REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON STATE DEVELOPMENT

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL 2025

CORRECTED

At Macquarie Room, Parliament House, Sydney on Tuesday 15 July 2025

The Committee met at 9:15.

PRESENT

The Hon. Emily Suvaal (Chair)

The Hon. Mark Buttigieg
Ms Cate Faehrmann
The Hon. Stephen Lawrence
The Hon. Bob Nanva
The Hon. Nichole Overall (Deputy Chair)
The Hon. Peter Primrose
The Hon. Damien Tudehope

The CHAIR: Welcome to the first hearing of the Committee's inquiry into the Local Government Amendment (Elections) Bill 2025. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people that are joining us today. My name is Emily Suvaal, and I'm the Chair of the Committee.

I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

Councillor PHYLLIS MILLER, OAM, President, Local Government NSW, sworn and examined

Mr DAVID REYNOLDS, Chief Executive, Local Government NSW, sworn and examined

The CHAIR: Welcome to our first witnesses this morning. Thank you for making time to give evidence today. Would either of you like to start by making an opening statement?

PHYLLIS MILLER: Thank you for the opportunity to appear today. I'm Phyllis Miller, the president of Local Government NSW, the peak body for local government in our State. I'm also the mayor of Forbes Shire Council, but I appear today for Local Government NSW. The Local Government Amendment (Elections) Bill 2025 was introduced to Parliament without any consultation with Local Government NSW, and I immediately wrote to the New South Wales Government, Opposition and crossbenchers, seeking an inquiry into the bill. To begin with, I'd like to place on record my thanks to you, the Legislative Council, for hearing this call and referring the bill for inquiry. Democracy, including local democracy, is very precious. It's essential that changes to elections and democracies are not rushed and include careful and broad consideration by the public, all electoral stakeholders and, indeed, the Parliament. Any legislative changes impacting democratic outcomes must be fit for purpose, informed by community consultation and fully considered.

There are elements of this bill for which Local Government NSW is broadly supportive. However, there are changes proposed in the bill that are concerning. Methods for filling the casual vacancies: In particular, the proposed change to the method for filling casual vacancies impose a one-size-fits-all approach to the 128 very diverse councils across New South Wales. The bill proposes that where the vacating councillor was a member of a group on the ballot paper at the election, at which time they were elected, they are to be replaced by the highest listed candidate from that same group who was not elected at the election. If this cannot be achieved, a by-election would be required. The changes could have adverse democratic outcomes and will cost councils—particularly rural and regional councils—significantly more, as they will be forced to hold many more by-elections to fill their vacancies.

Many candidates in the rural and regional councils are not elected as part of a group. Some ballot papers have no groups at all, and there are 57 of those councils that have no groups at all. Candidates in the groups will be advantaged over ungrouped candidates, and voters' preferences may be disregarded. As the NSW Electoral Commission notes in its submission to the inquiry, by-elections are often more costly than full local government elections, as economies of scale cannot be relied upon. It is our communities who will bear the cost by reduced council services, delayed infrastructure maintenance and renewal.

The councils' stability sought by this proposed change can be better achieved through ensuring councils retain the ability to determine the most appropriate method for filling casual vacancies, taking into account their local context. At present, councils must choose, at their first meeting, from two methods to fill casual vacancies: countback or by-election. Local Government NSW supports councils having a third method available which aligns with the bill's proposed model for countback from the same group of the vacating councillor. That would ensure that the newly elected council has a democratic mandate to make the best decision in the interests of the stability of the council over the term, and in consideration of the potential costs that would be imposed on their community through each option. We agree that countbacks should be available throughout the term of a council, not just for the 18 months.

More broadly, if the NSW Electoral Commission is to become a monopoly service provider for council elections, there is a need for greater oversight or regulation of its pricing principles. Councils have seen enormous increases in the cost of their local government elections in recent years, well beyond the rates of inflation or population growth. The NSW Electoral Commission should not be permitted to increase the costs of conducting local government elections by more than the rate peg of the council. If this is not possible, then the bill should provide for price determination by IPART or another independent body. This will ensure that cost impacts on councils and communities are kept as low as possible.

Local Government NSW welcomes moves to reduce the duration of pre-poll, as occurred during the 2024 local government elections. A pre-poll duration from the Saturday to the Friday before an election strikes the right balance between accessibility for voters and candidates. Finally, our submission makes a number of other recommendations. They include the need to remove outdated requirements to include a street address on campaign material. This can deter candidates standing for election due to concerns for their and their family's safety. We would also like to see nominations open for a longer period and faster declarations following the election day.

The CHAIR: Mr Reynolds, did you have an opening statement?

DAVID REYNOLDS: No, nothing, Madam Chair.

The Hon. NICHOLE OVERALL: Phyllis, it is lovely to see you again. Thank you both for joining us this morning. I note that in the submission of LGNSW, one of the earliest statements that you make is that there has been a lack of consultation with Local Government NSW and councils generally in this. Have you had any other opportunity for input outside this inquiry now being called?

PHYLLIS MILLER: We certainly have a good relationship with the local government Minister and he knows what we're thinking. We've made that quite clear, and we're very comfortable that we now have this inquiry.

The Hon. NICHOLE OVERALL: Prior to this amendment bill being introduced, though, had there been any opportunity for input into what was being considered?

PHYLLIS MILLER: No.

The Hon. NICHOLE OVERALL: This inquiry is the first chance for that to occur.

PHYLLIS MILLER: We broadly consulted across our councils. We've got some very good submissions from our councils. We've had a very short time frame, which we don't like but we've worked with. But we've got a lot of input from our councillors and councils across the State.

The Hon. NICHOLE OVERALL: That's great, and I might move on to that a little later so I can explore that in more depth. In relation to this particular bill and the lack of opportunity prior to this for that input, are you aware of where it has emanated from, and why it has developed without that additional input from LGNSW or the councils, formally?

PHYLLIS MILLER: No.

The Hon. NICHOLE OVERALL: It has come as a bit of a surprise, then, from the perspective of LGNSW as well?

PHYLLIS MILLER: It's a surprise, but we do need to really look at it and get it right.

The Hon. NICHOLE OVERALL: Yes, absolutely. I fully and wholeheartedly agree that we have to get it right. Is there a component, in your view and in the view of LGNSW, of it being an attempt to streamline and hopefully make the processes more cost-effective?

PHYLLIS MILLER: I hope so, but I'm not sure about that. That will rely on what the Electoral Commission is charging the councils. Because exponentially—those costs have gone up considerably every election. We've got a component in our rate variation for elections.

The Hon. NICHOLE OVERALL: Yes, 0.8 per cent, is that right?

PHYLLIS MILLER: Yes, which doesn't—

The Hon. NICHOLE OVERALL: It doesn't cover?

PHYLLIS MILLER: No, it doesn't cover it. We need to look at those costs. But all in all I think that we need to get it right. We need to make sure that the councils don't lose their decision-making ability on deciding what they do at that first council meeting after they're elected. We want them to be able to say—the last person on the list, if they are individuals, gets elected or from a group—let the council make the decision. The most important democratic thing that we want to happen with this bill is to leave it in the councils' hands.

The Hon. NICHOLE OVERALL: Outside of the Office of Local Government submission that addresses some of those points that you've just raised, from an LGNSW perspective it still doesn't fully address some of the concerns that you are pointing out in that regard about council maintaining that control of their processes and procedures when it comes to things like the countback.

PHYLLIS MILLER: Absolutely. We're happy to have an extra one if something has happened to a person out of a group and you go to that next—we're happy to have that third category in, but we're not happy if it's not a council decision. So what we're saying is: Let the council have the decision on whether it's a countback to a group, a countback to an individual or a by-election. I think the council should be the ones making the decision.

The Hon. NICHOLE OVERALL: The countback elections that you're suggesting in your recommendation 4, that LGNSW would be willing to look at that as the third option, wouldn't those still have the potential to be problematic?

PHYLLIS MILLER: I think that's up to the council to make that decision. I don't think it's for me to answer that here. That would go to a chamber that would have all of the councillors in there that would make that decision. That's democracy, Nichole. I can't see anything wrong with that.

The Hon. NICHOLE OVERALL: You don't potentially see any opportunity where, if a council has a majority of a certain group or a party, that could potentially influence the way in which they might select one of these choices—that is that they go for (c), as you've outlined there—because it could be advantageous to them?

PHYLLIS MILLER: It's politics, Nichole. I think I'd be very naive if I answered that question. I think that's an answer. I think the chamber must make that decision. There's a group of councillors around the table. A lot of decisions are made politically, but there's a hell of a lot that are made in the best interest of their communities. I would leave that to the democratic processes of a council.

The Hon. NICHOLE OVERALL: From your perspective as a long-term councillor and mayor, why do you think this particular point in terms of the countback has been introduced in the first place as part of the bill?

PHYLLIS MILLER: I can't answer that.

The Hon. DAMIEN TUDEHOPE: You would agree that a council after an election could be composed of a whole lot of varied groups of individuals. You've indicated that there are 57 councils which have ungrouped representation. You would suggest that in relation to the model for filling casual vacancies the council would determine at its first meeting—

PHYLLIS MILLER: Yes, it's always at the first meeting.

The Hon. DAMIEN TUDEHOPE: —at its first meeting after the election—how council vacancies would be fulfilled?

I think the model you are suggesting is, firstly, it could be by by-election; secondly, it could be by countback; or, thirdly, it could be by way of the next person, which reflects a group.

PHYLLIS MILLER: Of which the person that has—something has happened to, yes.

The Hon. DAMIEN TUDEHOPE: Has resigned. That third option, of course, needs to also take into account that the person resigning might not be part of a group.

PHYLLIS MILLER: No. If you read what's in the legislation—and this is my determination of it—it is someone that has resigned or got sick from the group, you go back to the group that it came from, not from another group.

The Hon. DAMIEN TUDEHOPE: No, but what about if the person resigning is not elected from a group and it's just an Independent?

PHYLLIS MILLER: That's right: You're not going back to a group.

The Hon. DAMIEN TUDEHOPE: What happens in that case, if you adopt model three?

PHYLLIS MILLER: You can't adopt model three if the person didn't come from a group.

The Hon. DAMIEN TUDEHOPE: So model three has to have a variation to say—does it not—that if in fact the person is not part of a group then it would either be by countback or by-election?

PHYLLIS MILLER: Yes. I thought that was clear in that number three: If something happened to a person out of a group, you can go back to that group. That's also a council decision. I believe it should be.

The Hon. DAMIEN TUDEHOPE: Just so that we're clear, the third option which you are suggesting is, in circumstances where an elected member is part of a group, then, in those circumstances, the resolution of the council can be to replace that person by another person from that group.

PHYLLIS MILLER: Yes.

The Hon. DAMIEN TUDEHOPE: In circumstances where they are not part of a group, then the proposal is that it be would be either by countback or by-election.

PHYLLIS MILLER: Or the next person that's in line for election or by-election.

The Hon. DAMIEN TUDEHOPE: That's countback, isn't it?

PHYLLIS MILLER: Well, whatever you want to call it.

The Hon. DAMIEN TUDEHOPE: It would either be by way of countback or by-election, so the third option really is a hybrid model.

PHYLLIS MILLER: I'm not sure, really.

The Hon. DAMIEN TUDEHOPE: Mr Reynolds, do you want to say—

PHYLLIS MILLER: The only reason that we're saying about the group is because it was in the legislation. Our councils can live with that, as long as it's a council decision.

The Hon. NICHOLE OVERALL: But, Phyllis, in a lot of the submissions—in fact it is only LGNSW who has introduced this concept of having it as the third option. None of the other submissions—and I'm not suggesting that there aren't other councils who haven't made submissions that might be for it, but they don't seem to be proposing the idea of C. Has LGNSW had the opportunity for further input from councils on whether or not they do support this as a third option?

PHYLLIS MILLER: We have had a lot of consultation, and—David, I'll hand over to you—even our board.

DAVID REYNOLDS: In the window that we've had to seek opinions from our members about it, some are in favour of the countback from the group model, but many are not. As the peak body for all members, we've attempted to represent a position that gives our members the discretion, democratically, to pick the method which most appropriately suits their circumstances. We acknowledge that—to go to Mr Tudehope's question—when you exhaust that option, there would still be a need for a council to rely on either a general countback or a by-election. At the moment, the format proposed in the bill is that the countback be done from the group and, as is the case in some first-past elections, once that group's exhausted, then it's a mandatory by-election. That mandates the most expensive option for a council in that circumstance, which is what we're trying to guard against, generally.

The Hon. DAMIEN TUDEHOPE: Can I just talk to you about the cost of elections? You've indicated that the cost of elections is far outstripping councils' ability to be able to keep up with the NSW Electoral Commission costings. Can you give me some examples, in relation to that, of councils where they have had cost increases, say, from 2021 to 2024?

PHYLLIS MILLER: Yes, I can. It is the council out at—Sutherland Shire Council. I'll give you an example of what they've done:

> … Local Government Election for our Council, as invoiced by the NSWEC, was $1,654,046 - an increase of $670,253 from the cost in 2016; an increase of $551,602 from the cost in 2021; and an increase of $159,300 between the cost estimate provided to Council by the NSWEC in 2023 and the final invoice received on 22 May 2025. In this regard, whilst we note and welcome inclusion of the election reimbursement component in the 2025/26 rate peg, as can be seen, the allocated 0.1% intended to offset the increased cost … will only enable Council to recover $157,545 …

The Hon. DAMIEN TUDEHOPE: Have you got a recommendation as to how you would control those spiralling costs, as you have indicated there from the NSW Electoral Commission?

PHYLLIS MILLER: I think that's a matter for the Government. We really need to—

The Hon. DAMIEN TUDEHOPE: Should IPART determine it?

