

Joint Standing Committee on Electoral Matters - Inquiry into the 2015 NSW State Election

NSWEC answers to Questions on Notice

1. Registration and approval of social media posts

The Hon. ROBERT BORSAK: For our submission—the Shooters, Fishers and Farmers Party submission—to this committee, we were looking at making suggestions about the use of social media. I think what happened in the campaign was that, when we were putting sponsored posts up, we had to submit those social media posts for prior approval. Do you have a view on that?

We were told that sponsored posts were effectively advertising and we had to have them pre-vetted—and that is what our people did.

Response

- 1.1 The NSWEC does not have any record of staff advising any registered political party that they had to have social media posts approved. The registration process implemented for SGE 2015 was for electoral material only, i.e., registration of electoral material for distribution on election day as required by Part 5 Division 17 of the *Parliamentary Electorates and Elections Act 1912* [PE&EA]. The NSWEC did not register any other materials such as posters, electronic media or social media.

2. Limiting the number of candidates in a LC group

The Hon. COURTNEY HOUSSOS: On the issue of limiting candidates to 21 per group, how often has a group nominated more than 21 in the past? You can take that on notice if you like. Is it commonplace or is it something that is an aberration?

Mr KWOK: It is not common, but certainly there was one instance in the 2015 election—one group that indicated that they intended to nominate more than 21 candidates. Eventually they did not, but they certainly gave an indication to us that they would. Can I just point out also that, upon getting that news, we actually had to make some contingencies. As you can appreciate, the printing of the ballot paper is a large-scale logistical exercise. It requires paper to be procured. The size of the papers is constrained by our suppliers' tendering process, if you like. We had to make some contingency in procuring different sized ballot paper on the chance that we have to cater for a larger group beyond 21.

Response

- 2.1 In the 2015 SGE one group indicated they intended to nominate more than 21 candidates, but did not ultimately do so. A review of LC ballot papers from 2015, 2011, 2007, 2003 and 1999 found that the maximum number of candidates for a group was 21.
- 2.2 Had that group proceeded to so nominate, the NSWEC would have been put to considerable difficulties in preparing the LC ballot papers, and it is on this basis that we propose the express limitation be included in the electoral legislation.

3. Third party campaigners & legislative requirements

The Hon. COURTNEY HOUSSOS: I have a final question on third party campaigners. The requirements on third party campaigners are very onerous under the legislation, the same as for registered political parties. We have heard that third party campaigners found it difficult to get advice from the Electoral Commission as to what is appropriate and what is not. This is something that registered political parties work out over elections. We heard that the Electoral Commission specifically does not provide advice on what is appropriate and what is not. Is that a legislative problem or is that a policy decision from the Electoral Commission?

Response

- 3.1. Third-party campaigners [TPCs] have legal obligations regarding their election campaign finances which are set out in the *Election Funding, Expenditure and Disclosures Act 1981* [EFEDA]. Information regarding compliance with these requirements is made available through the NSWEC website (including via downloadable fact sheets), telephone advice, direct communication by email and post, paid advertising and through social media, including Facebook and Twitter.
- 3.2. The exact nature of the advice provided by the NSWEC will depend on the circumstances of, and the information provided in, the individual inquiry.
- 3.3. The NSWEC does not provide legal advice regarding the interpretation of legislative provisions.

4. Postal Voting

The Hon. PETER PRIMROSE: I also have a number of questions, but I will stick to one this time. I will ask you to take it on notice for the reason that I do not want your answer to give a menu to miscreants to go through a checklist of things that they might do incorrectly. I note that in your submission you are saying that you will undertake further work to enhance the security of vote and we will get on to that in a moment, but we have heard evidence again today pointing out that other non-attendance voting is also of a concern in relation to possible tampering or security and one that was raised, of course, is postal voting. While the number of postal voters is declining, the Government, and I think incorrectly, has introduced legislation which will allow local councils to have universal postal voting and has given you, in its current budget, \$1.5 million to begin introducing and developing that process.

That may, in fact, lead to an increase in postal voting if you have local councils conducting elections by universal postal voting rather than attendance voting. My question to you is what proposals do you envisage you could introduce and what sort of recommendations might we make if we are required to do so that may enhance the security of postal voting? Local government is not an issue for this Committee at the moment, but if it is introduced, and it will be allowed for under this legislation, it is very likely the numbers will increase and it would seem to me that that may be even a greater issue of concern for vote tampering than the iVoting system.

Response

- 4.1. As postal vote ballot papers are distributed via the postal system; unlike other ballot papers, the NSWEC has no control over their secure transmission. As Australia Post relies on a network of contractors for delivery of mail, the end to end process may involve handling by many people. Because postal ballot papers are delivered with other general mail items,

security measures such as sealed containers, dedicated secured couriers and delivery manifests are not possible.

