

Questions taken on Notice – NSW Electoral Commission – 18
November 2019 – Joint Standing Committee on Electoral Matters
Inquiry into the 2019 NSW State Election

Question one - Page 51

Excerpt from transcript:

Ms FELICITY WILSON: Have you seen a significant increase in the total number of early voting centres in recent years? What has that done as far as resourcing and costs are concerned, if that is the case?

Mr KWOK: The total number of early voting centres probably has remained relatively similar, around the 200 mark, if my memory serves me right. I will verify that.

Response

There were 184 early voting centres in the 2015 State general election. Forty six of those were providing early voting for two or more districts.

There were 195 early voting centres in the 2019 State general election. Forty three of those were providing early voting for two or more districts.

NSWEC estimates that the rental cost of the 11 extra early voting centres was approximately \$30,590. Some further costs were also incurred by NSWEC in connection with the operation of these voting centres, including staff wages and information technology. The NSWEC is still developing a data set to enable a useful comparison to be made between any costs incurred due to higher rates of early voting and any costs avoided on election day due to more electors voting early.

Question two - Page 57

Excerpt from transcript:

The Hon BEN FRANKLIN: Understood. There is currently an exception in aggregation for small donations at fundraising events for up to \$50. There has been a suggestion that that be increased to \$100. That would be in line with the new limit on cash donations. Do you have any concerns about that?

Ms McCallum: Not now. I might take that on notice.

The Hon BEN FRANKLIN: Yes, you can do that for any of these questions. If you have any further thoughts you can provide them on notice.

Ms McCALLUM: Yes.

Response

There would be no operational concerns for the NSWEC if the aggregation amount increased from \$50 to \$100, providing there was adequate time and resources available to implement updates to NSWEC materials.

Question three - Page 60

Excerpt from transcript:

The Hon CATHERINE CUSCACK: ... Have you got some sort of evaluation of your current complaints system? Have you benchmarked that against the outcomes and timeliness past practice?

Response

The data available about allegations at previous general elections is limited because the NSWEC had no dedicated compliance team at those elections. The 2019 State election was the first general election at which a dedicated compliance team, including seconded investigators from other agencies, operated across the State and locally-engaged voting centre staff were able to direct allegations to it. A total of 179 matters arose from allegations recorded by the compliance team during the election period, of which around 70% related to electoral material. The Electoral Commissioner's report on the 2019 NSW State election contains statistical information about the outcomes of these matters. The report also contains information about the post-election review outcomes as they relate to compliance. The report notes that the recording of all allegations and supporting data from the 2019 NSW State election will provide a dataset to support subsequent compliance activities and future elections.

Question four - Page 60

Excerpt from transcript:

The Hon. BEN FRANKLIN: Perhaps you could take on notice the question: If there needs to be legislative change in order to provide the commission with the power to be able to dictate to the local returning officer, "Pull that down", or whatever it happens to be, that then it can be done. Is it that you are not empowered to do so? I am trying to get my head around it as well.

MS McCALLUM: Yes.

Response

The *Electoral Act 2017* confers powers on election officials to deal with non-complying electoral material. The Electoral Commissioner, voting centre managers and certain other election officials (which included the dedicated compliance team at the 2019 State election) are all authorised under the Act to exercise powers of confiscation, removal and destruction of non-complying electoral material. It should be noted that only police officers are empowered to use force under the Act. The Electoral Commissioner has not identified a need for any additional statutory powers.

Question 5 - Page 61

Excerpt from transcript:

The Hon CATHERINE CUSACK: This supplanted a role that used to be undertaken by the local person at the office. Am I correct in that understanding? That you have put in a specialist team to deal with it?

Ms McCALLUM: I would have to take on notice what the situation was in the 2015 election as I was not here.

Response

The three-member Electoral Commission was constituted in late 2014, following the abolition of the Election Funding Authority, and did not have a specialist compliance team in place for the March 2015 State election. Compliance operations led by specialist investigators have been in place, however, at all State by-elections since October 2016. The 2019 State election was the first general election at which investigators were deployed across the State and in every electorate.

Using the operational experience of the 2019 general election, the NSWEC will continue to explore improvements to its delivery model, including the most effective use of voting centre staff, for the upcoming local government elections.