PHYLLIS MILLER: We have said in our submission that we think IPART should, but it is a matter for the Government. Our elections seem to be funding the NSW Electoral Commission for most of the year. I know there's input from the State Government, and certainly they pay their 55 per cent, but it is their organisation. It's not our responsibility to pay all of those running costs of that organisation. Somewhere along the line, we need to have a really sensible conversation about the cost of elections because they are absolutely cruel the way that they're going up. We cannot even be able to budget for them because you've got no idea how much it's going to go up from election to election.

The Hon. DAMIEN TUDEHOPE: You support the NSW Electoral Commission conducting the elections, don't you?

PHYLLIS MILLER: We do, but not as a monopoly.

The Hon. DAMIEN TUDEHOPE: I understood that you were not supporting a tendering process with independent election companies to oversee elections.

PHYLLIS MILLER: We've got our membership. A lot of our membership support just having the Electoral Commission. But we also have a portion, which I must represent here at this hearing, that want to have independent people do it.

The Hon. PETER PRIMROSE: Can I ask, following on from that line of questioning, isn't it the case that only two of 127 councils use a private provider?

PHYLLIS MILLER: Absolutely. That's correct. We started out with, when it first changed, about 16 and then 14 and now there are only two left.

The CHAIR: Would you say that private providers have helped lower the costs, then?

PHYLLIS MILLER: Not at all.

The CHAIR: In terms of the costs of elections, following with this line of questioning, why should the rate peg be the system used to determine cost increases for an election provider?

PHYLLIS MILLER: It's all we've got to increase our income. It's important that it's not outside of what we are capable of having, financially.

The CHAIR: You recommend also that IPART oversees the NSW Electoral Commission. I'm curious as to how you think one independent statutory authority could keep another independent statutory authority accountable.

PHYLLIS MILLER: I'm hoping, Emily, that we just keep the costs down. That's all we're looking for. However that needs to be done. We've got IPART doing us and it's the most—I'm very happy with IPART. I think we're getting the best deal we've ever had with the way that they're determining our rate variations. I'm really finding that they're being very sensible about that. If that's not the path that we need to go, we'll say we need someone to help keep the cost down at the NSW Electoral Commission.

The Hon. PETER PRIMROSE: When Mr Tudehope raised the very legitimate question of does LGNSW and its membership have any proposals as to how to reduce the costs, you indicated that's a matter for the Government. Do your members have any views at all in relation to how you reduce the costs of elections?

PHYLLIS MILLER: We can have a go.

DAVID REYNOLDS: I'm happy to answer part of that question. I give the example of the State Government charging itself hall hire costs. The Department of Education charges the Electoral Commission and therefore the council and their community the costs of hall hire to carry out polling places. That's Peter robbing Paul. We would argue that there are efficiencies in the system where government space, used for the benefit of its community, can be used more economically. On the role of IPART or some oversight body reviewing the cost as opposed to its separate function in determining how much income a council can levy its community, we would argue that, whether it's IPART or some other established body, there's a role to review and have some oversight of the Electoral Commission's costs.

Madam President's given you an example of one council. We have others between the 2016 and 2021 elections where their costs increased more than 100 per cent. From 2021 to 2024 we have a council in south-west Sydney who went up 93 per cent. We accept labour costs are up. We accept the costs of security are up. We accept the costs of paper and IT systems are up. We don't say we operate in a vacuum, and we say that those costs might be justified, but there should be some oversight and some control because ultimately that cost is being passed on to our residents, which are the residents of New South Wales more generally.

The Government comments that it's a 55-45 split in terms of the portion funded by the State Government as opposed to councils, but that's not a direct split of the cost of local government elections. The State Government is very properly performing its role of sustaining the Electoral Commission between elections. It's providing for IT systems. It's providing for office accommodation. It's providing for leave entitlements, and the councils are then paying a very, very direct and up-front cost. We say it might be accurate, but we don't know. We'd love some oversight.

The CHAIR: In terms of the cost of elections, under the new rate peg methodology, which you've touched on, isn't the cost of an election basically a pass-through to ratepayers? Councils only pay, effectively, until they're reimbursed through the rate peg?

PHYLLIS MILLER: No. What IPART has given us in the rate peg is 0.1 per cent. That's not covering anything. As I said, one-point-something million was Sutherland's and they got $167,000 or $157,000, whatever. That's all they could recover through their rate peg. If we could get a system, even, knowing what our election costs are, and over a four-year period have that percentage on our rate peg, that would reimburse us for those elections. That would go somewhere to helping us pay for our elections, but it's still the communities of New South Wales that are being hit by this.

Just as a matter of course, I had an issue with my nomination, and I was in Sydney in the same building as the Electoral Commission. I was on the phone for 45 minutes, hanging on until someone answered. I said, "Could I pop down and fix it up?" I was only two floors, and they said, "No. We don't do people." It's pretty ordinary, even some of the service that we're receiving from the Electoral Commission. I think that can be improved exponentially.

Ms CATE FAEHRMANN: Just on the issue of the Electoral Commission, what consultation has the Electoral Commission had with Local Government NSW in terms of these increases? Are they meeting with you to try to work through how to reduce the costs with you? Were councils aware? For example, Sutherland had a 600k-plus increase. Was Sutherland aware already for this type of increase and the other councils that have experienced it, or did it just come out of the blue?

PHYLLIS MILLER: None of us knew what our costs were going to be. But David and I have had a discussion. We're hoping to have a meeting with the Electoral Commission.

The Hon. DAMIEN TUDEHOPE: You don't get a quote up-front? Do they tell you up-front?

PHYLLIS MILLER: Yes, you get a quote.

The Hon. NICHOLE OVERALL: Yes, they do, but it doesn't mean it's right.

PHYLLIS MILLER: You've got no choice.

The Hon. NICHOLE OVERALL: There's no negotiation, is there?

Ms CATE FAEHRMANN: In terms of trying to find reduced costs, it could be useful to get some examples of what different councils have been charged for the use of government buildings—school halls from the Department of Education, for example—if councils want to give them to us to pursue that.

PHYLLIS MILLER: Would it be the Electoral Commission that could give you that?

Ms CATE FAEHRMANN: Yes, possibly. We can see.

PHYLLIS MILLER: Yes, I think that's where it needs to come from. Otherwise, we're double-handling, Cate.

Ms CATE FAEHRMANN: Can I just go back to the recommendation around filling a casual vacancy. In the most ideal world, not with your pragmatic hat on in terms of what the Act already allows, why wouldn't Local Government NSW support taking casual vacancies out of elected councillors' hands, so as not to allow them to fill them at the beginning of that meeting—because, again, it's about democracy, and usually how to fill that casual vacancy for that term is not in their hands—and instead just putting it very clearly in the legislation that the casual vacancy should be filled by countbacks, and if it can't be then a by-election is held? Is that the most ideal situation, do you think?

PHYLLIS MILLER: No. We fought long and hard to get some democracy with these countbacks, so that we did have a decision in the chamber in that first meeting, and I don't want to lose that for the sector. Those people have been elected by their communities. They are entitled to make decisions for the next four years on behalf of their communities, and I believe that we should have the trust that they're going to make the right decision.

Ms CATE FAEHRMANN: But I do agree with what Ms Overall was suggesting earlier. Isn't there a situation, for example, where a council is stacked out with eight Labor or eight Liberal—

The CHAIR: Or eight Nats, Independents.

Ms CATE FAEHRMANN: —and they just vote in that election, because they've worked it out, what is going to be most favourable to them should a by-election occur in that term? Isn't that the issue that we're trying to address here, rather than—you're saying that councillors ideally make decisions for their community, but that's living in la-la land, isn't it? I just genuinely want to know why, because I look at this and think that's the fairest. That's the way to just deal with it. Countbacks are the will of the voters. If countbacks aren't possible to fill that position then go to a by-election, because then, again, the people decide.

PHYLLIS MILLER: Let's be frank here. It doesn't matter what the political make-up is in the chamber. It can go any way, and it's the same in Parliament. Politics is politics. When you're in local government, you're in politics. Basically, I think we should allow those democratically elected people to make that decision, and I will not bow away from that. That is the position of Local Government NSW—that the chamber makes the decision.

The CHAIR: Sorry, I'm just curious. In the Senate and the Legislative Council, a departing member is replaced by a member of the same party. It's not the will of the chamber; it's a very clearly established mechanism. Neither of these bodies use countbacks. Neither the Legislative Council nor the Senate use countbacks. Why should local government?

PHYLLIS MILLER: Because we just think that's the best way for us to do it.

Ms CATE FAEHRMANN: Just to be clear, I'm not arguing what the Government is arguing here.

PHYLLIS MILLER: No, I'm not arguing.

Ms CATE FAEHRMANN: No, I'm not doing that either.

PHYLLIS MILLER: We're a different beast.

Ms CATE FAEHRMANN: I am genuinely—we also are concerned about regional councils and the number of candidates that don't run in groups. I'm very aware of that. That's why, if a countback isn't possible, going to a by-election just seems to be a bit more democratic than the local councillors electing. Anyway, I won't push it because that's what Local Government NSW has—

PHYLLIS MILLER: That will be a decision for the Government to make. But we're making it quite clear, and we represent the democratically elected councillors and the councils and we believe that the decisions should wholly stay with those people.

The Hon. DAMIEN TUDEHOPE: One of the suggestions you've made is in relation to non-attending voters who get fined and the return of fine money to local government to assist local government in relation to the funding of election campaigns. Do you want to elaborate on that proposal?

PHYLLIS MILLER: We'd be very grateful if we got the support of this Committee for that to come back to us—it would be very helpful—instead of going into consolidated revenue.

The Hon. DAMIEN TUDEHOPE: I'm sorry, I don't have this figure at hand, but what do you say is the amount of revenue which is raised in relation to non-attendance or non-voting at local government elections?

PHYLLIS MILLER: David is going to look for that. I can't remember that actual figure.

The Hon. NICHOLE OVERALL: I think it was about $7 million.

DAVID REYNOLDS: I've found that. If I can take you to page 7 of our submission, just under recommendation 1 we have a section on non-voting fine revenue. In 2016-17 there was almost $24 million in fines for failure to vote and the Government recouped about $4 million, in 2017-18 the Electoral Commission issued almost $26 million in fines for failure to vote and received almost $5 million, and in 2021-22 the Electoral Commission issued almost $40 million in fines for failure to vote and received more than $7 million.

The Hon. DAMIEN TUDEHOPE: Do you have the figures for failure to vote at by-elections?

DAVID REYNOLDS: I do not have that detail with me, but it's possibly more a matter for the Electoral Commission.

The Hon. DAMIEN TUDEHOPE: Perhaps I can ask the Electoral Commission in relation to that.

The CHAIR: I just want to come back to this issue of the countbacks briefly. In your opening statement you said that the changes that are being proposed advantage grouped candidates, but they have the same chance of getting elected, don't they? How are they advantaged?

PHYLLIS MILLER: Just say that again, I'm sorry.

The CHAIR: In your opening statement you said that the changes that are being proposed advantage grouped candidates. But they have the same chance of getting elected, don't they?

PHYLLIS MILLER: No, I'm sorry, I actually don't believe—

The CHAIR: How are they advantaged? That is what I'm trying to understand I suppose.

PHYLLIS MILLER: I'm just trying to look for that bit, Emily, where I've said there is some advantage to the groups because I'm not saying that. I'm saying that if someone comes out of a group and that council decides to pick someone out of that group to go back in, we're going with that.

Ms CATE FAEHRMANN: I think the issue here, isn't it, is that if there is nobody in a group and you go to a by-election, those with more resources—that can campaign as a group, for example—may win that spot, as opposed to the person who vacates the seat, and it's the will of the electors, in terms of filling somebody with the same party, principles or values as that person who vacates? You go to a by-election and suddenly Labor with all of its resources or the Nats with all of its resources, because there is only one spot, will get that spot. Isn't that the issue with why it disadvantages? Because if they're not in a group, that's the whole point. That's the issue here, isn't it? If they're not in a group, you have to go to a by-election. I fear, looking at it, that it actually favours those candidates who are already elected in a group, as in those political alignments, potentially.

PHYLLIS MILLER: That's a very good pick-up.

The CHAIR: I'll probably take that as a statement from you, Cate.

Ms CATE FAEHRMANN: But that is the crux of it.

PHYLLIS MILLER: Yes. I've got it now.

The CHAIR: Ms Miller, should elected representatives really be in a position where they're deciding how to replace themselves, which is effectively the position that you've put forward?

PHYLLIS MILLER: Yes, I think we should—

The CHAIR: Elected representatives should just decide how to replace themselves?

PHYLLIS MILLER: Absolutely, but also by what the election has said. Whoever the last man standing at a regional council is when you're going individually, you have a countback and that person is elected. All we've added in here, from what we've had to date, is the groups. If someone left a group, the council still has to make the decision, we believe, that that person can be replaced by the group.

The CHAIR: In Forbes, the next unelected candidate received 4 per cent of the vote, or 216 first preference votes.

PHYLLIS MILLER: Yes.

The CHAIR: That's the tenth candidate for the ninth spot.

PHYLLIS MILLER: Well, we've got no choice—

The CHAIR: In Temora, the next unelected candidate received 97 votes, or 2.4 per cent of the primary vote. In Blayney earlier this year, a countback elected a candidate who received just 5.81 per cent of the primary vote, or 264 votes.

PHYLLIS MILLER: It's my understanding that when the Electoral Commission does a countback, they do it with the preferences distributed. So it's not just on your primary vote; it's your preferences that have been distributed as well.

The Hon. PETER PRIMROSE: This is not a critical issue, but I'd like to clarify your reason for recommending it. You recommended:

> That the Bill amend the Local Government (General) Regulation 2021 to reduce the closing time for receipt of postal ballots in local government elections from "6pm on the 13th day following election day" to "6pm on the 6th day following election day".

