

F2012/54

12 October 2012

Mr Jai Rowell MP  
Chair  
Joint Standing Committee on Electoral Matters  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000



Dear Mr Rowell

**Review of the *Parliamentary Electorates and Elections Act 1912* and the  
*Election Funding, Expenditure and Disclosure Act 1981***

I refer to the above matter and to the Roundtable held by the Committee at Parliament House on 24 August 2012.

I would like to commend the Committee on seeking input from the non-partisan participants in the Roundtable, and I am pleased to note that there was unanimity on the need for a thorough updating of the *Parliamentary Electorates and Elections Act 1912* [PE&EA] and the *Election Funding and Disclosure Act 1981* [EFEDA].

However, I would like also to take this opportunity to respond to some of the comments in the Roundtable's transcript made in relation to my submission to the Committee's Inquiry. Particularly, I would suggest that my submission actually addresses a number of the concerns raised therein.

Committee Members and participants seem to have been concerned that if principles-based electoral law were to be adopted in NSW, the Electoral Commission would essentially be conferred with far-reaching legislative, judicial and executive powers. I would suggest that this misconception arises from reading the material in the submission on the delegated rule-making in isolation from the proposed structural changes to the NSW Electoral Commission [NSWEC] and the Election Funding Authority [EFA].

The structure proposed in paragraphs 90 – 97 of my submission divides decision-making powers between the Electoral Commissioner and the three-member NSWEC, of which the Electoral Commissioner is but one member. This will ensure an additional probity mechanism for internal scrutiny and review of decisions by the Electoral Commissioner as administrator of State and Local Government Elections.



I have proposed that the three-member NSWEC, as a statutory corporation, will:

- delegate the responsibility for conduct of State and Local elections to an Electoral Commissioner whose appointment can be vetoed by the Committee, and who can only be removed by a vote of the Parliament;
- operate as the campaign finance regulator, in lieu of the current EFA; and
- approve rules and procedures for the conduct of elections and administrative functions in the funding and disclosure context.

This separation of roles and responsibilities will be an important safeguard.

Committee Members and participants seemed to consider that my submission's comparison of proposed NSWEC rulings with those of the rulings of the Australian Taxation Office was inappropriate. However, I note that the ATO is but one of many rule-making agencies and bodies at both Commonwealth and State levels to which Parliament has entrusted the responsibility under statute for the development and approval of a vast array of instruments including: guidelines, orders, by-laws, standards, plans, codes of practice, directions, accreditations and procedures. As I stressed in my submission, the issue is not where the applicable rules are located, but that they are developed by the most suitable body, and are consistent, clear and easily accessible to the public.

Concerns were also expressed that my proposal for delegated rule-making would exclude Parliamentary oversight, and there were queries as to the appropriateness of your Committee considering any proposed rules. As I noted in my submission, the aim is to relieve Parliament from legislating the *detail* of electoral administration in suitable areas: On this point I am pleased to note Dr Gauja's statement that the NSWEC is a trusted agency and that "there is a perception generally in the eyes of the public that these agencies are trusted more so than politicians".

Regarding the suggestion that the making of Regulations by the Executive might be preferred to rule-making by the NSWEC on the basis that Parliament is empowered to disallow Regulations, I note that the only recent example of this is in the case of the *Marine Parks (Zoning Plans) Amendment (Solitary Islands and Jervis Bay Marine Parks) Regulation 2011*. This Regulation was tabled in the Legislative Assembly on 3 May 2011, after a change of government, and does not therefore fall easily within the rubric of Parliament calling the Executive to account. It is almost unheard of for the Executive to have its Regulations disallowed when it has a majority of seats in the Parliament.

As I noted in my submission, given that Bills and Regulations are invariably framed by the Executive, leaving some of the detail to rulings of the NSWEC may in fact make the process appear less partisan.

There also appears to have been some confusion as to the potential for the NSWEC to be involved in the internal workings of registered political parties. The NSWEC's interest in party constitutions is confined to having current and detailed information. This is for the purely practical purpose of being able to determine whether or not an



applicant for amendment of the Party Register is in fact the relevant party office bearer, where such application is disputed.

To reiterate my submission, there are a wide range of benefits for all participants in the electoral process from the delegated rule-making which I have proposed, namely:

- electoral legislation is cleaner and simpler to understand, by politicians and interested citizens;
- fine-detail, typically of a machinery kind, is left to non-partisan experts;
- valuable Parliamentary time is not wasted on relative minutiae; and
- electoral regulation can change more speedily and flexibly when needed, especially to take advantage of new technologies or administrative methods.

I hope that my comments will be of some assistance to the Committee in its deliberations.

Yours sincerely

  
Colin Barry  
**Electoral Commissioner**