Question 6 - Page 61

Excerpt from transcript:

The Hon. CATHERINE CUSACK: In terms of monitoring the performance of your complaints system, was there any evaluation of that done after the State election? Do you have any performance information about it?

Mr KWOK: In terms of the compliance operation itself?

The Hon. CATHERINE CUSACK: Yes.

Mr KWOK: Yes, we have.

The Hon. CATHERINE CUSACK: How many complaints did it get? How long did it take it to process them and what were the outcomes of the complaints?

Mr KWOK: We will take that question on notice.

Ms McCALLUM: Some of that material will appear in our annual report, as well, in relation to the compliance—

The Hon. CATHERINE CUSACK: I am really interested, because this seemed very different at this election. I am hoping that you are able to benchmark it against previous practice and give us some feedback about its performance.

Mr SCHMIDT: We will have a look at that and see what we can give you.

Response

There were 179 allegations recorded by the NSWEC's compliance team during its 2019 State general election operation. The statistics are reported in the Electoral Commissioner's *Report on the Conduct of the 2019 NSW State Election*:

Electoral Material breaches:	No further compliance or enforcement action required	67
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	Warning	40
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	Ongoing	9
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Misconduct at Voting Centres:	No further compliance or enforcement action required	22
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	Warning	6
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Bribery/Treating:	No further compliance or enforcement action required	2
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	Warning	—
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Electoral Roll offences:	No further compliance or enforcement action required	2
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	Warning	1
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Offences relating to Third Party Campaigners:

	No further compliance or enforcement action required	10
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	Warning	1
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	Penalty Notice	1
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Offences relating to electoral expenditure:

	No further compliance or enforcement action required	8
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	Warning	6
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Potential unlawful Donations:	No further compliance or enforcement action required	—
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	Warning	2
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Offences Relating to Postal Votes:		
	No further compliance or enforcement action required	1
	Warning	–
Miscellaneous:		
	No further compliance or enforcement action required	1
	Warning	–

During the 2019 State election voting period, the compliance team prioritised contacting the person or organisation involved in the alleged breach to inform them of their obligations. If appropriate, the compliance team would then request that person or organisation to rectify the apparent breach. Such action was undertaken as soon as practicable during the voting period to minimise the impact of any breach on the conduct of the election.

Case files were then created so that all matters could be managed consistently, in accordance with the NSWEC's Compliance and Enforcement Policy. As at 12 December 2019, there were 11 matters still open that arose from allegations during the voting period.

Question 7 - Page 61

Excerpt from transcript:

The Hon. BEN FRANKLIN: To tie this up, could you consider on notice if there are any recommendations that you would make that the Parliament can do or this Committee can consider about assisting with this issue?

Mr SCHMIDT: Okay.

Response

The NSWEC has provided some suggestions for further legislative refinements to the Department of Premier and Cabinet, for its consideration. One of those suggestions concerns the powers of the NSWEC to disclose information about the outcomes of its investigations. The NSWEC is required to provide a statistical report to Parliament each year about its enforcement activities, which forms part of its annual report. It is not empowered, however, to disclose specific compliance outcomes, even to the person who made the allegation, unless the matter has become the subject of court proceedings. Legislative amendments would need to be made if an increased level of reporting – including directly to informants – is considered desirable for investigation outcomes.

Question 8 – Pages 62 and 63

Excerpt from transcript:

Ms FELICITY WILSON: Can you come back to us with data on whether there has been an increase in the number of people who have successfully challenged the fine? I know some people have had those fines overturned. It is not just about the fine; it ties into that electronic mark-off system and whether or not it is actually working the way it is meant to be working.

Mr SCHMIDT: We will give you figures on people who are excused?

Ms FELICITY WILSON: Yes, excused. Thank you.

Mr SCHMIDT: We will give you the figures for the number of apparent-failure-to-vote notices that have gone out; the number who have actually paid; the number who have been excused; the number who have been court-elected—will that give you the gist of what you want?

Ms FELICITY WILSON: Yes. Thank you, Commissioner.

Response

As at 3 December, for the 2019 State general election

- 384,879. apparent-failure-to-vote notices were issued
- 37,433 non-voters paid the penalty
- 150,058 were excused
- 94 elected to attend court
- the remaining 197,295 were referred to Revenue NSW