Can you tell us why you recommended that, please?

PHYLLIS MILLER: Absolutely. I wanted to bring that up, so thank you, Mr Primrose, for bringing that up, because it's very dear to my heart. We have not been getting determined as councils till October. What we're saying—and we were going to put this; it wasn't part of your terms of reference, but I think we need an amendment to some of these things in this bill—is that we open the nomination period earlier than what it was this time. It was very, very tight. If we opened the nomination period in July and we had the nominations and we had determination of the ballot, we could have nearly a month's period of postal voting prior to election day. We're saying why we want to bring the postal voting back closer to election day is so that we can be determined early.

In our Act, it says, "Vote you mayor in in September," and we're not getting declared until October. It's messy. If we could extend that time—I don't want the postal voting people to miss out. We know that rural/regional areas, it's by horse and cart, our mail delivery. So let's get that right. Let's open them in July and have all of August where you've got your postal votes. Bring that postal vote date—I would be happy for it to come back to the Friday before election day, if we could get a big enough block of time for people to do their postal voting, because then we could be declared in the next week or two in September.

The Hon. NICHOLE OVERALL: Phyllis, I just want to talk a little bit more about the countback. I understand the position that you've now raised, and I fully hear what you're saying—that the power stays with council. However, I would point out in the OLG submission, they have stated:

> It has been recognised—

no research to back up who it has been recognised by—

> that countback elections have the potential to change the political composition of a council—

and they say—

> impacting on its stability. There are examples where the balance of power has shifted in a council due to a councillor vacancy and a countback election throwing up a councillor with different political intents.

Coming back to that point, isn't then the countback system the most democratically equitable in the circumstances, when the OLG is suggesting that it does have a chance to influence the political stability of a council? Again, I understand the position that you've already presented, but in the submissions, largely, councils seem to be suggesting that they're not in favour of by-elections at all because it only winds up costing councils more money.

PHYLLIS MILLER: It does. We're trying to not have by-elections.

The Hon. NICHOLE OVERALL: That's right. If we're trying to do away with by-elections because of those additional cost imposts, then surely countback—and backing up what Cate has been saying as well—is the most democratic, fairest and most equitable way to be addressing it?

PHYLLIS MILLER: And we're happy with the countback, but we have—

The Hon. NICHOLE OVERALL: The options, yes.

PHYLLIS MILLER: Through this bill, we have spoken with our people, and I'm representing all of local government here today. I have a personal opinion, but we are representing the people that stand as groups and believe that if one of their group is not—if something happens to them, that should go back to that group. I believe if we can leave that decision with the council—it doesn't matter what happens, Nichole. It's politics and you're going to get a very different look of a council when something happens to someone. That's life and we've just got to live with that.

The Hon. NICHOLE OVERALL: You would say that the vast majority of, if not all, councils would prefer to do away with by-elections in all circumstances, if that is something that could be considered, because it just costs more money. Obviously there will be circumstances in which it wouldn't, but it would be by far the majority view that by-elections should be the last recourse.

PHYLLIS MILLER: I don't think that should be mandated. That's a decision for the chamber, and I'll stick with that as a decision for the chamber.

The CHAIR: We're at time. Thank you very much to you both for your evidence today. The secretariat will contact you in relation to any questions that may have been taken on notice, but I don't believe there were any. Thank you again.

(The witnesses withdrew.)

Mr GEORGE SIMON, Assistant General Secretary, NSW Labor, sworn and examined

Mr CHRIS STONE, State Director, The Liberal Party of Australia, NSW Division, sworn and examined

Mr SEAMUS LEE, Registered Officer, The Greens NSW, affirmed and examined

The CHAIR: Welcome. Thank you very much for appearing today at the inquiry. Would any of you like to start by making an opening statement?

GEORGE SIMON: I want to thank the Committee for giving the party the opportunity to answer questions on our submission and make a brief opening statement. I want to start by making the Committee aware that, like, I think, all the other political parties here, we have an objective of ensuring that voting is fair, open and transparent at a local government level. We, as a party, believe that the modest amendments proposed by the Minister in this bill go some way to achieving that and improving those principles at a local government level in relation to elections.

I want to speak to two matters in the bill which we believe are a priority and worth a brief opening statement from me. The first is in relation to the removal of private providers from the conduct of elections at a local government level. In principle, as a party, we don't believe in the privatisation of critical public assets and functions. That's a position that our parliamentary party took very strongly to the last election. We see the amendments in relation to that as very much in line with those commitments that we gave at the last election. We do believe that the NSW Electoral Commission is best placed to conduct elections at a local government level and at all levels of government in New South Wales. The NSWEC is an independent statutory authority. It has a mandate to conduct elections. It is subject to parliamentary oversight and other transparency measures that just don't apply to private providers when conducting elections.

It conducts elections in what is a very complex set of legal and operating environments. I'm sure my friend representing the Liberal Party could provide some comments on just how complex the nomination process alone is in respect to running elections. To expect that a private operator can navigate those complexities in a market that really only emerges once every four years, I just think is a libertarian fantasy. We're also concerned in relation to matters that we've provided in our written submission about the fact that a private contractor essentially replaces the role of the Electoral Commissioner with either the general manager of a council or the CEO of the private operator depending on what ruling is made and what set of principles are used.

Anyone who's observed local government for long enough will know just how politicised the appointment and dismissal of general managers has been. To expect that there will be impartiality of decision-making when the functions of the Electoral Commissioner are handed to those people, I think is not correct. Finally, the introduction of private, for-profit contractors to run elections in local government was supposed to reduce the cost burden on councils for running elections. There has been no evidence to date to indicate that that has been the case.

Finally, I just wanted to make a brief comment on the changes that are proposed for filling casual vacancies. The discretionary power granted to councils to choose between by-elections and countbacks has been and will continue to be used for political advantage. The most recent example that we've identified at Mid-Western council—when the council chose to force a by-election months after the general election when the newly elected councillors knew that the councillor that had been elected tragically passed away before the first meeting—I think is an example of how that is being used for political advantage. It really was a shameless political manoeuvre. We welcome the fact that the voters of Mid-Western council rejected that political manoeuvre.

The provisions proposed by the Minister, in our view, bring the practice of filling casual vacancies in local government in line with other elected proportional representative positions, namely replacing positions in the New South Wales upper House and the Federal Senate. Although the mechanisms may be different, the principles here are the same. We believe that the proposals made by the Minister in making those changes are appropriate. I'd be happy to take any questions from the Committee.

CHRIS STONE: Thank you again for the opportunity to make a submission to this Committee's inquiry into the Local Government Amendment (Elections) Bill 2025. The Liberal Party of Australia, New South Wales Division recognises the importance of ensuring integrity, transparency and public confidence in the conduct of local government elections across New South Wales. As a party, we reaffirm our belief in free, open, honest and robust democratic public institutions. While the Liberal Party acknowledges the objectives of the bill are to improve consistency and transparency in local government elections, these reforms must not compromise councils' financial sustainability or disproportionately burden regional and rural ratepayers.

Our submission focuses on two of the proposed amendments. In respect of pre-poll voting, we support early voting for those genuinely unable to vote on election day. However, it should not be a means of allowing all voters to simply get voting out of the way at a more convenient time. This supports the electoral system in New South Wales, and indeed in Australia, which is designed around a single election day when all electors are required to attend and cast their vote. Early voting should not be used to facilitate a voting period rather than a voting day. As such, we believe keeping early voting to only one week discourages the practice of electors voting early simply for convenience. However, we do support pre-polling on the Saturday before election. This would improve access for those who have genuine barriers to voting and align local government elections with State and Federal election practices.

Given the legislative requirement that early voting be only made available in circumstances where an elector is not able to vote on election day, we believe that limiting the location of polling places within the council's local government area is entirely appropriate. Fair, democratic elections are the cornerstone of the Australian and New South Wales political systems. As such, the party is naturally concerned with ensuring that elections, including their preparations, are undertaken to the highest standard to ensure ongoing community confidence in New South Wales electoral processes and to enable and assist political organisations and candidates to contest elections in a fair and easy manner. Thank you again for considering our submission. I'm obviously happy to take any questions.

SEAMUS LEE: Thank you to the Committee for inviting us to come and present. We are very strong supporters of the NSW Electoral Commission and the work they do. We believe that they should be the sole operator of local government elections in this State. It's a civic role, and they are the best placed to do it. We have some concerns around the changes to the countback elections. We believe that the countbacks have been working fine, and what we'd actually like to see is that the default gets switched around. At the moment, I think the default is that you use a by-election unless you opt in to countbacks. We think it would be better, potentially, to switch that to have countbacks by default with the option to still potentially go to—but, obviously, that's a thing.

We're also concerned with the limitation on polling places being within districts. We think that might be a bit problematic, particularly in metro areas, if you're trying to constrain costs. We think that allowing especially pre-poll venues to be outside of areas that—you think about one centre like Sydney Town Hall maybe servicing multiple councils. That would be a way of potentially reducing costs as well as having more accessible things.

Also, we have a very small, slight concern, which is—I think it's schedule 1 [10] in the bill that removes a penalty and the provision that the residential roll is not to be used for commercial purposes. We think that that might need to be retained, but that might also be covered by the provisions in the Electoral Act around the roll in general. But we're just wanting to make sure that the roll itself can't be used for any commercial purposes. The residential roll is, essentially, a derived product from the State roll in general. We also think that ban on commercial use of the roll may need to be extended to the non-resident rolls as well. At the moment, I think the current provision only covers the residential roll. But happy to take any further questions.

The CHAIR: We will now move to questions. The Committee has adopted free-flowing questions.

Ms CATE FAEHRMANN: Mr Stone, I am curious—with the Liberal Party's submission, it appears, similar to some other submitters, that you just went by the objects of the bill to make your submission. The objects of the bill do not talk about filling casual vacancies. Is that why the Liberal Party didn't address the issue of filling casual vacancies in your submission? It just seems a key part of the bill. Is it because you didn't notice that when you looked at the objects?

CHRIS STONE: No, we took the view that, as a political party, obviously, our job is to prepare for election campaigns, to support our local councillors. Obviously, we acknowledge that there would be councils and other stakeholder groups that would be making submissions on aspects of the operation of countbacks and by-elections and the like, so we did not explore those issues in our submission.

Ms CATE FAEHRMANN: It seems to be one of the most controversial issues that is in the bill, frankly. I am just wondering, has the party formed a view on it?

CHRIS STONE: I would, obviously, acknowledge that when the Liberal Party considers which areas it's going to contest around New South Wales, we have traditionally nominated candidates in groups, and we form a group to achieve a group voting square above the line. The proposal in the bill to allow those parties or groups that are formed to fill casual vacancies from that group is something that, certainly, we would support, where they exist, certainly as a cost-saving measure for the purposes of filling those casual vacancies but also I acknowledge that—as it is in the Senate and in the upper House—casual vacancies are filled by the political party from which the vacancy has occurred. From that perspective, given that the party nominates groups, with group voting squares, in the areas that we contest, we would have no objection to that.

Ms CATE FAEHRMANN: Mr Lee, could you explain a little bit more? At the end you were talking about the electoral roll not being used for commercial purposes. Is that contained in this bill or is that a broader recommendation?

SEAMUS LEE: Partly it's contained in the bill. There is a provision. I think schedule 1 [10] of the bill removes—it's seen as a clean-up measure from getting rid of the private providers. It removes a whole bunch of aspects within the residential roll part of the Act. One of those is removing the penalty and the prohibition on the use of the roll for commercial purposes. In one sense, then, it might be that the Electoral Commission and the Electoral Commissioner are therefore constrained by what's in the Electoral Act 2017 that may prohibit the use for commercial purposes or other purposes—that might be why this is okay, but we're just not certain. We would just like some verification on that.

I also touch on the question you asked Mr Stone. I note that there is another jurisdiction, Tasmania, that uses countback elections to fill any vacancies that happen in their House of Assembly, I think it's called, down there, where they use proportional representation. That is one other jurisdiction that uses countbacks. I think the ACT might also do it for their house as well, in terms of filling vacancies. I would also just point to the NSW Electoral Commission submission. They had a table in their submission of impacts from 2024 onwards. They pointed out that, I think, the number of by-elections that would be required would actually increase if we went to the model that's suggested by the bill rather than just using straight countbacks, because there was a number of times where I think an ungrouped candidate was elected in the countback. Whereas, under this, because there's no other candidate from that group, they would have to go to a by-election. In terms of cost concerns, that might be an aspect.

The CHAIR: When someone votes for, say, a Labor, Liberal or Greens candidate—this is an open question to you all—do you believe it's fair to say that in the vast majority of cases the voter is choosing the candidate due to their affiliation with the political party?

GEORGE SIMON: I'm happy to go first on that. Before I do, I just wanted to correct the record on something in my opening statement. Sharelle Fellows, who's the Mid-Western councillor, has been incapacitated and is ill—I just wanted to clarify that. In relation to your question, Ms Suvaal, I think the answer is not straightforward. I think that it is our view that people who are elected on group tickets bring some personal vote but broadly also get elected based on a set of principles that they take to that group and a set of commitments that they take to the electorate as part of that group.

There is, I think, a live debate amongst this Committee and in the sector right now about casual vacancies versus filling via group tickets or via countback. It's our view that the starting point to this question is who should make the decision about the method for filling a casual vacancy? Based on the matters that I outlined in my opening statement, we don't believe that councils should get to choose the way in which a casual vacancy is filled. We think that that is subject to far too much political machination and Machiavellian playing. Then you come to the question about, if you're removing that, what is the default position? Is it countback or is it group voting?

