JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
Inquiry into 2008 Local Government Elections

Questions on notice to the NSW Electoral Commissioner

Question 1:

In the Electoral Commission's response to question 2a(iii) of the questions on notice, dated 19 August 2009, you indicated that the NSWEC would be able to provide a more detailed examination of costs and potential savings associated with postal voting. Is the Electoral Commission able to provide comparative information on the cost per voter for regional areas of Victoria, which have universal postal voting, and costs per voter in local government elections for similar areas in NSW?

Response 1:

The Committee has sought information from the New South Wales Electoral Commission (NSWEC) regarding a comparison of the cost of universal postal voting as against attendance voting for regional and rural councils of comparative size in Victoria and New South Wales. As the Committee is aware, most of the Local Government councils in Victoria choose to have their elections conducted as universal postal ballots. Consequently, there is little opportunity for comparison of comparable councils within Victoria.

Based on my previous experience as Electoral Commissioner for Victoria and following recent discussions with senior staff at the Victorian Electoral Commission (VEC), it is very difficult to do a direct comparison between councils of similar size (voters) in Victoria and New South Wales regarding the cost of attendance elections versus the cost of universal postal elections. One of the challenges associated with doing interstate comparisons is the way that the VEC and the NSWEC cost services for Local Government elections.

Notwithstanding the above, in my view and the view supported by the VEC, as a rule of thumb universal postal elections generally cost 15-20% less than elections conducted as attendance elections. There are, however, a number of assumptions built into these cost analyses. For example, in Victoria legislation provides for a scheme where candidates are able to submit a 150 word statement regarding their candidature, accompanied by a photograph and an indication of voting preference. In addition, the VEC makes use of regional returning officers to run multiple rural elections. With these assumptions in mind, I am confident that regional and rural councils in NSW would achieve cost savings in the order 15-20% based on the above assumptions being implemented as part of the scheme. For example, if the scheme did enable the NSW Electoral Commissioner to appoint a returning officer to run multiple rural and regional Local Government elections as universal postal ballots, then the cost savings would be even higher. In other words, if some councils

still wanted to have their own returning officer the savings indicated would not be achieved.

Question 2:

Did the Electoral Commission receive any feedback from members of the public or candidates in relation to Returning Officers only being contactable by mobile phone?

Response 2:

A few comments were received, principally from callers to the Elector Inquiry Centre (EIC) who were seeking to contact the Returning Officer. Numbers are not available of callers to the EIC who raised this as an issue. In the surveys of candidates and General Managers only one response was received from each of these stakeholder groups. The feedback concerned the perceived cost to the caller.

Question 3(i):

The Commission's answers to questions on notice indicate that in total councils had around six weeks to respond to the Commission's schedule of polling places. The Commission indicates that in some cases councils sent only a "cursory acknowledgement that the information had been received and seemed satisfactory".

i) Was any follow up action taken in cases where the Commission received only a "cursory acknowledgement"?

Question 3(i):

The Commission provided councils with detailed polling place information and a request for comments within six weeks. Subsequent to the initial six week period, several extensions of time to submit comments were provided with regular reminders issued. The Commission was keen to get councils' comments as they have local knowledge.

When timing with the project became critical, the failure of councils to respond impacted on the risk associated with election planning and implementation. At that point the Commission took the view that councils that only provided a cursory response had reviewed the information and had no comments – a perfectly legitimate position to take.

Question 3(ii):

Are you aware of any link between those councils that sent only a "cursory acknowledgement" and complaints by councils regarding the selection of polling places?

Response 3(ii):

A number of councils have made submissions to the JSCEM and have raised varying issues related to polling places. Not all submissions express concern directly related to the selection of polling places but rather with other issues, such as lack of facilities, access, queuing and staffing levels.

Of the councils which have made submissions to the JSCEM only five were from councils which submitted only an acknowledgement or no response to the Commission on the selection of polling places.

Question 3(iii)(a):
In cases where the Electoral Commission did not accommodate a council's concerns:
(a) What were the main reasons for not doing so?