- 4.2. With perhaps the exception of Registered Post, mail delivery is not a guaranteed delivery service. Introducing Registered Post for the distribution of postal vote applications [PVAs] and postal vote ballot papers is prohibitively expensive, based on the following figures from 2015:

A minimum of \$5.60 each way x 263,464 PVAs, plus the same number of ballot papers provided, plus \$350k operational costs wrapped around this process = approximately \$6M.

- 4.3. Delivery by Registered Post also requires signatures, putting thousands of postal voters to the inconvenience of either staying at home to sign for the PVA and their ballot papers, or attending at their local post office to collect both, with the potential to delay both the receipt of PVAs and ballot papers and their return to the NSWEC.

5. Elector data from iVote database

The Hon. Dr PETER PHELPS: In relation to iVoting, is it possible for iVoting details to be forwarded to political parties and candidates in the relevant registered iVoter's electorate?

Mr SCHMIDT: In the way that registered postal voters are?

The Hon. Dr PETER PHELPS: Yes.

Mr RADCLIFFE: We obviously gather, as we mark them off—

The Hon. Dr PETER PHELPS: Emails and mobile phones—

Mr RADCLIFFE: We collect that data if there is legislative provision to provide it.

The Hon. Dr PETER PHELPS: Is there any feasibility issue with providing that?

Mr RADCLIFFE: At the end of the election, no.

The Hon. Dr PETER PHELPS: No, not at the end of the election.

Mr BEEREN: I think there is some confusion about what you are suggesting. Are you suggesting that the contact information that is required for the iVote process is provided to political parties before the election?

The Hon. Dr PETER PHELPS: Yes.

Mr BEEREN: I think we will have to take that question on notice.

The Hon. COURTNEY HOUSSOS: The question has two parts. There is a question of whether you could communicate the information directly to the political party or to the candidate at the time in the same way as when they register for the iVote they get an email, and that information would then be provided to political parties, and also in the question is whether it could be provided to them afterwards in the same way that it is under section 138.

Mr BEEREN: The answer remains the same.

The Hon. Dr PETER PHELPS: I agree that that should be easily done—

Mr BEEREN: But you are dividing it up into two—

The Hon. Dr PETER PHELPS: During the election period if it is not technically feasible for the Electoral Commission to provide electronic HTVs for the iVote process then we would relieve you from that burden if you could provide the parties with real time requirements so that then we could provide HTV material.

Mr BEEREN: I assume within the same sitting session of the elector? Is that the basis of the question?

The Hon. Dr PETER PHELPS: Yes.

Mr BEEREN: I think the answer is probably the same.

Response

5.1. Electoral information in the nature of telephone numbers, email addresses, etc., is protected information under s 48 of the PE&EA and Schedule 1 to the *Government Information (Public Access) Act 2009*. Accordingly, the NSWEC cannot give out this information.

5.2. Under the provisions of the PE&EA and privacy legislation, the NSWEC is only permitted to disclose:

- enrolment information (i.e., details of electors that appear on the roll including names and addresses) in the limited circumstances under Division 6 of Part 4 of the PE&EA; and
- election information (names and addresses of electors together with an indication whether the elector voted by post or in person and location of polling place) in the limited circumstances under s 138 of the PE&EA.

6. Third Party Campaigners – Wilderness Society

The Hon. BEN FRANKLIN: I wish to talk about third party campaigners and a specific issue that involved The Nationals. The Nationals advised us that the commission failed to act effectively when an unlawful third party campaigner aired television advertisements in the final week or so of the campaign. The commissioner's response, eventually, was that the offenders had been told to stop. My view is that with significant unlawful television advertisements—in this case they were professionally developed and very effective—and the impact that they can have on an election result—and those advertisements were aired in the final four or five days before the election's electronic blackout—why did the commission take four days to respond to The Nationals on this issue regarding the Wilderness Society, and only respond the day before the blackout? Why did the commission not to pursue immediate enforcement of the law?

Ms FRANKLIN: I believe that the former Electoral Commissioner would have spoken directly to that party, taking the line of our enforcement policy to try to talk to those individuals to get those advertisements removed.

The Hon. BEN FRANKLIN: But, with respect, they did not register as a third party campaigner.

Ms FRANKLIN: Right.

The Hon. BEN FRANKLIN: They were breaching the law already, so why therefore would they, if spoken to politely, say, "Oh, yes, we are terribly sorry", when they knew perfectly well that they were breaching the law? I would contend that speaking to them was nowhere near enough.