No system for electing people in these circumstances is perfect. But we would argue that people who are elected on a group voting ticket are elected on a set of principles that electors would expect to continue to be represented at that council. You can easily determine that in a group voting arrangement. You cannot easily determine what that is in a non-group voting arrangement. In our view, it makes total sense that you can't do a countback in a non-group voting arrangement, because that does risk that the next person elected doesn't actually represent the stability that has been created and the coalition that has been created at a council, where you can more easily determine that in a group voting arrangement. That's not to say it's perfect. I think there are merits to both points of view but, on a marginal call like that, it's our view that the best method is the one that's been proposed by the Minister.

CHRIS STONE: This will be somewhat controversial, but I do agree with much of what my colleague just said. When you nominate a group, they are candidates that all subscribe to the values and beliefs of the organisation or the party that they represent. In circumstances where there is a casual vacancy that is caused through one of them either resigning or otherwise, filling that casual vacancy with the next available person in line from that group makes a lot of sense.

SEAMUS LEE: One of the other things that we ought also need to be mindful of is—whilst I agree with a lot about the fact that, when you are voting in a group, you're voting for the values that that group assigns. We also have to remember that in councils like Willoughby City Council and others which have a popularly elected mayor and sometimes ward structures as well, you end up with—particularly in the situation where have teams—the mayoral candidate might have a group in each of the different wards to help support them. So you end up with this sort of team situation going on. People might vote for a team that might have been headed by that mayoral candidate.

I'd also say that countbacks have generally shown, if you look at the history—like Tasmania and generally—it's not been the case that you get an opposing political spectrum when you do this countback process. I think that the NSW EC has shown in their report that the only time since 2024 the countback was filled by someone other than in the group that that person would have left from was when nobody else from that group applied to be part of the countback process. In terms of the political make-up, there is that. But I'd also say that I think we should be going back to what the voters had to say. There might be a case where some councillors might get a personal vote. Obviously, we do have below-the-line voting, so voters might be voting for particular personalities to be on the council rather than just the group.

I think one of the other advantages of the countback process is allowing for group members to opt in and it's not just automatically assumed that everybody in that group will still be willing to serve down the line. For example, I've been on a group. I was number 30 in the west ward of Lane Cove, helping out my campaign there, and did I really want to expect that I might end up getting picked just because I'm on a group? A similar thing also happened in a Penrith East ward, I was told. Things can happen in politics.

The CHAIR: Absolutely. I could say lots to that, but I won't. The Minister in his second reading speech touched on an issue that councillors often stay on council for longer than they intend—or, indeed, want to—because, if they leave, they'll change the numbers on council. Does that match up with your experience?

GEORGE SIMON: Just speaking from personal experience of this, it certainly does. I was an elected councillor at Ryde council from 2012 to 2017. That was a five-year period. There was an extension of the one-year period because of local government amalgamations. I'd made a decision sometime between 2015 and 2016 that I would not seek re-election. I'd started making arrangements to move house. If I'd made a call at the point at which it was announced that there'd be an extension of the term of the council, it would have forced a by-election in which the make-up of the council would likely have changed because it turned quota from 25 per cent to 50 per cent when you go to a by-election. I made the decision to stay on council for a year extra when I perhaps wouldn't have made that decision otherwise, and was essentially forced to make that decision not to force a by-election. I've certainly got personal experience of that, which matches up with the commentary that was made by the Minister in the second reading speech.

SEAMUS LEE: If I could just say, I think that quota question is actually quite an important aspect in terms of why we prefer countbacks over by-elections. It's because you end up with that quota remaining the same, and that was, again, another thing. If there's a concern about councillors doing Machiavellian things as well, I think we should also remember that we are one of the unusual jurisdictions in that councils approve their own ward boundaries. I think in Victoria and Queensland and other States, they have their State commissions that do the ward boundaries as well as the LGA boundaries. I think it was in Ballina, just before the last election, there was a bit of local political concern about ward boundaries being set in one way or another because of certain aspirations of councillors that were on the council at the time or whatever. I would say that, if there was a concern, maybe look at taking that out and giving that to the Electoral Commission to manage the ward boundaries.

CHRIS STONE: I can certainly say that in my first period as State director, during the COVID period, the local government elections were deferred for 12 months. There were certainly councillors that variously expressed their desire to move on at those elections and where they felt that they needed to do the right thing and stay on for that extra year, given the costs that would have been associated with by-elections had they chosen to leave. Certainly I recall there were numerous conversations where people expressed that frustration that they had made conscious decisions that they were going to retire at the elections and where they had to stay on because they did not want to incur the costs of by-elections in their particular councils.

SEAMUS LEE: I would also note that I think in the last 18 months of a council term, there is a provision in the Act that says, if there's a vacancy, you don't actually have to have a by-election at this point in time.

CHRIS STONE: That's not assured, though.

SEAMUS LEE: Not assured, correct, yes. But I'm just saying that that is something that might happen.

The Hon. PETER PRIMROSE: Would you agree with the statement that established political parties such as yourselves actually benefit from having a longer period of pre-poll—because it's actually much harder for other people, particularly Independents, to be able to organise for, say, a two-week period of pre-poll—and that, in fact, you would be disadvantaged in some way if it was reduced down to the Monday to the Friday?

SEAMUS LEE: It's hard to say, really, because I don't think we'd be overly disadvantaged by a reduction in the pre-poll time, but I think it would be—

The Hon. PETER PRIMROSE: Surely it's harder for Independents.

SEAMUS LEE: I accept that it's harder for Independents. I do accept that. I would just say that I think there's sometimes some very organised Independents out there, as well, and they can sometimes—I used to live in the Willoughby council area, so I got to see some of the mayoral campaigns there that felt very organised. They had no issues staffing pre-poll. But I can also understand that for a smaller, say, single-ward Independent or whatever, that might prove to be difficult. I agree with what Mr Stone said in the opening statement about retaining the Saturday before the election as a pre-poll day because I think, particularly in regional electorates, if people come in and do their shopping on the Saturday before, that might be the easiest way for them and might be the best time for them to do their voting as well. I think we need to have that accessibility aspect as well, and so that's just one thing I'd note. Having a shorter pre-poll but retaining the Saturday before would be helpful.

GEORGE SIMON: Peter, I would start by saying that the barriers to entry for people to get into local government are quite high. If you're a woman with caring responsibilities, if you're someone who can't afford to take a lot of time off to campaign, that is a significant disadvantage, and I think that's actually reflected in the composition of the kind of people who make up most councils. In relation to your question, your question is do political parties get advantaged by an extended period? I think the answer to that is yes. I would also make the point that we don't heavily resource local government campaigns and we do rely on local resourcing, and those barriers to entry exist whether you run for a party or run as an Independent in a non-grouped or grouped environment. So I think it makes a lot of sense to restrict the early voting period to ensure that, for people who don't have the capacity to take a long time off financially or have the capacity to do more campaigning in the early voting period, because they have caring responsibilities and other things, we don't put up another barrier of entry to them. I think that makes a lot of sense.

CHRIS STONE: Beyond, obviously, the principle that I outlined in my opening statement and in our submission just around the notion of an election day as opposed to an election period, I would agree that whether you're a political party that obviously has volunteers that are willing to give up their time to stand there on pre-poll and to campaign on behalf of their candidates—likewise, if you're an Independent or a group formed particularly for a local government election, being able to find volunteers that are prepared to stand there day after day after day on pre-poll is a challenge—regardless of whether you're a major political party or an Independent, I think those challenges exist. As I said, we believe very much in an election day, and the pre-poll period is there for those people who can't vote on election day. Five days, with the option of a Saturday, we think is sufficient to recognise some of those challenges for political participants as well as protecting the sanctity of an election day.

The Hon. NICHOLE OVERALL: Just a couple of points that I'd like to raise—it is specifically about regional, rural and remote areas in all of these matters that we're considering right now. The first is that the countback methodology of course has the opportunity to more adversely affect regional, rural and remote communities who very often don't run group tickets or party tickets. Also, when it comes to the pre-poll period and those people in areas where it is more difficult to get to polling booths, that opportunity, if it is extended, surely provides a better accessibility advantage to them specifically when it comes to those more remote areas—from each of you.

CHRIS STONE: On the latter point, I acknowledge obviously in regional locations where there are large distances involved and if people have legitimate reasons for not being able to vote on election day, providing accessibility to be able to cast their vote is important, but there are also other options that are available as well, including postal voting, which is available for every voter. I think finding that balance is important to ensure that, as you said, people in rural and regional communities are not disadvantaged. But I would make the observation on that point that obviously there are other methods of voting that are available to people if they can't get to a pre-poll centre, for example, during that period of time.

SEAMUS LEE: I think accessibility is fundamentally important to allow people to be able to vote when they can. That's why I think having the Saturday before the election day is an important thing. In terms of the countback versus fielding from groups, I think rural and regional, where there are not as many groups, shows the importance of the countback process. The fact that you could go for—in like Kempsey, for example, I think it would be like one-seventh in a general election that you would need to get elected to then needing in a by-election one-half of the vote, so the disparity. Whereas in the countback you'd still only need the one-seventh. That's all that you would need, and preferences would follow how the voter marked the preferences at the time.

That's why we support more usage of the countback process, because, fundamentally, we see it as a more democratic option rather than just doing a "pick from a group" type of situation that the bill foresees. That being said, that's probably even slightly better than the by-election, because you do still have a connection to what the voters had said. Obviously where there aren't as many groups running, you also lose that aspect of people voting for the group over people voting for a particular candidate—councils like Brewarrina, where there are no groups, if my memory serves. The Greens ran a candidate up there, got elected, but people still had to number one to seven

or something, and it was all candidates; there was no group voting there. I think that's why we support countbacks, significantly.

GEORGE SIMON: I'd just start by saying something I said earlier, which is there's no perfect method for filling casual vacancies, and I think there are consequences to each one. On the matter in relation to countbacks, there's just another bit which I think hasn't been explored in our discussion at this Committee. If someone is elected at a general election and two years later there's a casual vacancy to fill and you fill it via a countback, I think there's a semantic point to be argued about whether filling that person at a countback two years later, with everything that has passed over those two years and the performance of the council over those two years, is actually a reflection of the will of those voters that they expressed two years earlier. There's actually an interesting debating point in all of that, which I think reflects the idea that no system of filling a casual vacancy is perfect. The system proposed by the Minister—acknowledging that it has some consequences which are unfortunate—is likely, in my view, on a marginal call, the best method for doing it.

The Hon. DAMIEN TUDEHOPE: Mr Simon, in your submission, you highlighted that you had serious concerns in relation to the Australian Election Company's conduct during the 2024 elections. Do you recall saying that?

GEORGE SIMON: Yes.

The Hon. DAMIEN TUDEHOPE: What were those concerns?

GEORGE SIMON: There were two concerns in relation to the conduct of the Australian Election Company, noting that it was used by only two councils in the 2024 local government elections. The first was in conduct at the Liverpool council, which were matters that were publicly reported, and we've quoted extensively from public reporting. I believe that the matters that were of concern there related to the conduct of the electoral company in the provision of postal votes.

The Hon. DAMIEN TUDEHOPE: They were handing them out rather than—

GEORGE SIMON: People walked in to put in a postal vote application and then suddenly walked out with a ballot paper, which is just not the way that postal voting is done. The Australian Election Company itself acknowledged that it was not in line with the regulatory environment and the legal framework for conducting elections at a local government level.

The second one was in relation to Fairfield council, which I could talk about ad nauseam, Mr Tudehope. To summarise, in essence, we had a great deal of difficulty, and I think the electoral company itself was perhaps slightly confused in determining a ruling that they'd made on a piece of material that one of our candidates was distributing. The confusion was about wording in that, but the ultimate confusion was about who was the decision-maker. There was an appointed RO by the private company who'd made a decision, who at first instance said there was no right of appeal, and subsequently said we could appeal to the CEO of the company on making a decision about whether that piece of material could be distributed. There was an added layer of complexity, which was that the general manager who, on behalf of the mayor, had made a complaint about the material and passed that on to the electoral company. It's the general manager who contracts the electoral company to do that. A whole very murky set of arrangements that either was or potentially could have been subject to—

The Hon. DAMIEN TUDEHOPE: Did you raise any of these concerns with the NSW Electoral Commission?

GEORGE SIMON: We could not raise those concerns with the Electoral Commission. The Electoral Commission had no jurisdiction in Fairfield and Liverpool councils to deal with those matters.

The Hon. DAMIEN TUDEHOPE: No, they do have jurisdiction to field complaints in relation to the conduct of an election.

GEORGE SIMON: I'd have to take on notice whether we raised any matters with the Electoral Commission in relation to those matters. I do not know.

The Hon. DAMIEN TUDEHOPE: If you did take them up with the NSW Electoral Commission, could you provide us with a copy of the correspondence and their reply, if you received one?

GEORGE SIMON: Yes.

The Hon. DAMIEN TUDEHOPE: Mr Stone, in relation to the Parramatta local government election, which adjoins Cumberland, you had some concerns in relation to how-to-votes and joint how-to-vote cards. Should you be able to have joint how-to-vote cards at Cumberland for Parramatta if you are having polling booths in separate electorates? You've advocated for polling booths to be in the local government area for which they are

assigned. Obviously, a lot of people from Cumberland work in Parramatta. If they go to pre-poll in Parramatta, should there be joint how-to-vote cards available in Parramatta?

CHRIS STONE: If there is a polling facility in Parramatta for Cumberland council, then yes.

The Hon. DAMIEN TUDEHOPE: But even if there is not a facility?

CHRIS STONE: It's an interesting question. Ultimately, for a political party where you're nominating candidates in a number of local government areas, you're wanting to ensure that people cast a formal vote where they cast their vote and that they are casting a formal vote for your candidate and your party. As a matter of principle, I would say that you should be able to hand out joint how-to-vote cards, as long as you are advocating a formal vote for the local government area. I think there's a distinction, though, as to that question about whether early voting should be available outside of the local government area.