Response 3(iii)(a):
The Commission's principal concern with polling places is in respect to providing appropriate buildings to accommodate the number of electors voting at the polling place. As well, the Commission seeks to maintain consistency in the location of polling places across the three tiers of government to ensure that electors are not confused by polling places used at Federal and State elections not being available at the Local Government elections.

In most instances, where disagreement arose with a particular council, it was apparent that the council's concern was primarily related to the cost of the use of the building.

Proposals by councils were mainly to delete polling places rather than, perhaps, to reduce the size (staffing) of polling places. It is worth noting that in one instance a proposal by a particular council was to halve the number of polling places proposed for use and to replace by only council owned premises.

In other instances councils preferred the use of council owned premises rather than the venues used at Federal and State elections. Councils submitted that the use of council owned premises would be at no cost to the council. This, of course, conceals the lost opportunity of renting the facility to other people. The Commission required councils to provide the cost of the venue. In many cases it was more than what the Commission would have paid to use a school.

The Commission did consider proposed alternate council owned premises but in most cases they were unsuitable for use due to either their location being unsuitable, being too small or lacking appropriate facilities (such as access, car parking, etc).

The Commission did agree to use buildings proposed by council in those instances where a satisfactory level of service could be offered to electors.

It should be noted that in some instances councils proposed an increase in the number of polling places to provide an increased service to its electors.

Question 3(iii)(b):

Did any council express disagreement with the Commission's reasons?

Response 3(iii)(b):
There were some instances where there was disagreement with the Commission's approach but no statistics are available.

Question 7:

Did the Electoral Commission undertake the same form of consultation with councils in relation to the selection of pre-poll centres as it did in relation to polling places?

Response 7:
As required by law, pre-poll voting was conducted at each returning officer's office. As councils were consulted on the location of the returning officer's office, they were consulted on the location of pre-poll voting facilities.

Each council was given advice of the pre-poll voting arrangement at the returning officer's office together with the Commission's proposal for additional (if any) pre-poll voting locations.

In some instances the Commission proposed and established additional pre-poll locations on the basis of the experience of pre-poll voting at the 2007 NSW State General Election. Councils were advised of these additional venues.

Some additional pre-poll locations (not proposed by the Commission) were established at the request of councils.

Question 8:

Did staff at the Elector Inquiry Centre have the information required to provide callers with details such as ward boundaries for each local government area?

Response 8:
Operators at the Elector Inquiry Centre had full details of council boundaries and were trained in the use of the tools concerning providing accurate information regarding which local government area callers belonged to and which ward. Operators not only had their own intranet but also had access to the NSWEC's website which had a facility for electors to use to locate where they had to vote.

The NSWEC undertook considerable work with Google maps to ensure that electors and staff had access to accurate information to assist electors in identifying their location.

Question 9:

What is the Electoral Commission's position in relation to electronic voting in local government elections? In the Commissioner's view, which form of electronic voting would be most suitable for local government elections?

Response 9:
The Committee seeks the views of the Electoral Commissioner regarding the introduction of electronic voting in Local Government elections. I am not in favour of

the introduction of electronic voting as a default position for all Local Government elections. In my view, the cost of implementing electronic voting for all Local Government elections would be prohibitive and counter to the culture of metropolitan and regional voters' expectations.

I have indicated to the Committee in the past that I do see there being value in consideration of a form of electronic voting for those remote Local Government areas that may reject universal postal voting as an alternative. I am generally not in favour of a wholesale introduction of electronic voting to replace our long established attendance or universal postal voting culture. I can, however, see some advantages in having a form of electronic voting as an option in attendance elections where people who live in remote parts of the State otherwise find it very difficult to get either a postal vote or to attend a polling place on election day.

In summary, I do not believe that there is any widespread community appetite for the introduction of wholesale electronic voting at either Local Government or State elections.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
Inquiry into 2008 Local Government Elections

Questions on notice to the Chair of the Election Funding Authority (EFA)

Question 1(i):

Changes made the Election Funding and Disclosures Act 1981 prior to the 2008 local government elections now require disclosure declarations to be audited by a registered company auditor.

i) Did the EFA receive many complaints from candidates, groups or parties regarding difficulties in accessing the services of a registered company auditor?