Ms FRANKLIN: I would have to go back and look through all of our records to be truthful and totally understand what occurred at that particular time.

The Hon. BEN FRANKLIN: Okay. Could you do that, and could you provide the Committee with a full response of the actions taken in response to that complaint when a body, which was in fact a third party campaigner that was looking to impact the outcome of the election but was not registered, aired those advertisements which did impact on the campaign? Could I also ask you—and, again, you may not want to do this now—what action you have taken against those people who breach the law in such an egregious way? I presume you would prefer to take that on notice as well.

Ms FRANKLIN: I will certainly come back to you on that.

Response

- 6.1. Having regard to the concerns expressed in the course of the Public Hearing, we consider it important to go into some detail as to the NSWEC's response to the issues raised by the distribution of material by the Wilderness Society.
- 6.2. Where the NSWEC receives an allegation that an entity/person who is not registered as a TPC is incurring electoral campaign expenditure, the NSWEC conducts a review and investigation in accordance with its Funding and Disclosure Compliance Policy and procedures. There must be available admissible evidence to prove to the requisite standard that the entity has breached the EFEDA (also taking into account the exemption under s 87(4)). The only available sanction under the EFEDA for such an offence is prosecution. The NSWEC also has the discretion to issue a warning and provide educational information. The NSWEC has not prosecuted an entity/person under s 96I/s 96AA.
- 6.3. Prior to election day, the NSWEC was involved in the following interactions:
- On 21 March 2015 the NSWEC received a complaint from Mr Aubert of the Nationals regarding a potential unlawful third party television campaign and provided a link to the advertisement in question, "What do you say Mr Baird?" on YouTube.
 - On 23 March 2015, the NSWEC wrote to the Wilderness Society advising that the advertisement appeared to be electoral communication expenditure as defined in s 87 of the EFEDA. The NSWEC also advised that if expenditure in excess of \$2,000 had been incurred, the Wilderness Society may be a TPC with obligations under the EFEDA, including registration; and that the NSWEC intended to investigate the matter in accordance with our Funding and Disclosure Compliance Policy. The NSWEC also requested the Wilderness Society to cease any further activity in which electoral communication expenditure may be incurred.
 - On 26 March 2015 Mr Aubert emailed the NSWEC to complain that a flyer distributed by the Wilderness Society did not contain printer details.
 - On 27 March 2015, the NSWEC contacted the Wilderness Society to alert them to the absence of the printer details and to warn them not to distribute material on election day without prior registration by the NSWEC. This action was taken in accordance with NSWEC policy to provide an opportunity to potential offenders to remedy breaches.
 - On 27 March 2015, the NSWEC wrote to Mr Aubert advising him of the actions taken by the NSWEC in relation to the Wilderness Society advertisements and flyer, as outlined above.
- 6.4. Post-election, a review was conducted in accordance with our Funding and Disclosure Compliance Policy to assess whether the Wilderness Society was a TPC under the EFEDA which had failed to register. That review found the available evidence was insufficient to

establish that the Wilderness Society was a TPC. In addition, the quality of the flyer was such that the review concluded that it was unlikely that the print and design would have cost over \$2000 and there was insufficient evidence to show the cost of any other activity with it e.g., additional prints, distribution. Also, it was discovered that the relevant video had been removed from YouTube. Consideration was also given as to whether the video or flyer would fall under the “dominant purpose” exception in s 87(4) of the EFEDA to exempt the Wilderness Society from the TPC rules.

6.5. In summary, we note the following:

- the NSWEC had insufficient evidence to meet the burden of proof for a prosecution - sufficient primary evidence of the advertising was not provided by complainants and was not found on investigation;
- on 24 March 2015, the Wilderness Society attempted to register as a TPC and appoint an official agent, even though they were not certain that they were obliged to do so. However, as the application was received within 7 days of the election, the NSWEC could not register them as a TPC due to the operation of s 38E(1) of the EFEDA;
- as it can be difficult to identify TPCs, the NSWEC relies heavily on self-reporting - where the NSWEC does become aware of a TPC, this person or entity will be included in future stakeholder communications; and
- there is no statutory relationship between EFEDA and PE&EA obligations and entitlements, except in regard to registration of parties and nomination of candidates. A person or entity is not required to be ‘registered’ under the EFEDA to receive entitlements under the PE&EA, or in order to take advantage of options under the PE&EA. An unregistered entity can publish and distribute electoral matter, which is only required to be registered with the NSWEC if it is to be distributed on election day.

7. Monitoring Third Party Campaigns

The Hon. BEN FRANKLIN: Could I ask also in a broad level what internal processes you have in the commission to monitor unlawful third party campaigns and specifically who is responsible for this area?