The Hon. DAMIEN TUDEHOPE: But it follows on from Ms Overall's question about whether, if you just have a polling booth in the local government area, that may impact on people in regional areas who, perhaps, have a very short distance to go to a polling booth in a neighbouring local government area but a long distance to go in their own. I think you responded by saying that they could have a postal vote or there are other voting options available to them. But it may be a very convenient position just to go 10 kilometres to another local government area. Do you see the benefit in that for regional voters?

CHRIS STONE: Certainly in regional areas where, if you live close to a regional centre that may be outside of the local government area, I do acknowledge that there would be a convenience argument for some of those voters in regional areas.

SEAMUS LEE: I would also add that, at the moment, there's no absentee voting at all permitted in local government elections. You've got to be in your LGA somewhere.

The Hon. DAMIEN TUDEHOPE: Or postal.

SEAMUS LEE: Or postal—exactly. That's your only option.

The Hon. DAMIEN TUDEHOPE: That's the point about Parramatta and Cumberland.

SEAMUS LEE: Yes. I think the fact that there is no absentee voting was one of the reasons that drove a lot of people to try to use iVote back in 2021 or whenever. Then that obviously led to the voiding of the elections, which was done in a judicial review case, not a court of disputed returns case, because there doesn't appear to be any provision for a court of disputed returns in the Local Government Act or in the regulations. Maybe NCAT is the place; I'm not sure. But the commission took it as a judicial review case to the Supreme Court. I think it's about having more availability. If you're concerned about cost cutting, for example, using Parramatta Town Hall to service both Cumberland and Parramatta makes sense, in a way. It's what we see at State elections, and it's what we see at Federal elections as well, this condensing, particularly at pre-poll venues—one doing multiple districts or divisions or maybe areas. Obviously it gets a bit more complex in local government because you've got councils that are warded, unwarded, and some councils might be having polls or referendums on at the same time. There may just be a need to have the facility to print ballot papers as necessary.

The CHAIR: Unfortunately that's all we have time for in this session. I want to thank you all again for making time to give evidence at the inquiry. The secretariat will contact you in relation to any questions on notice.

(The witnesses withdrew.)

Mr BEN RAUE, Independent Election Analyst, The Tally Room, affirmed and examined

The CHAIR: Good morning to our next witness. Thank you for appearing today. Would you like to start by making an opening statement?

BEN RAUE: Yes, absolutely. Thank you to the Committee for the opportunity to discuss this topic today. When I originally read the bill and read the explanatory memorandum, I made a submission regarding the use of private election providers. I do think it is a good move to be ending that practice. But I mostly want to talk today to the question of how we fill casual vacancies in local government, because I think in a lot of ways this would be a backward step—by changing the system—that is being proposed in this bill. We've had countbacks now for about 1½ local government election terms, and I think they've been a resounding success. I would argue the only part of the reform that has failed is the part where countbacks weren't rolled out fully and where councils were given discretion about when they were used. I think that has been a failure.

I would ideally like to see countbacks implemented fully for the full term, maybe with an exception for leaving seats vacant at the end of the term. By-elections should only be used in situations where there are no candidates available who can fill a vacancy. The vast majority of vacancies that have been filled since the 2021 council election where a countback is possible have been filled by countbacks. I can talk more to that later. They are very stable politically. That is a thing that's been talked about in the context of the proposed change to the system. Countbacks are very politically stable. Almost always—I would argue practically always—they produce someone of a similar political stripe to the person they are replacing. They are cheaper. They are predictable. They are convenient for councillors if they want to resign.

I am particularly concerned about effectively the abolition of countbacks for regional councils where councillors are not elected in groups. While they are a relatively small share of the State's population, they are a much larger share of the States councillors because local councils in rural areas tend to be less populous, and thus it has a much bigger impact when you count up the number of councillors who might be affected rather than the number of residents. I have a few more points I could make, but I'm happy to address those through questions.

The CHAIR: Thank you. We'll now move to questions.

The Hon. STEPHEN LAWRENCE: Thanks, Mr Raue, for coming along. Thanks for your website—I really enjoy it. In terms of your submission and this issue of the legitimacy of the proposed variation to how a countback might occur—in terms of a new system where a member of a group replaces an outgoing member of a group—do you think that one can construe a vote for a group or a quota for a group as really not just the election of the number one, or number two if two are elected, but also an endorsement in some sense of the other members of the group and that, therefore, it's legitimate, if one member of that group leaves, to ensure that they are replaced by a member of that group because that group got a quota? Is that another way of looking at this, which is obviously different to your submission?

BEN RAUE: I think for a lot of voters it's true. It's not true for all voters. The elegance of the countback system is that we don't need to ask that question: We leave it up to the voters. In practice, almost always, the party that vacated the seat filled it. As Mr Lee mentioned before, there was one case of a grouped councillor in the last five years where they weren't replaced by someone in the same group, and that was because there was no-one left in that group. In every other case, they've been replaced by the same group. Tasmania has used countbacks for many decades. The only case ever of someone from a different party filling a vacancy was Bob Brown replacing a Democrats member of Parliament in 1982. It hasn't happened since, in over 40 years, so they are very stable. Most of the time, that is what happens. But there are cases where we give voters the choice of voting for individuals or voting for parties where voting for the individual can make a difference, and I think we should keep that option available.

There is an example here from the Central Ward of Camden in 2016, where the number one candidate on an Independent ticket did not win, and the number two candidate did win. He was very popular. He got a lot of below-the-line votes. He got elected. We didn't have countbacks then but, if he were to vacate that seat, I don't think it would be legitimate to automatically hand that seat to his number one candidate, who could have gotten elected and didn't. The fair thing to do, which is what we do now, is to examine that person's votes, where those preferences flow, and give it to the person who's next on the ticket.

The Hon. STEPHEN LAWRENCE: Another example to think about, in the Dubbo Regional Council elections, the Labor Party, in the last election, got three councillors elected. We had a group of whatever it was, six or seven. The third person got elected with an under-the-line vote, so the first two people got elected on the group vote, basically. They might have got a couple of hundred under the line. The number three got elected predominantly on under-the-line votes. That would seem to me to be a situation where, if that person resigned

from council, you wouldn't have any expectation that he'd be replaced on a countback system with the number four, because his vote was an under-the-line vote. My question is, he ran as an endorsed Labor candidate on a Labor group so, rather than some other person that hypothetically would have got the vote if he wasn't there, isn't it more legitimate that he be replaced by an endorsed Labor candidate, such as he was?

BEN RAUE: I don't so, because I think if that is true—and I'm not really aware of that example; I would suspect quite a lot of his preferences may well have flowed to the fourth candidate—that candidate probably did receive surplus from the first two. But if that—

The Hon. STEPHEN LAWRENCE: A very small surplus, 200 votes or something.

BEN RAUE: If that was the case and that person had a lot of votes that otherwise voted for someone else because—this is the beauty of the below-the-line system: If people want to vote for all the women, all the young people or all the people from one particular town, they can. And if the voters have done that, then I think that is reflected in how they vote. Of course, we know parties are strong, and most of the time partisan politics wins out. I am fine with that. I think that is perfectly legitimate. But that's the beauty of the countback as opposed to this proposed system. Ultimately, it is about the voters, whereas this system kind of removes that option from existing.

Another example I would give actually happened just the other week. The data wasn't actually stored in the same place because it hasn't been archived yet. There was a countback for the Mortdale Ward of Georges River, where the local Labor councillor was elected to Federal Parliament and has had to resign her seat. That was one of the wards where the Liberal Party failed to nominate, so you had Labor and you had the Georges River party running against each other, and that was it for three seats. The second Labor candidate had beaten the second Georges River party candidate by 373 votes. When the countback happened, understandably, some of the people who had voted for that number one Labor candidate—now the Federal member—didn't preference the third Labor candidate. That third Labor candidate was elected, but only by seven votes.

In the case where, say, eight other people had voted in a different way, I think it would have been legitimate for that seat to change hands because it would have reflected that that support wasn't there. And I'd like people, ideally, to put your own partisan hats aside. This could happen in any direction. I think in the current system the vast majority of the time the same party wins. But there is potential there, if a seat is extremely close or if voters have not voted on a party basis, for someone else to win. It also has this elegance that it doesn't require you to be in a group. It works whether you're in a group and it works if you're not in a group.

The Hon. STEPHEN LAWRENCE: Lastly from me, are you aware of the mid-western council by-election situation?

BEN RAUE: Yes.

The Hon. STEPHEN LAWRENCE: I'm interested in your thoughts on the desirability or undesirability of having a situation where, at the first council meeting, the councillors choose whether to adopt countback or by-election, which normally is not a particularly politically loaded decision, though it can be. But in the mid-western situation, it was very politically loaded because they knew by the time of the first meeting that the councillor had resigned already. They were, in effect, in a situation where, if they chose countback, they knew they would be electing her number two and, if they chose by-election, I suspect they probably suspected the people wouldn't elect the number two. It transpired they did, so it was a bit of an unexpected outcome. What's your thought in terms of the policy? Should the Act maintain a situation where councillors get that choice or would you rather just move to countback completely?

BEN RAUE: I hate it. I think it's democratically appalling that we do that. There is this dilemma we have in electoral systems that the people who are making the decisions about what the voting system should be are also the people who are going to be governed by it. Members of Parliament have to decide on what electoral systems are. But, ideally, you're not doing it in a moment where you know the direct benefit of who's going to benefit from it or not.

The Hon. STEPHEN LAWRENCE: Exactly.

BEN RAUE: Like the Chair said earlier, the method of filling vacancies is decided in advance. At State and Federal level, it's embedded in the Constitution. It's not something you can just change up in the moment. That is the worst example. I don't have any evidence that in Shoalhaven there was anything that wasn't above board. In Shoalhaven there was a case where a councillor resigned immediately after the first meeting, and I suspect people on that council may have known they were going to resign. The local Liberal ex-councillor there, who had lost his seat because of the nomination problem, was very upset about that because he really wanted a

by-election so he could get back on council. But they made the decision to go for a countback and I think that's a fair outcome. I would love to see a situation where that decision was no longer there.

There are plenty of ways in which the method of local government elections is regulated by the State, and this is absolutely one that I think should be regulated by the State. If I was going to give councils choice over things, there would be other things I would give them choice over, not that, and not in that moment. I don't see why we can say that—if there's a better method, there's a better method. I think for countbacks, as long as you're electing more than one person—if it's a single-member electorate, absolutely by-elections are better. But when you're electing more than one person, a countback is an elegant solution that doesn't require parties but works with parties. In the case of mid-west, a countback would have worked perfectly fine. It would have filled that seat just as it ended up being filled without the necessity of a by-election. This is why I would say I don't think you need to mandate that it goes to someone from the same group to, effectively, achieve that result most of the time. Leave that decision up to the voters; don't lock it in law.

The Hon. STEPHEN LAWRENCE: Just to be clear, your concern in that regard is not just about preferring countback. You see something wrong, in principle, with councillors having that choice because it can be susceptible to taking into account quite illegitimate things.

BEN RAUE: Yes. I can see the benefit. There's a bit of me that goes, "Well, it would be nice to get rid of the by-election option for the cities, for the big urban councils, through what's being proposed here." I don't particularly like, effectively, the rule that it must be from the same group. But what I really don't like about this is that it would be returning regional councils, where councillors are not part of groups, to using by-elections. There have been quite a few of those councils that have used countbacks. In the 2021-24 term there were eight countbacks that, under this change, would instead have had to be by-elections. While it's a small share of the vote, it's about 26 or 27 per cent of councillors were elected where everyone in their ward was ungrouped.

The Hon. NICHOLE OVERALL: Mr Raue, I too enjoy your website very much. Thank you for appearing today. I would also like to point out the additional point you made about the need for a broader inquiry into local government elections. I also agree with that and think it's something that we should be looking at. As you point out, the conduct of each State election is given a general inquiry, but it's not true for local government elections. Getting rid of by-elections as well seems to be something that the far majority of councils are in favour of because of the cost imposition, particularly when it comes to those regional and rural areas. Can I ask you to share with us a little more your recommendation when it comes to the private providers and why you're so opposed?

BEN RAUE: Sure. I don't have any particular objection to the people who do that work or any claim to them behaving improperly or not doing their best work, but in my experience I don't think this is the kind of thing that should be dealt with through a competitive process. I think this is the kind of thing that should be dealt with by best practice by the State Electoral Commission. Sometimes the Federal Electoral Commission's better, but in New South Wales our State Electoral Commission is great. Don't ask me that question in Western Australia. The NSW Electoral Commission and the Australian Electoral Commission are best practice. They are able to do these things in the best ways.

I have had experience, with my hat on as an election analyst, of accessing basic information about how elections are run. It's quite difficult for these local councils. They are providing it with a particular idea of who is going to need that information but it's often quite hard to find. It disappears very quickly when the election's over. I know there are issues with polling places where there was a disagreement between the local council and the provider as to whether that school was meant to be open. People turned up at polling booths and they weren't open on election day.

I also have experience from about a decade ago, in the first election of using private providers in 2011. I was involved in running that election for The Greens. I'm not involved in The Greens anymore, but I was back then. We had issues—I think Mr Simon was talking about this before—where different councils using the same provider would make completely different rulings about what was allowed, and there was no appeal procedure beyond the local government area.

NSW Electoral Commission returning officers aren't perfect, but there is a procedure that, if an issue arises, you can appeal up the chain of command and ultimately there is consistency in rules. Generally, I think voters get a poorer level of service from these providers—again, nothing against them personally, but I don't think they can compete. Ultimately, if local governments are choosing it for cost, they're getting what they pay for, and I don't think it should be an option for local governments.

The Hon. NICHOLE OVERALL: But wouldn't you say that's what it comes down to, that it is about the choice, the option, that councils potentially have in that regard. If they get what they pay for, yes—but, if

fewer of them are using the private providers, as we seem to have indicated to us by the numbers falling away, they still have that option to utilise that, should they choose to do so. Surely that it is a more democratically open and transparent process.