Response 1(i):
The EFA received a number of calls regarding the requirements to have disclosures audited by a registered company auditor. No record was kept of the number of calls.

Enquiries were received from candidates, groups, parties and official agents. The nature of the calls was in respect to either (or both on some occasions) the difficulties in locating a registered company auditor and the cost of such an audit.

The EFA granted a number of extensions to the time by which a disclosure was required to be lodged by individual candidates, groups, parties and official agents on the basis that difficulties were being experienced in locating a registered company auditor and/or the time required by such an auditor to complete the audit.

The EFA does hold a list of ASIC registered company auditors.

Question 1(ii):

Were there complaints as to the costs incurred by candidates, groups or parties in having a registered company auditor audit their disclosure?

Response 1(ii):
See (i) above.

Question 1(iii):

The EFA currently grants to candidates and groups an exemption from this requirement for disclosures less than $2500. On what basis did the EFA determine this threshold?

Response 1(iii):
The *Election Funding and Disclosures Act 1981* and the Election Funding and Disclosures Regulation 2009 provide that registered parties, candidates, groups and elected members are required to have their disclosures accompanied by a certificate from a registered company auditor.

The legislation provides that the requirement may be waived by the EFA where a "nil" return is lodged or where the candidate, group or elected members is not eligible

to receive public funding in accordance with the Act. (Public funding is not available at Local Government elections.)

Prior to the 2008 Local Government elections, the EFA considered whether it would require an audit certificate in all instances from candidates and groups who contested the 2008 Local Government Elections. The EFA resolved that, in those instances where neither political donations received nor electoral expenditure incurred exceeded $2,500, it would not require the disclosure to be accompanied by an audit certificate.

The default position of the legislation is that all registered political parties, candidates and groups are required to have their disclosures accompanied by a certificate from a registered company auditor. The EFA is mindful that any decision to move from that position must maintain public confidence in the integrity and transparency of the funding and disclosure regime.

The EFA is of the view that, at a Local Government election, a campaign that involves in excess of $2,500 in either political donations received or electoral expenditure incurred is significant and the requirement for an audit in relation to a campaign exceeding that threshold will verify that full disclosure has been made.

In respect to the disclosures received for the period ending 31 December 2008 (which captured the 2008 Local Government elections) there were 4,747 disclosures from candidates of which 4,220 were not required to have their disclosures audited. For the same period, there were 792 disclosures from groups of which 325 were not required to have their disclosures audited.

Question 1(iv):
What is the EFA's response to concerns raised in submissions and evidence about the impact of this threshold on independent candidates and small groups of independents?

Response 1(iv):
As indicated in the response to (iii) above, the legislation contemplates that all registered political parties, candidates and groups are required to have their disclosures accompanied by a certificate from a registered company auditor.

It is considered that candidates and groups contesting elections for public office, such as councillors and mayors, need to accept that a robust and transparent system of funding and disclosure is a key aspect of the election process and is the focus of significant public interest.

Whereas, a more accessible and less costly system of having audits undertaken may be considered, the EFA considers that this needs to be considered separately from what the criteria should be for requiring an audit.

The EFA does not consider that the requirements and intent of the legislation should be diluted by having regard solely to the cost of having an audit undertaken by participants in the election. Rather, the obligation should be considered by the participants in their decision to contest an election.

Question 1(v):
What is the EFA's position on allowing certified practicing accountants (CPAs) or chartered accountants to undertake the audit of disclosures?

Response 1(v):
The *Election Funding and Disclosures Act 1981* provides that a disclosure is not validly lodged unless it is accompanied by a certificate of an auditor. The certificate of the auditor is prescribed in s. 96K of the Act.

The EFA is of the view that the person who provides the certificate should be qualified to do so and is registered with a recognised body.