Ms FRANKLIN: In the whole, I think we are very reliant on people informing us of particular breaches, alleged breaches, that they see and taking action from that in terms of responding to those particular issues.

The Hon. BEN FRANKLIN: So there is no person who is responsible specifically for monitoring that part of the Act?

Ms FRANKLIN: For monitoring the Act, certainly.

The Hon. BEN FRANKLIN: No, sorry—for monitoring unlawful third party campaigns and dealing with those in a timely manner. This does not fall under the gamut of anyone's specific responsibility?

Ms FRANKLIN: There is responsibility for, obviously, looking into alleged breaches from those particular incidences. In terms of monitoring, I believe there is some monitoring that occurs. But in relation to the breadth of various electoral material and campaigns that occur, I cannot say categorically that we would be across every single one that actually is in process at the time.

The Hon. BEN FRANKLIN: Which is fine. That is fair enough. But when one is advised, as in this case, and in effect nothing happened because they continue to advertise until the electronic blackout—in fact, you were advised on 20 March 2015. They continued to advertise quite heavily on television until the electronic blackout, continued to handout material after that, and were not a registered

third party campaigner, so there must be some sanction. There must be. This goes back to the original point that I made about the signage issue. If these laws are not applied, if there is no sanction, then there is no point in having them and people will realise very quickly that the Electoral Commission is a toothless tiger and will not act and therefore they will run amok. I will certainly be pushing hard for recommendations to ensure that the Electoral Commission has the power, if necessary, to ensure that these sanctions are imposed so that does not happen. Could I ask that also in your response on notice that you consider what legislative muscle you would like to ensure that when we have a good system, a regulated system, a system on which we have worked together as to how it can be done in the best interests of the people of New South Wales, what we can do when people blatantly flout it and decide to run a campaign to impact the outcome of the election anyway?

Mr SCHMIDT: Mr Franklin, if I could add something?

The Hon. BEN FRANKLIN: Please do.

Mr SCHMIDT: We would, of course, appreciate any recommendations to increase the suite of powers available to us but hand in hand with that we would also appreciate your support for appropriate resourcing to the extent that it requires a greater deal of activity by the commission.

The Hon. BEN FRANKLIN: I understand that. I have always been a strong supporter of increased resourcing for the commission. That brings me to the next issue. The financial requirements of the parties are incredibly high and burdensome as to what you require from us in order for parties to be transparent and accountable. That is as it should be; it is utterly appropriate. However, let us look at the case that I have just raised, the campaign run by the Wilderness Society, which shows a potential double standard. Clearly they spent at least five and possibly six figures on that unlawful campaign. Not only was it unlawful because it breached the Act but they also did not lodge a disclosure or a return on either their expenditure or their donations received. How are you satisfied in this situation that they did not receive unlawful donations, prohibited donations, that they did not receive donations that were above the cap, and what can you do now and what would you like to be able to do to enforce the law in this and other cases?

Mr SCHMIDT: I think we would like to take that on notice.

Response

7.1. In 2015, the NSWEC Funding, Disclosure and Compliance Branch (FDC) underwent a comprehensive review with the aim of building a stronger regulatory function. FDC now includes a team of auditors, a team of investigators, and an intelligence officer. Through FDC, the NSWEC:

- audits declarations and claims;
- conducts intelligence and data gathering;
- pursues investigations; and
- takes enforcement action.

7.2. In regard to legislative powers and resourcing, as indicated in the NSWEC submission to the review of the PE&EA and the EFEDA [paras 204-221], our response would be strengthened by the introduction of a statutory Penalty Notice regime to:

- require people/entities to remove unlawful electoral material from public place (where failure to comply is a Penalty Notice offence);
- require people/entities to stop distributing unlawful electoral material; and

- deal generally with electoral material/advertising offences.

7.3. Notwithstanding the above, a penalty notice regime will only be effective in certain circumstances. It may not be particularly effective in relation to alleged unlawful electoral material which appears on social and other electronic media. To address the dissemination of material through such media requires a national regulatory approach.

8. Updating the Roll with respect to deceased electors

The CHAIR: In view of the time, you might like to take this question on notice. Can you provide the Committee with some information as to how we could better create a system to update those voters who are deceased, particularly close to the election, working in conjunction with Births, Deaths and Marriages? That has always been a bugbear of mine, particularly as political parties we sometimes correspond with people who have passed away. Is there a system that helps you, helps us as elected people and no doubt candidates with this?

Mr BEEREN: There is but in the interests of time I am happy to respond to the question on notice.