BEN RAUE: One of the things that we're all debating here today is where does the line get drawn between decisions that are made by the State about how elections are run, and decisions that you leave to local councils. Often when councils are making this decision, they are making it on a cost basis.

The Hon. NICHOLE OVERALL: Absolutely, they are.

BEN RAUE: That has an impact on the voters and the constituents. I think it would be legitimate and the right decision for the State, through this bill, to make that decision. I would recommend that.

The Hon. NICHOLE OVERALL: Obviously, cost-effectiveness is a major point in all of this. That comes back to your point about having local government elections reviewed because there are such concerns around those cost imposts. This is just literally putting an idea out there: What about the opportunity for better oversight of the private providers, rather than abolishing it completely, to say that there does need to be an appeals process or some type of procedural ladder that they know they have to be bound by, rather than being left to their own devices or nothing at all offered in that regard?

BEN RAUE: My primary objection is not poor quality or poor standards. My primary objection is that because they are conducted separately from every other local council, they are effectively disconnected from the rest of the State, which means the quality of the information—people talk to their colleagues about what is going on with an election. When these elections are treated as happening in isolation, it makes it harder for people to understand what's going on in their local councils, because the NSW Electoral Commission is doing all this work everywhere else and then there's just a black hole in south-west Sydney.

I don't think oversight would fix that because, again, my problem is not that they are doing a poor job; it is that I think there is something natural about the way the election is run. Ultimately, these local government elections are not unique, separate events that are happening; it is actually one big event. From a cost perspective, I'm not the one paying the bills, but we know that local councils struggle to have enough money to pay for all of the things that get put on them. If we want to ensure better quality local government elections, the State is in a position that it could afford to cover those costs. I think that is a better solution than providing cost-cutting options that produce a less-good result for voters.

The Hon. NICHOLE OVERALL: So you would say that there are other options or potential solutions that could be looked at, and perhaps should be looked at, prior to potentially making decisions around more amendments to the bill.

BEN RAUE: I would support the solution that's in the bill in terms of private election providers. I think then that opens a conversation about other ways to save money and to reduce costs. It is a bit bizarre that local councils are having to pay for one State government agency to pay a local school to hire their hall, and things like that. I understand that every government agency has its own budget, and they want to defend it, and they don't want to have to cover the costs that belong in some other line item. Ultimately, it is strange for local councils to be doing that, but I don't think that should hold us up from saying all elections should be conducted by the commission.

The Hon. DAMIEN TUDEHOPE: I raised earlier an issue about failure to vote. Anecdotally, it appears that there is a greater rate of failure to vote in local government elections than in any other election. Obviously, that probably is a reflection of the fact that people are conscious of other elections much more than local government elections.

BEN RAUE: Yes.

The Hon. DAMIEN TUDEHOPE: If you were making a suggestion about fixing that, what would you suggest?

BEN RAUE: I'm not particularly worried about it, to be honest, but it is true that people are less aware of local government elections. People move around, particularly in the cities but in regional areas too. People move around and move from one council to another, and so they may live in a council where they're not really familiar with the people who represent them or who are contesting an election. I do think there is a problem with the collapse of local media, meaning that there's less accountability and just information about local government. It is a difficult one to achieve.

I would just say, generally, it is a pretty standard rule that we see all across this country that when you go into lower levels of government, turnout levels drop—just like, for by-elections, turnout levels drop. I think

the ideal thing is we want to have that rate be as high as possible, but I don't think it's a massive crisis that not everyone is fully engaged. I know also sometimes people's enrolment is not up to date, so they may have moved into a different local government area. I'm not suggesting getting rid of compulsory voting or anything, but it hasn't been one of the top issues that has been a concern of mine.

The Hon. DAMIEN TUDEHOPE: Do you have a view about whether absentee voting should be available in relation to local government elections?

BEN RAUE: I can understand why it's so technically difficult to do it. Absentee voting at a State level requires you to have 93 or 94 ballot papers; at a Federal level, 158 ballot papers—actually, less than that, because at the Federal level it's absent voting within your State, so it's 50 ballot papers, or 46. It is much more technically challenging, and I can understand why they don't want to do that for that reason. I respect that. I have focused here—

The Hon. DAMIEN TUDEHOPE: In a day of technology developing the way that it does—

BEN RAUE: Yes, and you can print ballots, but then you need to return those ballots to their original source. You need to keep each bundle separate. I can understand why it's very technically complicated.

The CHAIR: And that would add to the cost.

BEN RAUE: It is a concern of mine with the ban on having polling places in neighbouring electorates. I can see the case for rural areas, but it is particularly an issue in urban areas, because often local government borders aren't enormous barriers. Short of Sydney Harbour, generally local government borders are just roads. They're not really hard barriers that separate people. I live in Parramatta. Parramatta and Cumberland are a perfect example. Cumberland doesn't really have a big CBD of its own; Parramatta is effectively its CBD. I also think of an area like Epping where that suburb is divided between multiple councils and the idea that you would draw a line there and go, "That booth has to only be Hornsby and that booth has to only be Epping."

I worry a little bit that there are some of these things that make life easier for parties and candidates, and not just the big parties but everyone who participates in elections, while making things more difficult for voters. Having to print less different how-to-vote cards and knowing that you can hand out one piece of paper and you're going to get the right one in the voters hand, I can appreciate that but I'm not sure that's worth the impact on the voter of turning up at a booth and not being able to vote.

A big part of the problem with iVote in 2021 was people turning up to vote in Parramatta and they live in Inner West and finding out they just can't vote and it's already midday and they have plans for the day and it's too late. The scary thing about what happened with iVote was all those people went to vote electronically but actually what would have happened previously is they just would have thrown up their hands and said, "Oh, well, I can't vote." That is a case for absent voting. That is a case for, at the very least, having more locations. Maybe not every polling place is that, but I think having Parramatta and Sydney town halls and maybe even a few other major centres being available for multiple councils would make that easier for people. My kid has soccer on a Saturday morning and our local soccer association covers about four local government areas. You might be travelling around, you go to a different area, and it's too late for you to get back to your local government area. I think there is a case for absent voting, but I can understand the technical difficulties. It would be a good question to ask the commission.

The Hon. DAMIEN TUDEHOPE: There's pre-poll, of course.

Ms CATE FAEHRMANN: Thanks for appearing today, Mr Raue. You said in your contribution that quite a few of the regional councils had used countbacks and it has been quite successful for them. The Minister in his second reading speech has not used a specific example but he has said that "the use of countbacks to fill vacancies can result in councillors being elected who received little to no support at a general election". Do you know which ones he is talking about and also how that has happened?

BEN RAUE: I don't know what example he's talking about. There are some regional councils where you might be electing seven councillors, there might be 10 or 11 people who run for election, and so by its very nature the people who are remaining may not have an enormous share of the vote. That can also be true with people who are elected on the original count as well. That's the beauty of a preferential system. One popular candidate gets 40 per cent of the vote and they pass those votes on to other people. If it's a problem, it's a problem at general elections as well.

I would also say that a lot of these councils are quite small and don't have a lot of voters, and so by its very nature that person who's winning—just like the number three Labor candidate in Mortdale in Georges River, I'm going to bet, and I don't have the number in front of me, didn't get many votes of their own and most of their votes were cast for the candidates above them on the ticket. I think by its very nature with countbacks, some of

those people don't have a huge share of the vote, but the point of the countback is that they are getting that because they've received a preference further down the ticket and they are preferred to the other candidates that are available.

Ms CATE FAEHRMANN: This inquiry is just a day inquiry. It has all kind of been a bit rushed. This isn't before the Joint Standing Committee on Electoral Matters. We're not hearing from any witnesses who would represent themselves as an Independent candidate, for example. Do you have any contributions to make in relation to what this bill would do, whether it would potentially impact the ability for Independents, say, at by-elections—does it favour major parties in terms of potentially forcing more by-elections and maybe increasing the chances of those who run on group tickets at by-elections? Is there any substance to that theory?

BEN RAUE: Yes, I can answer that. There are two different issues here. One is that, obviously, a by-election is costly. And it's not only costly for the ratepayer; it's also costly for everyone who participates in the election. You've got to go out and print stuff, and you've got to produce materials, and people take time off work and all that kind of stuff. I do think, generally, that is more of a burden on small groups; political parties are more able to share that burden around. The second thing I would say is that the logic behind countbacks and not using by-elections for multi-member elections is that some of the councillors are still there, sitting on the council, and only some of the voters have lost their representative. If you're only electing one person and there's a vacancy, I think having everyone go back and vote again makes perfect sense. But in a case where only a quota—say, a quarter of the voters—elected that one person, we can't go and pick out those individual voters and ask them to vote again. Everyone else still has their original representative, plus they get to vote again. And that is the democratic problem with using by-elections.

In practical terms, what it does mean is a larger party that gets a bigger share of the vote within that area is more likely to win that by-election, whether or not they are the one that has lost that representative. A really good example of that is Campbelltown in 2017; the election was 2016. Fred Borg, who had been a long-time—I grew up in Campbelltown, and he was a councillor when I was a kid. He'd been on council forever, and Labor had won seven of the 15 seats in Campbelltown. Campbelltown has no wards, so it's, effectively, one big election the size of a Federal electorate. He passed away, sadly, straight after the election. Labor is very strong in Campbelltown, but they're not usually strong enough to win a majority in their own right. But when the by-election came up, from a cost perspective, it was ridiculous. It was 100,000 people voting. Effectively, it was a Federal by-election for a single seat on a local council.

Of course, Labor did well, and voters voted the same way they always voted. Labor won that seat. Instead of Labor having seven out of 15, they had eight out of 15, which totally changed the colour of the council. Labor would have still been the dominant group, but they went from being a large minority to being a majority. If that was a countback, Fred Borg's number three candidate would have filled that seat instead, because the number two was also elected. I think that would have been democratically fairer and much, much cheaper for everyone. I think that is a good example. Of course, there are areas where there are local parties that are very strong in that area. It's not always the case that Independents can't be competitive, of course. On the northern beaches, Your Northern Beaches is stronger than, say, Labor or The Greens. The Georges River party is very strong in Georges River. Whoever the strong forces are in that local government are the ones that would benefit.

The CHAIR: That's all we have time for today, although I'm sure we could all ask questions for the remaining hours. Thank you, Mr Raue, for making time to give evidence. The secretariat will be in touch with you if there are any questions that were taken on notice. We appreciate you giving time to the inquiry.

(The witness withdrew.)

(Short adjournment)

Mr LACHLAN GUNN, Acting General Manager, Fairfield City Council, before the Committee via videoconference, sworn and examined

Mrs SONJA DRCA, Executive Manager, Fairfield City Council, before the Committee via videoconference, sworn and examined

The CHAIR: Welcome to our next witnesses, who are appearing online today. Would you like to make an opening statement?

LACHLAN GUNN: Council appreciates the opportunity to make a submission to the New South Wales Legislative Council Standing Committee on State Development in the inquiry into the Local Government Amendment (Elections) Bill 2025. In Fairfield City Council's experience, the use of a private electoral service provider has delivered an accessible, connected and tailored service that meets the community's needs. Local knowledge has ensured that well-known locations have been selected for polling facilities that fulfil the requirements of parking, shade and accessibility to provide the best experience for those who vote. The NSW Electoral Commission has never selected strategically well-known locations such as the Fairfield Showground and Cabravale Leisure Centre, which have been popular with voters during local government elections.

A dedicated returning officer serving only the Fairfield LGA is better for our multicultural community and the candidates, as they can quickly respond and work face to face to resolve issues. A community-focused approach ensures that the service can dynamically respond to community needs, as was the case when the pre-polling period was reduced from 12 days to seven days at short notice. Council responded with the introduction of Sunday polling and had 60,227 pre-poll votes, which was 51 per cent of total votes received. This was delivered from four pre-poll locations, without large queues, which is less than neighbouring councils.

Fairfield City Council delivered a tailored electoral solution, which met the community's needs for a lower cost than that of the NSW Electoral Commission, with expanded hours—including Sunday pre-polling—in well-known locations and with a responsive local returning officer. Therefore, council requests that this option be retained to best serve the needs of the community. It should also be noted that negative feedback from the Liverpool election should be qualified by the acknowledgement that they were only advised that their local government election was going ahead two days before pre-polling commenced.

The Hon. NICHOLE OVERALL: Thank you for joining us this morning. It's really interesting to hear you so wholeheartedly backing the continuation of the system as it stands in terms of the private providers. Your council has been used as one of the examples of why it should be abolished—that there are only two councils that currently employ private providers. It's your view that your council would continue to utilise this service, if made available?

LACHLAN GUNN: Yes. As I've briefly touched on during the opening statement, we find that having the local provider, with that dedicated officer to serve the community better, works for us because we can dynamically adjust in terms of whether we need more translation services for a particular sector of the community or whether we need to address onsite issues during the voting. Also, it allows us to better identify the ideal locations for the polling facilities.

The Hon. NICHOLE OVERALL: In terms of cost-effectiveness, you do find that it is more cost-effective than the EC?

LACHLAN GUNN: Yes. With the information we're provided by the Electoral Commissioner, we've always compared their quotes with the quote provided by the private provider. We've always found that we've been able to deliver a small saving compared to the Electoral Commissioner.

The Hon. NICHOLE OVERALL: You've never found other issues? One example that has been presented is when it came to the handing out of postal ballots, for just one of the reasons there. You've always found the processes and procedures completely in order? There haven't been any issues for you in that regard?