In this regard, it is worth noting that the Election Funding and Disclosures Regulation 2009 provides that online training of official agents is not required to be undertaken if the person is:

- a Certified Practicing Accountant;
- a member of the Institute of Chartered Accountants (who holds a Certificate of Public Practice issued by that Institute); or
- a member of the National Institute of Accountants who holds a Public Practice Certificate issued by that Institute.

The EFA would have no concern if the legislation was amended to provide for the same classes of persons being eligible to undertake the audit of disclosures provided that they are, as previously indicated, qualified to certify the audit in the terms required by s. 96K the Act.

Question 2:

Our Sustainable Future has submitted to the Committee that the costs associated with the requirement to have all returns, including nil returns, audited by a registered company auditor is a particular burden on independent micro-parties. Does the Election Funding and Disclosures Act permit the EFA to exempt parties from these auditing requirements? If so, would the EFA consider granting an exemption to those parties submitting nil or small returns?

Response 2:
The *Election Funding and Disclosures Act 1981* and the Election Funding and Disclosures Regulation 2009 does not provide for parties to be exempt, in any circumstances, from the requirement to have all disclosures audited by a registered company auditor.

The legislation does not empower the EFA to exempt parties from the audit requirements.

Question 3:

The EFA has provided to the Committee a schedule of proposed amendments to the Election Funding and Disclosures Act. Are there any particular amendments that the EFA considers to be matters of priority? How would the EFA propose that the amendments be brought forward?

Response 3:

The schedule of proposed amendments to the Act has been amended to include an indication of the perceived priority of each matter. The amended schedule is attached.

The most significant issue for the EFA relates to the difficulties in enforcing certain provisions of the Act. Proposed amendments to deal with these issues are marked as a high priority on the amended schedule. The matters of high priority address two main areas of concern.

Failure to Lodge a Disclosure

The legislation requires disclosures to be lodged by the official agent. Candidates and the head of a group are deemed to be their own agent provided they do not exceed $1,000 in donations (although they may appoint another person if they so choose). Prior to exceeding the threshold of $1,000 in donations a candidate or head of a group must appoint another person as the official agent.

In the event that a candidate or head of a group fail to lodge a disclosure, prosecution can only proceed against the official agent. No difficulty arises where the candidate or head of a group has appointed a person other than themself as the official agent.

However, where the candidate or head of a group has not appointed a person other than themself as the official agent, the EFA must, in the first instance, establish whether or not the candidate or group exceeded the $1,000 threshold invoking the requirement to appoint a person other than themself as the official agent. Legal advice obtained by the EFA is that establishing such criteria is extremely difficult and, most likely, not achievable.

Failure to Appoint an Official Agent and Establish a Campaign Account

Candidates and the head of a group are deemed to be their own agent provided they do not exceed $1,000 in donations (although they may appoint another person if they so choose).

Prior to exceeding the threshold of $1,000 in donations a candidate or head of a group must appoint another person as the official agent and establish a campaign account.

In the event that a candidate or head of a group fails to appoint a person other than themself as the official agent and establish a campaign account prior to exceeding the threshold of $1,000 then prosecution action would be considered by the EFA.

However, the EFA must, in the first instance, establish whether or not the candidate or group exceeded the $1,000 threshold invoking the requirement to appoint a person other than themself as the official agent. Legal advice obtained by the EFA is that establishing such criteria is extremely difficult and, most likely, not achievable.

The matters of concern to the EFA with the present legislation have been brought to the attention of the Department of Premier and Cabinet.