Response

8.1. At the preparation of a 'closed roll', extra attention is paid by both the NSWEC and the Australian Electoral Commission [AEC] to the updating of the printed roll/authorised roll files to minimise the presence of electors who have died remaining on the roll.

8.2. Neither the NSWEC nor the AEC are currently able to provide updated death records to election day 'ordinary' polling places.

8.3. The NSWEC updates its Election Management Application system on the Thursday before election day with those electors who have died between the 'Close of Rolls' and that Wednesday/Thursday before election day. This ensures that the scrutiny of declaration envelopes/votes and the preparation of non-voter lists is as accurate as is reasonably possible given the time frames for death notification.

8.4. There are two sources of death information. These are (1) each State's Births Deaths and Marriages Agency; and (2) combined information from the Commonwealth, which forms the "Fact of death" file accessed by the AEC and provided to the NSWEC via enrolment updates/removals, together with the reason for those changes.

9. Authorisation of social media, text messages, emails, etc.

The CHAIR: Would you have any issues if we made sure that any material like how to votes and the sorts of things we do during an election campaign also related to social media, robocalls, emails, Facebook and those types of things with "this has been authorised and printed or published by X, W, Z" and, as suggested by another Committee member, a logo on that?

Ms FRANKLIN: We will have to take question on notice and have a look at it.

Mr SCHMIDT: It is a question about legislative scope and jurisdictional reach when you get to some of these electronic medium.

The Hon. BEN FRANKLIN: Could also add text messages to that group? It is a relevant issue in terms of what can be done.

Mr SCHMIDT: Yes.

Response

- 9.1. Any approach needs to take into account that instant transmission of opinion and information which is part of the contemporary conduct of elections. Legislative regulation of social and electronic media is fraught with challenges. We consider the better approach is for paid advertisements on the internet to be authorised, e.g., as is required by s 328A of the Commonwealth Electoral Act and cl 356GB of the *Local Government (General) Regulation 2005*.
- 9.2. The NSWEC notes the work of other Parliamentary Committees which have considered the regulation of electoral material on the internet, in particular, the Commonwealth Parliament's *JSCEM Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto* and the Victorian Parliament's *JSCEM Inquiry into the provisions of the Electoral Act 2002 (Vic) relating to misleading or deceptive political advertising*.
- 9.3. Both these inquiries acknowledged the difficulties of control and law enforcement that attend the application of electoral offence provisions to the internet. The Commonwealth JSCEM held the view that, for the purposes of authorisation, a distinction should be made between advertising/promotional material and that political debate/commentary which the internet facilitates. Such a distinction is supported by considerations that internet discussion is more akin to traditional editorial commentary or letters to the editor.
- 9.4. Also, as the authorisation requirements do not currently apply to editorial comment, etc., in printed form, there is a policy argument that they should not apply to blogs and social networking sites.
- 9.5. Regarding regulation of SMS, robocalls and other emerging new campaign techniques, the NSWEC would suggest a national approach is required. Existing regulatory frameworks that apply to commercial tele-marketing and the like, such as that implemented by the Australian Communications and Media Authority, could be examined for application in the electoral context. Notably, while commercial tele-marketing in Australia is subject to the Do Not Call Register and unsolicited commercial emails are subject to the *Cth Spam Act 2003*, registered political parties are exempt from the application of these regulations. Even if this exemption were to be removed, these mechanisms would have limited application to campaign activities, as most campaign activities are likely to be considered non-commercial in nature under current arrangements.

10. View on the appropriate way to deal with non-payment of polling place workers by parties

The Hon. ROBERT BORSAK: Does the Commission have a view on the fiasco around the No Land Tax Party and what occurred not only arising from the non-payment of electoral booth workers but also the way they advertised for staff? If the party still exists and, if it is still registered, whether it should be registered? What should be done with the offices of that party should it be found that it has not paid anybody and probably had no intention of paying them?

Mr SCHMIDT: I am going to give you a very black and white answer. We act within the confines of what the legislation enables us to do and to the extent that a party does not pay its workers or engages in other activities which are outside the purview of the legislation there is a limit as to what we can do.

The Hon. ROBERT BORSAK: I appreciate that is the classic bureaucratic answer but I asked whether you had a view on where we might go?

Mr SCHMIDT: Not at this stage.

The Hon. ROBERT BORSAK: Do you want to take it on notice?

Mr SCHMIDT: I do not think I would like to pursue that particular line at this stage.

The Hon. ROBERT BORSAK: You do not want to provide the Committee with any guidance?

Mr SCHMIDT: If you put that question on notice we will of course consider it.

