committee

<sup>450</sup> NSW Electoral Commission, *NSWEC Annual Report 2008/2009*, 30 October 2009, p. 21.

<sup>451</sup> NSW Electoral Commission, *The nomination process*, [http://www.elections.nsw.gov.au/local\\_government\\_elections/candidates/the\\_nomination\\_process](http://www.elections.nsw.gov.au/local_government_elections/candidates/the_nomination_process), accessed on 24 May 2010.

<sup>452</sup> The Greens, *Submission 51*, p. 8.

<sup>453</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 October 2009, pp. 8-9.

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received evidence that this created difficulties for some parties during the 2008 local government elections in relation to multi-council polling places.<sup>454</sup>

Amend Recommendation 13:

Insert before 'The Electoral Commissioner' the following words 'The Committee recommends that'

Delete the following words 'be asked to'

Delete the following words 'multi-ward and'

Replace 'in dual-ward or dual council' with 'for multi-council'

Replace 'joint electorate or joint-ward' with 'multi-council'.

Amend Recommendation 14:

Insert before 'That more priority' the following words: 'The Committee recommends'

Insert after para 4.230:

**Recounts**

Any candidate can request a recount. Candidates must submit requests in writing to the RO within 24 hours of being notified of the election result. The request must set out the reasons for the count, and be signed by the candidate. A deposit to cover the costs of the recount must also be lodged.<sup>455</sup> If there is a change to the result, the deposit is returned to the candidate.<sup>456</sup> The Electoral Commissioner can also direct a recount.<sup>457</sup> During the 2008 local government elections two recounts were conducted, with no change to the outcome of either election. The cost to candidates wishing to request a recount was raised as an issue during the inquiry, particularly in cases where a small number of votes determined the result. It was acknowledged that the Electoral Commissioner currently has discretion to direct that a recount be conducted at no cost to the candidate.<sup>458</sup> In their submission to the inquiry, The Greens recommended that:

'A pre-determined close election result trigger for a free recount of the vote needs to be created. If there are significant count irregularities then the margin for a free recount may be larger with such a recount invoked at the discretion of the relevant electoral official, or upon payment for the cost of the recount by the person(s) requesting it.'<sup>459</sup>

The Committee believes that this matter warrants further consideration, and will consider preparing an outline of issues, on which it will seek a response from the Electoral Commissioner. Some of these issues may include:

- The frequency with which close ballots occur, for instance in the case of elections determined by less than 10 votes and less than 50 votes.
- The costs that would be involved for councils where recounts are conducted.
- Recounts arising from manual counts and data entry counts.
- The impact of the size of the council area.
- Approaches taken in other relevant jurisdictions.

The Committee defers making findings and recommendations on this issue until it has had an opportunity to consider the Electoral Commissioner's response and seek input from local councils and stakeholders.

Executive Summary put and agreed to.

Chapter 1 put and agreed to.

Chapter 2 put and agreed to.

Chapter 3 put and agreed to.

Chapter 4, as amended, put and agreed to.

List of Recommendations, as amended, put and agreed to.

Resolved on the motion of Ms Beamer that:

- a. the draft report, as amended, be the Report of the Committee, and that it be signed by the Chair and presented to each House;
- b. the Chair, the Committee Manager and the Senior Committee Officer be permitted to correct minor, stylistic, typographical and grammatical errors.

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<sup>454</sup> The Greens, *Submission 51*, p. 8.

<sup>455</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 112.

<sup>456</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 13-14.

<sup>457</sup> NSW Electoral Commission, *Report on the 2008 Local Government Elections*, June 2009, p. 112.

<sup>458</sup> Mr Colin Barry, Electoral Commissioner, NSW Electoral Commission, *Transcript of evidence*, 26 August 2009, p. 13-14.

<sup>459</sup> The Greens, *Submission 51*, p. 11.



There being no further items of business, the deliberations concluded at 10.09am and the Committee adjourned sine die.