Joint Standing Committee on Electoral Matters Appendix 1

Matter	Priority	Proposal	Comment
Definition of Candidate	Low	To include a person who is nominated as a candidate at an election, a person who intends to accept gifts or incur electoral expenditure for a purpose related to a candidacy at a future election and a person applying for registration as, or registered as, a candidate.	• To require a person to register who intends to accept a gift for a purpose related to a candidacy at a future election. Presently, the Act infers that registration is required from a person after they receive a gift. • To require a person to register who intends to incur electoral expenditure for a purpose related to a candidacy at a future election. These persons are not presently required to register. • The definition of candidate to be captured, in its entirety, in S4 of the Act. Some aspects of the extended definition are embodied in S84(2) and 96A(2) of the Act.
Registration of Candidates	Medium	Registration of a candidate to be automatic in those instances where a person nominates as a candidate at an election. Registration to be required in those instances where a person intends to accept gifts or incur electoral expenditure for a purpose related to a candidacy at a future election. A candidate remains registered as a candidate up to and following the election and until such time as the candidate's agent (being either appointed or ex officio) finalises all financial management matters associated with the candidacy and complies with reporting obligations under the EF&D Act.	• Registration of a candidate to be automatic in those instances where a person nominates at an election. Presently, persons who nominate at an election are required to separately register with the Election Funding Authority as a candidate. • It is not clear from the Act as to when a person ceases to be a candidate. Clarification in the Act would be beneficial and, in this regard, it is proposed that a "candidate" should continue to retain that status until such time as the candidate's agent (being either appointed or ex officio) finalises all financial management matters associated with the candidacy and complies with reporting obligations under the EF&D Act. • It is further proposed that the "candidate" would, if elected, assume the status of "elected member", as defined in the Act, but would continue to hold the dual status of "candidate" until such time as the candidate's agent (being either appointed or ex officio) finalises all financial management matters associated with the candidacy and complies with reporting obligations under the EF&D Act.

Register of Candidates	Low	All references to a Register of Candidates are removed.	• The Register of Candidates has served no practical purpose and it is proposed that all references in the Act to the Register be removed. • The Register of Candidates presently is in force from polling day at one general election until the day before election day at the next general election. • In so far as the cessation of the Register may terminate the period for which a person is a candidate, there is uncertainty as to how this may impact on the person's disclosure obligations. • For further information see comments under "Registration of Candidates". • It is desirable that the period for which a person remains a candidate sits comfortably with the regime of six monthly disclosures. • As an alternative to a Register of Candidates, it is considered that a list of registered candidates should be available on the EFA website.
Appointment of Official Agent (in respect to Candidates)	High	A person must appoint an official agent as a requirement of registration as a candidate. The official agent takes office immediately upon appointment. The agent would remain as the agent until such time as they finalise all financial management matters associated with the election and complies with reporting obligations under the EF&D Act, or, upon revocation, resignation or death.	• This would entail a candidate appointing an agent as a requirement of nomination at an election or, otherwise, upon registration as a candidate. • The nominated official agent would be required to accept the appointment (in writing) and complete the online training as a condition to their registration and, consequently, the registration of the candidate by whom they have been nominated. • This change would remove the present difficulties associated with the requirement for the candidate to appoint an agent prior to exceeding the $1,000 threshold.

Definition of Group	Low	To include any group created pursuant to S81C of the PE&E Act or S308A of the LG Act, two or more persons who intend to accept gifts or incur electoral expenditure for a purpose related to a group at a future election and two or more persons applying for registration as, or registered as, a group.	• To require a group to register who intends to accept a gift for a purpose related to a candidacy at a future election. Presently, the Act infers that registration is required from a group after they receive a gift. • To require a group to register who intends to incur electoral expenditure for a purpose related to a candidacy at a future election. These persons are not presently required to register. • The definition of group to be captured, in its entirety, in S4 of the Act. Some aspects of the extended definition are embodied in S84(2) and 96A(2) of the Act.
Registration of Groups	Medium	Registration of a group to be automatic in those instances where a group successfully forms at an election. A group remains registered up to and following the election and until such time as the group's agent (being either appointed or ex officio) finalises all financial management matters associated with the group and complies with reporting obligations under the EF&D Act.	• Registration of a group to be automatic in those instances where a group successfully forms at an election. Presently, groups which form at an election are required to separately register with the Election Funding Authority as a group. • It is not clear from the Act as to when a group ceases to exist. Clarification in the Act would be beneficial and, in this regard, it is proposed that a "group" should continue to retain that status until such time as the group's agent (being either appointed or ex officio) finalises all financial management matters associated with the group and complies with reporting obligations under the EF&D Act.