Response

10.1. Following SGE 2015, the unpaid wages of election day helpers for the No Land Tax Campaign [NTLC] resulted in many people seeking the NSWEC's assistance to gain redress. The NSWEC was unable to assist, as this was the responsibility - and appropriately so - of the NTLC. Subsequently, the Fair Work Ombudsman received almost 1000 requests for assistance from workers claiming they had not been paid money promised to them; and in August 2015 the Ombudsman commenced proceedings against the NTLC and Mr Peter Jones personally in the Federal Court.

10.2. These activities raise questions of whether there should be a common Code of Behaviour required to be signed by all parties and candidates at the time of nomination to address such occurrences. In order for this to be effective, appropriate penalties would need to be made applicable under the relevant electoral legislation. Even if a Code were put in place, the NSWEC questions the effectiveness of a body such as itself being responsible for enforcing what would, in regard to unpaid wages, appear to be issues best dealt with under employment law.

11. Making HTV material available electronically on election day for anyone to view

The Hon. BEN FRANKLIN: I have two quick questions. The first is about the registered material that you need to put out for polling day, which predominantly are how to votes but also some little pamphlets and so forth. The system whereby people could see that in returning offices in the State crashed on the day for a few hours at least and we were not able to see them in a number of electorates. In Tamworth, for example, once the system did get up and running we were not able to see them all.

I understand that there are errors in these situations. You may want to take my questions on notice. Firstly, what is being done to make sure that does not happen in the future? What has been done to address it? How would you feel about this material being put online so it is made available for everyone in the State to see on the morning of election day? This has come up in evidence. That would mean that at 8 o'clock the how to votes and the posters that can be distributed would go online on the day.

Mr KWOK: We would support that.

The Hon. BEN FRANKLIN: Could you respond to the other issues about what actually happened and, if we do not go down the other line, what will be done?

Mr KWOK: We will take those questions on notice.

Response

11.1. The NSWEC experienced system performance issues when trying to transfer thousands of registered HTV materials to all 93 Returning Officers, as the rate of transfer of the files took much longer than anticipated. This issue did cause a delay in making available HTV materials from 8.00 am at some RO Offices, and the NSWEC has since upgraded its storage network to avoid a recurrence.

11.2. If registered HTV materials are made accessible via a website instead of at the RO Offices, these delays would be avoided. The NSWEC uses an online system to process HTV registration. As the system is web hosted, making the materials accessible via a website is relatively simple.

12. Receipts for parties/candidates on acceptance of their disclosures

The Hon. BEN FRANKLIN: I turn to the depositing of financial disclosures and other items at the commission's office by a party. Do parties or individuals get receipts when those items are left?

Ms FRANKLIN: We do not have our funding and disclosure director here, so I apologise. We will check that for you and get back to you with an answer on that.

The Hon. BEN FRANKLIN: If that does not happen, I would be grateful if you would consider if that system could be implemented.

Response

12.1. Issuing a receipt in these circumstances is not the current practice of the NSWEC's FDC Branch. However, if a receipt is requested it will of course be provided.

13. Public release of iVote source code

The Hon. Dr PETER PHELPS: I am happy for you to take my questions on notice. Would you support the public release of more information about iVote including public release of the system source code? If not, what mechanisms do you think could be introduced, if any, to allow for more opportunities to scrutinise the system, particularly by people who might not have been identified by the Electoral Commission but who may have a private or academic interest in source code of the iVote itself?

Mr SCHMIDT: We will take that on notice.

Response

13.1. The NSWEC does not support the public release of the iVote source code because any potential benefits that could be achieved can still be gained without the additional risks and costs that come with publication.

13.2. NSWEC will continue to expand on the opportunities for appropriately skilled people to scrutinise the iVote system and notes such scrutiny to date:

- Technical Advisory Group formed for the 2015 election with two international academic experts on electronic voting and an Australian IT security expert. This group reviewed

technical design, tender documentation, technical attachments to contract and selected software source code.

- Formed an ongoing four member academic advisory group with computer scientists from UNSW and Macquarie University. As a result of forming this group:
 - UNSW ran a cyber security course built around trying to hack iVote, which found nothing of significance; and
 - Academic papers are being produced that examine the protocols underlying iVote.
- An ERRN (Electoral Regulation Research Network) funded research project has just commenced that will examine voting channels (paper and electronic) from the perspectives of stakeholders and comparative risks. The project brings together four computer science academics, three political science academics and the electoral commissions of NSW and WA.
- An international academic project to define “Common Criteria for Verified Voting” involving a number of European universities is expected to commence in October – All Australian electoral bodies, through ECANZ, will be represented on an advisory board by NSWEC.
- Documents made publicly available by NSWEC include:
 - ‘An overview of the iVote 2015 voting system’ a paper discussing the cryptography and other technical details with the iVote system
 - ‘iVote Strategy for the NSW State General Election 2015’ a document outlining the NSWEC strategy for iVote, including discussion of key issues, guidelines, application architecture and the voting protocol.
 - ‘iVote System Security Implementation Statement’ which outlines how NSW Electoral Commission plans to secure the system and develop procedures to address perceived threats.
 - ‘Post Implementation Review of the iVote Project’ the final report from PwC on their assessment and observation of iVote through the 2015 State General Election.