LACHLAN GUNN: We've always been able to find that forward planning and making sure that we adequately plan and work collaboratively with the service providers has always made sure that we haven't had those problems. I work for Fairfield council, not Liverpool council. Without being an expert on their unique situation, it's my understanding that they had a number of issues simply because of the late notification of whether their election was proceeding or not. That meant there were some logistical planning problems in terms of that. Plus I believe that their council staff member who was a primary communicator with the service provider also went on maternity leave shortly before the election. So I think there were probably some compounding issues there. We've always found through proactive planning that we haven't had those problems.

The Hon. NICHOLE OVERALL: This may be a little bit broad for you, Mr Gunn, and you may not be in a position to answer it, but you may be able to touch on, from the position of other councils, why there has been a diminishing number of councils who are taking up the opportunity of this additional resource.

LACHLAN GUNN: I think one of the things that we benefit from is probably stability of staff. Sonja Drca—she's been here for the last four elections. She is our primary conduit between council and the service provider. Having intimate knowledge of each other in terms of how the process operates has worked to our advantage. Without being an expert on this, I believe that probably some of the other councils, through turnover of staff and with the Electoral Commissioner assuming a greater role, have probably found that it's been an easier solution for them to fully outsource that service to the Electoral Commissioner.

SONJA DRCA: I can actually add some more comment to that. Fairfield council was in a group of about 12 or 14 councils that used the private provider in 2012. At that time the legislation was actually that the elections are administered by the general manager. The general managers that existed at that time were people that were in a certain age group and had experience from when the elections back in the '90s were administered by the staff. So, as time went on, a lot of these general managers then retired and so did some of the senior staff. That's impacted the decisions moving along because, if they're retiring, that knowledge is gone. Legislation then also changed because it then became the provider doing a lot of the administrative side of it. I think that's been a part of the reason why some of those councils and those numbers went down.

The Hon. NICHOLE OVERALL: That's a great point. Continuity, for you, is also a benefit out of this. For you both, if this bill were to proceed in the form that it is, what would be your greatest concern about no longer having access to the private provider?

LACHLAN GUNN: I'd say that the greatest concern is not having your own dedicated returning officer. My understanding of the amendments as they are currently proposed is that there would be greater engagement around locations. One of the things that Fairfield council believes it has done particularly well is making sure we identify the right locations. Clearly, as one of the larger landholders, just through being council, we have a better idea of which locations the community best uses and are best geographically placed. So we've been able to deliver really large pre-poll numbers without queueing through four locations.

Most of our neighbouring councils use five or six, even if they've got a lower number of voters than what we do. Hopefully we'd be able to communicate that and the Electoral Commission would be able to take those comments on board and use locations which they haven't previously used. The real concern is if we have a returning officer who is trying to service multiple local government areas without being able to focus on the unique needs of one area such as ours, which through the nature of having a large multicultural community does have its own unique needs. It's about that service delivery. It's probably our biggest concern.

The CHAIR: In terms of the cost savings that you mentioned earlier, Mr Gunn—you mentioned there are cost savings associated with using the private election provider. Are you in a position to tell us what those savings are?

LACHLAN GUNN: For us, they've been circa $50,000 to $100,000 per election. One of the challenges we have in terms of quantifying the savings is that the Electoral Commission hasn't always provided us—we go through a proper procurement process. Therefore, we'll always do an expression of interest whereby we ask that quotes be provided. The Electoral Commission hasn't always been forthcoming with quotes, and sometimes we've received the information after the election. But, based on the information we've received, it's been in the order of about $50,000 to $100,000.

The CHAIR: You mentioned earlier that the NSW Electoral Commission doesn't tailor their experience to your council. In terms of that, you've mentioned, obviously, multilingual offerings and the use of a translator. Is there anything else that they don't do?

LACHLAN GUNN: I suppose, mostly, it's around that responsiveness to onsite issues during the election process, whether it be—one of the benefits of having the local returning officer is that they can sit down face to face with candidates so, when we're having the deadline for nominations, they can quickly help with the paperwork and the administration around that. They can quickly sit down, face to face on the election polling days and they can work with the officers in the locations and quickly address any local issues there, whether it be with the different political parties or whether it be with the community having translation issues. It's just having that dynamic, on-the-ground contact point.

SONJA DRCA: In terms of that level of service, what is different is, at most elections, what we've had is at least one or two people—what we call a "ward supervisor". Whether it's pre-poll or the election day, that particular person can go out and sometimes it's just observations. It's queues. It could just be that we can quickly get access to the barricades to control the queues. Garbages may be filled. They're sitting outside on the public

area, so it's quickly making a call to the relevant staff. They're just some of the service-level discussions we've historically had with the commission to say, "If you provided us with something equivalent, would that person be based on the Fairfield LGA or a region?" And they've always said to us, "It's based on the region." And the fact for us is it's limited to our area and, in particular, ward. We have two wards. That means that level of service is much higher. We can respond quickly, work with the provider and then the council.

The CHAIR: You argue in your submission as well that there are a number of commitments that would mean an elector may be unable to vote on election day. If we go back 10 years or so ago, nearly everyone voted on election day. There was obviously postal voting available. Do you think there's an underlying change, or have people simply opted for a convenience factor?

LACHLAN GUNN: I think it's a combination of both, to be candid. But part of the nature of our community is that we don't have—with all due respect—a nine to five, like five-day-a-week office workers. We have people who work in diverse sectors, often working on weekends and often working shift work.

The CHAIR: I'd say that's probably true of every local government area.

LACHLAN GUNN: I think more so now, in terms of how we're very much a blue collar working area. I agree that work-from-home arrangements have increased flexibility, but our staff or our community don't necessarily have the opportunity to work remotely. A lot of them have to go on site, whether they're doing hospitality or whether they're working in a factory et cetera. That's probably increased the challenge for them. Plus we have a large number of pensioners and disabled people in our community as well.

The CHAIR: Would you say that proportion has changed in the past 10 years, in terms of that profile, because I would also wonder about other councils which have similarly high proportions of what may now be called "essential workers" or otherwise, that work a lot of shift work?

LACHLAN GUNN: No, that proportion wouldn't necessarily change, to your point, Madam Chair, because the reality is that we've had a migrant community and we've been a settlement city for some time and, of course, different waves of migration come through. Because of the fact that they are new migrants, they tend to work in that sort of sector by nature, because English isn't necessarily their first language.

The CHAIR: Your submission also notes that councils avoided excessive rent or daily venue hires by using its own facilities for polling. Would you agree that having the election provider, whoever it is, consult with the council might end up with the sorts of cost savings that you have achieved there as well?

LACHLAN GUNN: They should. As long as it's an appropriately consultative approach, yes. What we've done is we've looked at some of the other—as a matter of course, we'll go through a comprehensive process to make sure we identify the best venues. At times, when we've looked at those venues which have been used by the NSW Electoral Commission for State government elections, we've probably found them to be inferior to ours in both location and being more expensive. But if they were to work with us and take our comments on board, it should achieve the same outcome.

Ms CATE FAEHRMANN: In terms of the cost overall, I think you said there was a saving of roughly $50,000, for example. Are the costs of running your elections transparently displayed in, for example, the annual report or on the website somewhere? Is it transparent in terms of how much?

LACHLAN GUNN: Yes.

Ms CATE FAEHRMANN: Have you asked for the Electoral Commission to tender for every election as a service provider recently?

LACHLAN GUNN: Yes. There's a report on our website—and Sonja can quote the section of the Act. I can't remember exactly what it is. Under the Local Government Act, we have a requirement to submit a report. I think it's 393, or something like that, under the Act. That's up there now. We put it up as required after every election. As per the procurement guidelines, we always do an expression of interest and go through appropriate tendering processes. As part of that, we always ask the Electoral Commission to submit a tender in response to that.

Ms CATE FAEHRMANN: Each time that the Electoral Commission has submitted a tender—because you're saying sometimes they don't. Is that correct?

LACHLAN GUNN: Yes.

Ms CATE FAEHRMANN: I'm just trying to figure out why, if you're the Electoral Commission, you wouldn't want to try and match what they know that the private provider is providing to try and ensure that

Fairfield council goes with them. You seem to be implying that every time the Electoral Commission does provide a tender, it is higher than the private provider. Is that correct?

LACHLAN GUNN: What happens is, when we go through and we do an analysis of the Electoral Commission's quote compared to the private provider, the private provider will also provide opportunities for savings as well, whereby the Electoral Commission doesn't necessarily provide those saving opportunities. Therefore, when we look at the whole cost solution, we end up with a better financial outcome using the private provider.

Ms CATE FAEHRMANN: What you're saying is that, potentially, even if the private service provider may have, on the face of it, at the start, provided a quote that is slightly higher than the Electoral Commission, you have worked out savings. Is that what you're getting at? It hasn't been always the case that the Electoral Commission provides a more expensive quote.

LACHLAN GUNN: Yes, exactly right. What I'm saying is that they will give mechanisms by which we can save costs, whether it be through how we do the advertising et cetera, whereby we can take different options in order to have different financial outcomes.

Ms CATE FAEHRMANN: Taking the cost out of it, then, it does sound like Fairfield council has been more keen to pursue the private provider. You would prefer to use the private provider in some ways, regardless of a $50,000 or whatever difference. Could you have also approached the Electoral Commission, do you think, about savings or do you think they would not be open to that?

LACHLAN GUNN: They haven't historically been open to that, from our understanding. Whenever you make a procurement decision, it's about the value for money and value for money is not just purely about cost. When we look at these things, it's about assessing the service needs as well in terms of how we do the electoral service delivery. We've just always been able to find that the private provider has been more willing to dynamically assess to meet the service needs of our community.

Ms CATE FAEHRMANN: I would have thought as well that with the Electoral Commission there would be quite a few things that would be cheaper in terms of economies of scale, such as printing and advertising. You would think that that would come into its favour. I'm just curious about, when the private provider works with you, what the cost savings are. Are they things like the council using your own venues?

LACHLAN GUNN: It is using your own venues, but even when we attribute the normal hire rates which we apply to those venues, we've found that it's been a better value-for-money outcome in terms of what our venue hire is compared to what the Electoral Commission is looking at paying.

Ms CATE FAEHRMANN: In terms of problems with the way the local service provider may be running the election, what problems have been encountered? Your submission suggests that it's been very smooth. Is that the case for Fairfield, with the service provider? Have there been any significant problems or complaints about the way in which the private service provider has been working that could be improved?

LACHLAN GUNN: I think the most important thing is that it's—we've found it works quite well because our biggest thing we're trying to do is make sure we give a good service to community, which is like minimising queues and making sure the candidates are well informed. We've found that the private providers engage well with candidates. We've found that they've worked well with us to help make sure that we can minimise queueing by making sure we identify the right locations. I'd probably go across to Sonja as well and let her provide any comments.

SONJA DRCA: We don't have any complaints about the provider. We do find that we can work together to ensure that whatever messaging is coming out of the election office through the returning officer, whoever has been appointed, the council then can use that same messaging because then we can hit through our social media, our website. That joint approach makes sure that we're attacking the community to make sure the messaging is clear.

Another example is, if you recall in 2020 the election date was changed. It ended up being in 2021. At the time, because of the uncertainty with COVID, in the communications that went out, the phone number we listed was my direct phone number. When the lead-up came and the date was changed, again working with the provider, we all have gone out and done the appropriate communication. Yet on that particular day when the election should have proceeded, I took over 70 calls—because they were coming direct to my phone line, which I diverted to my mobile—to ensure that customer inquiries minimised it, and that right messaging was to say, "There is no election today. It's been postponed", or whatever the messaging was. That's just one example where we've worked together to ensure that the customer service and that level of engaging together is joint.

LACHLAN GUNN: I suppose, without trying to over-elaborate, one of the things, even when we had the reduction of pre-polling, we were just working with our service provider to do the Sunday pre-polling, which was particularly well received from our community. That's just an example of how we work together to come up with solutions which still achieve the pre-polling needs of our community.

The Hon. DAMIEN TUDEHOPE: Mr Gunn, have you read the submission by the Australian Labor Party?

LACHLAN GUNN: No, I haven't.

The Hon. DAMIEN TUDEHOPE: It provides a case study in respect of Fairfield City Council as to their assessment of the 2023 local government election. The first issue they dealt with was an issue relating to material which was wanted to be distributed and a registration certificate required, and a problem relating to the approval process. Are you aware of that issue?

LACHLAN GUNN: I'm not, sorry. Are you aware of that issue, Sonja?

SONJA DRCA: Yes, I am. I am familiar with the matter. From my recollection, someone from the Labor Party was distributing material that had been raised as not being compliant. As it turns out, what we found was there was a display of material that belonged to Fairfield council. We were saying to them, "You don't have copyright or the permissions to be able to use that part of it". The rest of the content was a matter between the Labor Party and the returning officer. As time went on, because of the time frame—because this was happening, I think, the Sunday before the elections; we're now into pre-poll—any legal action that we would have taken for the copyright would have lapsed because it was only five days before the elections.

The Hon. DAMIEN TUDEHOPE: The complaint from the Labor Party appears to be that the returning officer wasn't able to identify a mechanism for appeal. Are you aware of that issue?

SONJA DRCA: I'm not aware of that. I do know that the returning officer was liaising with them and with the head office, which is the provider—the director, Mr Richard Kidd. I understand they were getting their own legal advice and they were then liaising with the general manager, from council's perspective, because for us the issue was about council's material, not the content.

The Hon. DAMIEN TUDEHOPE: Their further complaint was that they asked for a copy of the legal advice from the returning officer and they were unable to provide that legal advice. Are you aware of that issue?

SONJA DRCA: From what I recall, yes, I do. I think it was not released due to legal privilege for them, but I'm not 100 per cent certain.

The Hon. DAMIEN TUDEHOPE: Were there any other complaints that you're aware of in relation to the manner in which the Australian Election Company conducted the election?

SONJA DRCA: In terms of 2024?

The Hon. DAMIEN TUDEHOPE: Yes, 2024.