Register of Groups	Low	All references to a Register of Groups are removed.	• The Register of Groups has served no practical purpose and it is proposed that all references in the Act to the Register be removed. • The Register of Groups is an inherent aspect of the Register of Candidates and consequently is in force from election day at one general election until the day before election day at the next general election. • In so far as the cessation of the Register may terminate the period for which a group exists, there is uncertainty as to how this may impact on the group's disclosure obligations. • For further information see comments under "Registration of Groups". • It is desirable that the period for which a group exists sits comfortably with the regime of six monthly disclosures. • As an alternative to a Register of Groups, it is considered that a list of registered groups should be available on the EFA website.
Appointment of Official Agent (in respect to Groups)	High	A group must appoint an agent as a requirement of registration as a group. The agent takes office immediately upon appointment. The agent would remain as the agent until such time as they finalise all financial management matters associated with the election and complies with reporting obligations under the EF&D Act, or, upon revocation, resignation or death.	• This would entail a group appointing an agent as a requirement of forming a group at an election or, otherwise, upon registration as a group. • The nominated official agent would be required to accept the appointment (in writing) and complete the online training as a condition to their registration and, consequently, the registration of the candidate by whom they have been nominated. • This change would remove the present difficulties associated with the requirement for the group to appoint an agent prior to exceeding the $1,000 threshold.

Register of Official Agents	Medium	All references to a Register of Official Agents are removed.	• The Register of Official Agents has served no practical purpose. • The Register of Official Agents presently is in force from election day at one general election until the day before election day at the next general election. • In so far as the cessation of the Register may terminate the period for which an official agent holds office, there is uncertainty as to how this may impact on the status of the official agent and their disclosure obligations. • It is desirable that the period for which an official agent holds office sits comfortably with the regime of six monthly disclosures. • As an alternative to a Register of Official Agents, it is considered that a list of registered official agents should be available on the EFA website.
Register of Party Agents	Low	All references to a Register of Party Agents are removed.	• The Register of Party Agents has served no practical purpose. • The Register of Party Agents presently is in force on a continuous basis which is inconsistent with the treatment of other registers under the Act having limited lives. • As an alternative, a list of party agents should be available on the EFA website.
Appointment of Official Agent (in respect to Elected Members)	Medium	To provide elected members who are not a member of a registered party with the capacity to appoint their own agent. On becoming an elected member it is proposed that the person who is, at that time, the official agent for the elected member in their capacity as a candidate would automatically become the official agent. The official agent would remain as the official agent until such time as their appointment is revoked or upon resignation or death.	• The EF&D Act does not presently enable an elected member who is not a member of a registered party to appoint their own agent. • This category of persons is presently required to have an official agent “designated” by the Election Funding Authority. • In the absence of a person being nominated by the elected member for this appointment, the Authority will designate the elected member to be their own agent. • It is considered that these elected members should have the capacity to appoint their own official agent.

Refund of Nomination Fee	Medium	A candidate would only be eligible to receive the refund of their deposit at an election on the basis that a disclosure(s) was received for the reporting period in which election day occurred. It is proposed that this initiative be considered in conjunction with the suggestion that all candidates/groups receive a refund of their nomination. (This might include consideration of an increase in the nomination fee.)	• This would require affected nomination provisions and prescribed forms within the PE&E and LG Acts (and possibly Regs) to be amended.
Offences	High	S96I of the EF&D Act presently provides that a person who does any act knowing it is unlawful under Divisions 3 and 4 of Part 6 of the Act is guilty of an offence. The aspect of "knowing" presents a significant barrier to successful prosecution and might be considered for review.	Unlawful acts under Divisions 3 and 4 of Part 6 include, but are not limited to, accepting reportable political donations without appointing an official agent, accepting gifts in kind valued in excess of $1,000, and accepting anonymous donations. The EFA is advised that S96I requires *actual* knowledge of the unlawful activity not *constructive* knowledge. For example, it would not be enough to establish that a candidate or official agent had attended seminars or training or been issued with guidelines or other advisory information