13.3. NSWEC was advised by the Norwegian (Remote Electronic Voting) Project Manager that the publication of source code was a significant distraction and expense to the Norwegian electoral authority and did not provide any advantages in terms of improving trust or finding bugs in the code.

13.4. NSWEC has confidence in the current approach of employing competent, independent specialists, including academic experts on internet voting, to scrutinise both the source code and some other significant documentation on the iVote system.

13.5. The NSWEC will consider instituting a process where people not identified by the Commission but who have a private or academic interest in the source code or other aspects of iVote may approach the NSWEC to request access, which may be given at the discretion of the NSWEC, based on similar criteria used in the current selection of external experts, such as competence in the field, likely benefits and some form of non-disclosure agreement.

Additional questions to NSWEC after the hearing

14. Use of official colour schemes

We heard evidence requesting that it be made an offence to use the “official colour scheme” of the Electoral Commission in the production of posters or leaflets.



- a. Does the Commission have “official colours”?
- b. If so, what are they?

Response

14.1. Please see below:



Table 1. Corporate colour breakdown

NSWEC CORPORATE COLOURS	SWATCH	PMS	CMYK	RGB	WEB
NSWEC Blue		PMS 302	C 100 M 25 Y 0 K 50	R 00 G 83 B 128	R 00 G 54 B 80
NSWEC Teal		PMS 5483	C 62 M 0 Y 21 K 31	R 56 G 147 B 155	R 38 G 93 B 9B

15. Voter identification

If voter ID checks are introduced for attendance voting, assuming that this will add to processing time for people to vote on polling day, what is your estimate of the likely additional staff that will be required, and the total cost of this additional staff?

Response

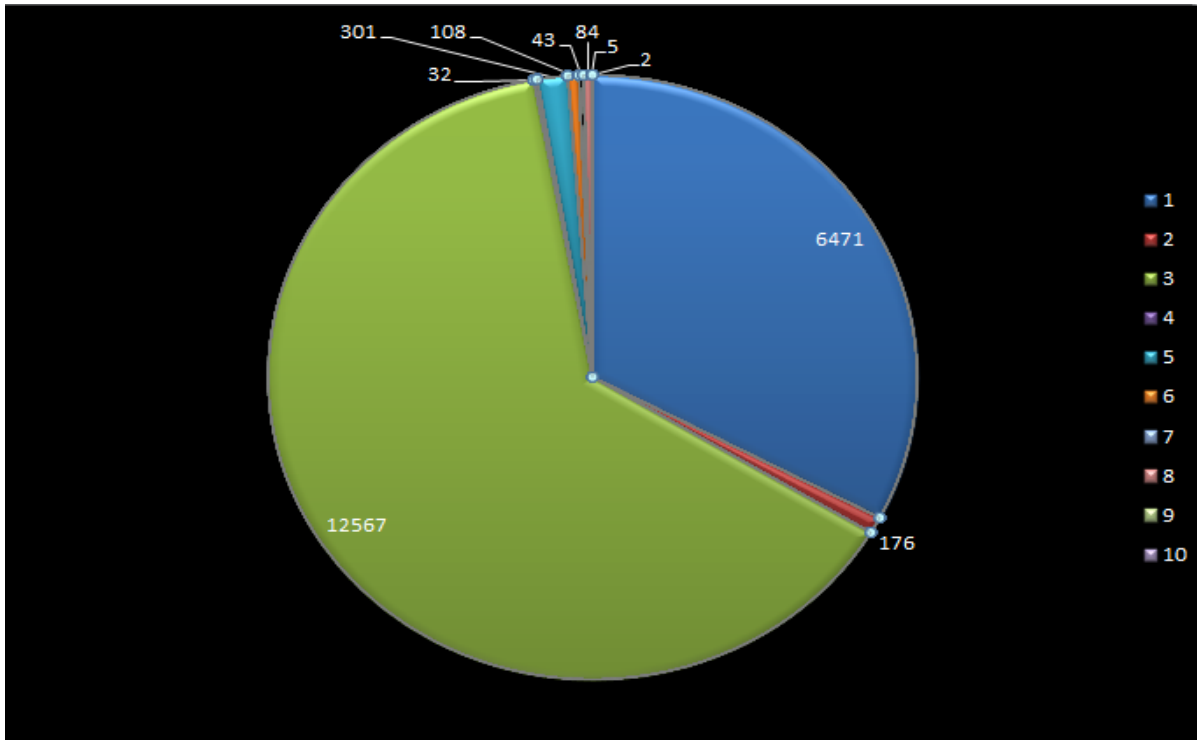
15.1. We note that for the 2015 Qld State Election, Proof of Identity (POI) was required for ordinary voting at pre-poll, a declared institution, electoral visitor vote, or on polling day, but not for absent or postal voting. An elector without POI had to make a Declaration Vote. There were a wide range of forms of POI, including:

