

Supplementary submission in response to : [NSW Electoral Commission.pdf](#)

GJBRISCOE-HOUGH

The Commission, irrespective of opinion, has not dealt with the substantive issue.

The NSWEC refers to “significant practical benefits of the Electoral Commissioner being expressly empowered in election-related legislation to approve the use of electronic communication and services.” The NSWEC ‘understanding’ does not clarify the law, and, indeed the example given (cl 3(5) of Schedule 9A to the Local Government (General) Regulation 2022) is just another ‘misunderstanding’ of regulations probably (and erroneously) drafted by the Commission.

If the matter was referred to a court, the term ‘nomination paper’ would – in the absence of any statutory definition – have to be given its ordinary meaning. [Aids to interpreting Acts - NSW legislation](#). In the circumstances, it may be appropriate for the Committee to seek opinion wider than the Commissioner’s understanding or desire for regulatory convenience.

Which provisions would/should prevail in law? I again refer the Committee to the action taken by the Federal Government on this matter, and suggest NSW applies a similar approach.

**To remove any doubt, parliament should (in a mechanical instrument) at some point clarify the issue.**

GBH

#### ***Electoral Act 2017 No 66***

#### ***84 Method of nomination***

*(1) A nomination is to be made by lodging a **nomination paper** in the approved form with the Electoral Commissioner.*

*(2) A **nomination paper** lodged at the following places is taken to have been lodged with the Electoral Commissioner—*

*(a) the office of the Electoral Commission,*

*(b) in relation to an election for a district, at the office of the election manager for the district.*

*(3) A **nomination paper** must be lodged—*

*(a) in relation to a general election that follows an expiry of an Assembly under section 24 (1) of the Constitution Act 1902—during the period beginning on the Monday before the expiry of the Assembly and ending at 12 noon on the nomination day, or*

*(b) in any other case—during the period beginning on the issue of the writs and ending at 12 noon on the nomination day.*

Note—

*Section 24 (1) of the Constitution Act 1902 provides that Legislative Assembly, unless sooner dissolved, expires on the Friday before the first Saturday in March in the fourth calendar year after the calendar year in which the return of the writs for choosing that Assembly occurred.*

*The Legislative Assembly elected at the 2015 general election will, unless sooner dissolved, expire on Friday 1 March 2019.*

*Sections 74 and 75 provide that the writs for the next general election are to be issued on Monday 4 March 2019 and that the nomination day for that general election will be Wednesday 6 March 2019.*

*Subsection (3) (a) provides that the Electoral Commissioner may accept **nomination papers** for that election only during the period beginning on Monday 25 February 2019 and ending at 12 noon on Wednesday 6 March 2019.*

*(4) A **nomination paper** is to specify the form of given name that the candidate wishes to be printed on the ballot papers for the election.*

*(5) A given name of a candidate specified in a **nomination paper** under this section as the form in which that name should be printed on the ballot papers for the election may differ from the name under which the candidate is enrolled only to the extent that the given name is specified by—*

*(a) an initial standing for that name, or*

*(b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or*

*(c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the Electoral Commissioner is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).*

*(6) For the avoidance of doubt, the Electoral Commissioner may approve a form of **nomination paper** under this section that enables the registered officer of a registered party to nominate candidates for more than one electoral district and candidates for a periodic Council election in a single document.*

*(7) The regulations may make further provision for the electronic lodgment of **nomination papers** with the Electoral Commissioner.*

And:

### **Electoral Regulation 2018**

#### **5B Electronic lodgment of nomination papers: section 84 (7)**

*A **nomination paper** lodged through an online electronic nomination system made available by the Electoral Commissioner is taken to have been lodged with the Electoral Commissioner.*

**cl 5B:** *Ins 2019 (4), Sch 1 [1].*

This does not refute the initial matter raised:

### ***Electronic Transactions Act 2000 No 8***

#### ***6A Exemptions***

*(1) The regulations may provide that all or specified provisions of this Act do not apply—*

*(a) to transactions, requirements, permissions, electronic communications or other matters specified, or of classes specified, in the regulations for the purposes of this section, or*

*(b) in circumstances specified, or of classes specified, in the regulations for the purposes of this section.*

*(2) The regulations may provide that all or specified provisions of this Act do not apply to specified laws of this jurisdiction.*

**s 6A:** *Ins 2010 No 68, Sch 1 [4].*

### ***Electronic Transactions Regulation 2017***

#### ***4 Certain laws excluded from section 7 (1) of the Act***

*Section 7 (1) of the Act does not apply to the following laws of this jurisdiction—*

*(a) the [Election Funding, Expenditure and Disclosures Act 1981](#), and any regulations under that Act,*

*(b) the [Government Information \(Public Access\) Act 2009](#), and any regulations under that Act,*

*(c) Chapter 10 of the [Local Government Act 1993](#), and any regulations under that Act with respect to the matters dealt with in that Chapter,*

*(d) the [Parliamentary Electorates and Elections Act 1912](#), and any regulations under that Act,*

*(e) the [Poisons and Therapeutic Goods Act 1966](#), and any regulations under that Act,*

***(f) [any other Act or regulation that makes provision for the conduct of polls or elections by the Electoral Commissioner, to the extent only to which it makes such provision.](#)***