- Voter Information Letter (VIL) issued by the Electoral Commission of Queensland (ECQ);
- letter from the Australian Electoral Commission evidencing electoral enrolment;
- current driver licence;
- current Australian passport;
- recent account or notice issued by a local government or a public utility provider;
- identification card issued by the Commonwealth or a State as evidence of the person’s entitlement to a financial benefit;
- adult proof of age card issued by the State;
- recent account statement issued by a carriage service as defined under the *Telecommunication Act 1997 (Cth)*;

- recent account statement, current account card or current credit card issued by a financial institution; and
- recent notice of assessment issued under the *Income Tax Assessment Act 1997 (Cth)*.

15.2. As the VIL was one of the forms of POI, the ECQ’s advertising campaign was centred around ‘Having your say on polling day’, focusing on ensuring electors brought the VIL with them when voting. The campaign and the wide range of acceptable POI contributed to the relatively low rate of voters who did not bring POI. Attached is a breakdown of POI in the July 2014 Stafford by-election:

Proof of Identity Statistics – Stafford By-Election



Current Driver Licence	32.70%
Current Australian Passport	0.90%
Voter Information Letter	63.51%
Electoral Enrolment	0.16%
Identification Card	1.52%
Adult Proof of Age	0.55%
Notice Issued by LG or Public Utility Provider	0.21%
Statement Financial Institution	0.42%
Telephone Account	0.02%
Tax Assessment	0.01%

15.3. As the ECQ recorded 0.6% of total number of Uncertain Identity (i.e., no POI) votes taken, with the average across the 89 State Districts of 181 votes per district, it would seem that there may be no need for an appreciable increase in staff at polling places in NSW should voter ID be introduced. However, a rough estimate of providing the VIL for a NSW

State General Election is approximately \$12M, consisting of \$5M elector brochures postage costs perhaps containing a Voter Identification card, plus \$2M to produce the brochures, plus a \$3M Statewide advertising and awareness campaign, and \$2M in system and process changes.

15.4. We note that the requirement for POI was repealed by way of the *Electoral and Other Legislation Amendment Act 2015* it had the potential to:

... discriminate against voters from marginalised groups in society without ready access to proof of identity documents; inconvenience voters without proof of identity documents at the ballot box on election day; and reduce voter participation in the electoral process.¹

15.5. In terms of the overall value of introducing a voter ID requirement, the NSWEC also refers to the conclusion of Professor Rodney Smith in his 2014 paper *Multiple Voting and Voter Identification* at p 21:

The exact effects are impossible to quantify accurately. Addressing the American context, Spencer Overton has argued that it would be extremely hard to conduct a reliable cost-benefit analysis to weigh the risks of multiple voting against the exclusion of legitimate voters (Overton 2006: 161-167). Nonetheless, the possible net result of measures against multiple voting might be more electoral inequality between citizens, rather than less.

16. Scytl report

In their testimony (p.36 of the transcript), Scytl explained that there was an external review of iVote conducted, other than the PwC report. A copy was provided to Scytl. Could the NSW Electoral Commission please provide a copy of that report to the Committee? In their testimony (p.36 of the transcript), Scytl explained that there was an external review of iVote conducted, other than the PwC report. A copy was provided to Scytl. Could the NSW Electoral Commission please provide a copy of that report to the Committee?

Response

16.1. The report referred to by Scytl was a review of source code led by two experts selected by the Commission: Carsten Schürmann (Associate Professor at IT University of Copenhagen and electronic voting expert) and David Hook (Director of Melbourne-based Crypto Workshop and founder of widely used 'Bouncy Castle' cryptography project).

16.2. The report should be read together with the response documents from Scytl and NSWEC, which clarify some issues raised by the reviewers by providing additional information not known to the reviewers at the time of the review and also identify where remediation took place. This report is currently being finalised and, once completed, it and relevant supplementary documents will be provided to the Committee.

¹ See Queensland Legislative Assembly *Hansard*, 27 March 2015.