SONJA DRCA: Not to my knowledge, no.

The Hon. DAMIEN TUDEHOPE: Did the council do an evaluation process at the conclusion of the election to assess any potential issues which may have arisen in relation to the manner in which the election was conducted?

SONJA DRCA: No, we worked off the information that we had throughout the elections. That's been incorporated in the election report, which is published on the council website.

The Hon. DAMIEN TUDEHOPE: If given the opportunity—I think you may have been asked this, Mr Gunn—would you say that you would use the Australian Election Company again?

LACHLAN GUNN: Yes, based on the ability to tailor the service that we required. Yes.

The Hon. NICHOLE OVERALL: Coming back to the points about the cost savings to the Fairfield council by using the private provider, have you utilised your own staff as part of that? My understanding is other councils—like Berrigan, for example—were advised by the NSW Electoral Commission that if they used their own staff, they would have cost savings. It didn't work out that way for them. Have your staff been involved with working with the private provider, or is it completely outsourced and they do everything?

LACHLAN GUNN: Some of our staff are somewhat involved, yes. For instance, Sonja, as an example, is involved. But it's a small number of people who are involved in the process.

The Hon. NICHOLE OVERALL: And you can still tailor that to your needs so that you're providing the service in the best possible way and doing it at reduced cost as well.

LACHLAN GUNN: Yes, and we factor the cost of the staff in when we're doing that evaluation.

The Hon. NICHOLE OVERALL: This is a broad question and may be more difficult for you to answer in that regard. With the numbers that have been provided to this inquiry around the fewer numbers of councils that are using the private provider—that it is a matter of education and better information on how such a situation can be used to the advantage of councils, perhaps better than it has been to this point?

Coming back to Mr Tudehope's point as well, suggestions from the Labor Party suggesting that the manner in which you had a problem with the private provider wasn't really the way in which it may have unfolded—but it is about better education and information being provided to councils so that they could utilise this service more effectively for themselves.

LACHLAN GUNN: Council's primary concern is also about if the Electoral Commission probably had a more engaged service approach where they took on board our concerns around locations and around the returning officers and how we'd address some of those concerns. But then its next concern is probably then about how we continue to keep the Electoral Commission accountable and make sure we can deliver value for money, because clearly we are one of the few councils, for whatever reason, that does want to make sure we achieve that best value-for-money proposition, given there are significant costs and we want to make sure that we spend the ratepayers' money as cost-effectively as possible. It's about how we make sure we maintain that accountability and making sure that we're keeping them honest to some extent.

The Hon. NICHOLE OVERALL: And you feel that having that option for councils is a far better way to do that, rather than simply relying on the NSW EC to be the sole provider?

LACHLAN GUNN: Yes, we do, especially given that when we've seen the EC there have been some quite significant cost increases over the years, so at least that gives that point of reference to ensure that that's really what the current cost with legislative requirements is.

The CHAIR: In your submission, Mr Gunn, you also state that you think replacing candidates from the ticket would support good governance. I'm keen to hear from you about why you think that's the case.

LACHLAN GUNN: I believe that when the Minister put forward his second reading speech to Parliament he made the comment about the fact that that's adhering to the residents' wishes, that they've actually nominated a particular candidate from a particular party and that therefore that's the party that they want to sort of have in place. If you have people retaining their seats and not having a vacancy simply because of the fact they're worried about having a change in the balance of power, that's not necessarily good governance of council. Therefore we're of the view that if you maintain that party balance and can allow people to have vacancies and be replaced by a member from that same group, that's probably the best outcome for the community.

The CHAIR: In your view, why is it the case that councils have largely chosen not to use private providers?

LACHLAN GUNN: As I said from the outset, it's a combination of things. I think it's probably ease of administration, because of the fact that it's something that is only done every four years. It's not exactly a specialist thing, which we do on a recurring basis. Sonja gave more detail before through the change in personnel and that loss of, probably, intellectual property of people leaving that don't have the familiarity with it and they probably haven't done it as much. One of the things we've always done at Fairfield council is we always have a very strong community and service focus. Through us and the longstanding mayor and longstanding staff members who've maintained that community engagement and awareness, that's why we want to make sure we don't lose that.

The CHAIR: In the OLG submission, which you may or may not be familiar with, it stated that Penrith City Council found that there were no longer cost savings associated with using the Australian Election Company, and so chose to go back to the NSW Electoral Commission. You said you found savings and there are savings. I'm just curious as to how that might have come about when Penrith council has had such a different experience.

LACHLAN GUNN: If you read the Penrith council report, and based on our limited discussions with them, I think they could have potentially found savings from using the Electoral Commission, but those savings were through the use of council staff. They just simply made the decision that they didn't really want to use the staff, and they wanted to have a fully outsourced solution. For ease of administration and the marginal financial benefits which might have been there, it was in their best interest to totally outsource it to the Electoral Commission. I don't think they're saying that there was no financial benefit. I think they were saying there were some marginal benefits, but they didn't want to have any administrative burden on the staff. Therefore they felt the best solution was to outsource it entirely.

The CHAIR: We heard earlier today as well around concerns with the nature of such a politicised appointment, or what could be described as a politicised appointment, in the general manager of a council and concerns with the issues of transparency and integrity in the election process when that general manager is then seen as driving or directing the way in which a private provider might operate. An example, again, was raised about issues with the returning officer at Fairfield City Council and a decision that was made there. I'm curious as to what your thoughts are around that, and why you think that using a private provider and having a general manager that could be seen as a political appointment would support good integrity and transparency in local government elections.

LACHLAN GUNN: What I'd say is that there were legislative changes a couple of elections ago, whereby the returning officer is more independent now than it was previously. The general manager is such that, whilst he's part of making a decision to appoint the service provider, it's still the returning officer's decision; the general manager, practically, cannot influence them. They're still going to maintain their integrity and independence in making that assessment. Sonja probably can comment further.

SONJA DRCA: The arrangement that we have is no different to any contractor that may be doing any other services for council. Whether it's myself, the staff or the general manager, we don't get involved unless we have to raise performance issues and address any concerns we may have. That's how the independence is there, because the general manager is operating no different to any other contract we have. Sorry, what was the question in relation to the integrity and transparency?

The CHAIR: Of local government elections.

SONJA DRCA: As I said, the political influence—we just ask the provider that the returning officer meets the criteria of what we'd be looking—should we be the person who is appointing it, remembering that historically it was the general manager. They don't have to take on board our suggestions, but every single election we've had a different returning officer and a different substitute, and they have taken in consideration the factors we'd look for. They're simple things, but it's that professionalism and being able to deal with some of the inquiries, whether they're from candidates, the parties themselves or just the electors. They vary, depending on, obviously, the language barriers or other requirements. They're just the standard of what we'd be asking every election, and the provider and the returning officer have been able to deliver that for us.

Ms CATE FAEHRMANN: Chair, can I jump in with one last question?

The CHAIR: If it's quick. I was going to follow this line of inquiry. I'm happy to give you another one after that.

Ms CATE FAEHRMANN: I don't know whether this was covered, because I was late.

The CHAIR: Please proceed.

Ms CATE FAEHRMANN: I do think it's important, because this is not in the submission by Fairfield City Council. In terms of casual vacancies, if they can't be filled by the group, the bill states that the Electoral Commissioner must conduct—that a casual vacancy must be filled by a by-election. That element of the bill hasn't been addressed in your submission. You're aware of that, though, in terms of what the bill proposes. I'm just wondering whether you support that.

LACHLAN GUNN: Just on that, yes, we are aware. Candidly, we're looking for the most cost-effective service for the community. We'd probably prefer that there isn't a by-election unless it's absolutely necessary. We wouldn't see it as being the best use of council funds to be conducting a by-election in those circumstances.

The CHAIR: That brings us to the end of this session. If there were any questions taken on notice, the secretariat will be in contact with the details of those, but I don't believe there were. Thank you both for making time to give evidence to the inquiry today and for appearing.

(The witnesses withdrew.)

Dr JULIA CORNWELL McKEAN, Mayor, Berrigan Shire Council, before the Committee via videoconference, affirmed and examined

Ms KARINA EWER, Chief Executive Officer, Berrigan Shire Council, before the Committee via videoconference, affirmed and examined

The CHAIR: Thank you both for appearing today. Would either of you like to start by making a short opening statement?

JULIA CORNWELL McKEAN: Thank you to the Committee for inviting us here today. Free elections are, of course, central to the democratic society that we're proud to live in in Australia. However, free elections are not, indeed, free of cost. In local government they cost our ratepayers a significant sum of money. In Berrigan Shire our 2024 election costs were around 3 per cent of our annual rate income. That's a significant proportion of our limited revenue base for a small council such as ours.

We at Berrigan Shire Council do not support mandating the NSW Electoral Commission as a sole provider for local government elections. Notwithstanding that there is really no other competition in our neck of the woods, our experience with the 2024 elections has left a bad taste. It does not appear to us that the commission is running a cost-recovery business and, if it is, what is clear to us is that it has no respect or consideration of their own expenditure that is coming out of our ratepayers' pockets. It is clear that they are not mindful of looking for cost savings and efficiencies. Even when commitments were made to council personnel about cost savings, they were not delivered. Further, the commission staff were demanding of council staff and difficult to work with. We were so concerned that we at Berrigan Shire raised these matters directly with the commission in writing, and the response we received was less than satisfactory.

Before I close, I will cover one other matter, being the duration of pre-poll. As I mentioned earlier, free elections are central to our democracy. With an ageing population in Berrigan Shire, many prefer in-person voting at a time that is convenient to their other activities. A shorter pre-poll will disproportionately impact on communities such as ours. We already have a very low voter turnout. In the by-election that was held for us in November, only 65 per cent of registered voters turned out. In full elections in the past few electoral cycles, we only had 75 per cent at local government elections. It is critical to make voting as convenient as possible to communities outside of the city to ensure their active participation in the democratic process. Thank you for your time.

The Hon. NICHOLE OVERALL: Julia and Karina, it's lovely to see you again. I hope things are well down there and you're getting your golf swing up. I note in your submission that you not only disagree with all of the proposals put forward, but you also note that you've raised significant concerns regarding the timing, cost implications and practical impacts of these proposed changes. I would imagine you would not be satisfied with the lack of input and consultation that has gone around this bill.

JULIA CORNWELL McKEAN: Absolutely—a very short time frame to provide a submission. We have 90 staff. We don't have people sitting there waiting for submission opportunities. However, this was something that concerned us deeply with the 2024 costs. As I say, we did raise a complaint. I did ask our CEO, in her very limited time, to put something together and then, a week later, we find ourselves here at the hearing. We're pleased to be invited but, believe it or not, I have to actually work, because I don't get paid very much as a mayor. I'm giving up my own time to be here at limited notice. This appears to be disingenuous consultation to have such a very short, limited time period.

The Hon. NICHOLE OVERALL: It's definitely genuine from our perspective, having brought the inquiry forward so we can have this opportunity to speak and hear from you. Obviously, then, it goes without saying that you would prefer to see more opportunity for greater input and consultation before this bill is advanced further.

JULIA CORNWELL McKEAN: Absolutely. We think at least a little bit longer for other councils to have time—at least a cycle so they can get a submission through their council by way of resolution, at a very minimum, to assist. Having more input into these very important matters is critical.

The Hon. NICHOLE OVERALL: One of the points about the private provider—you're talking about retaining flexibility and the opportunity for councils to choose, which is something that I have raised on numerous occasions just this morning. Has Berrigan council ever looked at utilising the services of a private provider?

JULIA CORNWELL McKEAN: Yes, we have. We did receive some quotes for the last election; however, the price was significantly higher. Unfortunately our location is a disadvantage in relation to competition. We're located seven hours from Sydney. If you're running a business across New South Wales, the

extremities, such as where we are, are probably not where your business case is going to be effective. It does mean we have to rely on the commission. We would like the commission to do their job better, given the situation we're in. It would be great to have more competition, but I don't know how likely that would be.

The Hon. NICHOLE OVERALL: Despite the fact that it doesn't particularly suit the needs of your local government area, you're not advocating that it becomes a monopoly as such?

JULIA CORNWELL McKEAN: Absolutely.

The Hon. NICHOLE OVERALL: And you are in that situation, as I well know, with the cross-border position there. The idea of additional polling places—are you also wanting to retain the flexibility around that as well?

JULIA CORNWELL McKEAN: Yes. I think that's important, particularly with, as I mentioned, the low voter turnout that we have had in Berrigan shire traditionally. We have 75 per cent turnout in a regular election. It was 65 per cent at the November by-election. The more options to have people actively participate in democracy, the better. We do have a vast geography in our particular council but very concentrated towns. If you are coming from a farm, you are coming in for your day out. It would be useful to have more places available and not necessarily limited as being within the shire. For some of our communities, particularly farming communities, their nearest town might even be outside Berrigan shire, but they need to vote for a council in Berrigan shire.

The Hon. NICHOLE OVERALL: Finally from me, on that cost-effectiveness point, obviously, all of these things contribute to escalating costs. You're of the view that New South Wales EC isn't doing enough to ameliorate these costs, and 3 per cent of your annual rate income is, indeed, huge. The special variation that they provide—the 0.8 per cent—clearly isn't enough to cover your costs. Even for a smaller local government area, it is not enough for what you need to adequately cover costs.

JULIA CORNWELL McKEAN: It isn't. Frankly, $160K, roughly, which is what it cost last year—we could get a brand spanking new playground for less than that, and it saddens me that our community would probably prefer a playground to democracy. It's a very sad state of affairs.

The Hon. NICHOLE OVERALL: Just quickly, before I hand over to my colleagues, so I'm not taking up all of your time, you also—and I mentioned this example earlier. New South Wales EC had indicated to you that if you employed some of your own staff in terms of the delivery of the election it would be a cost-saving measure for you, but that did not turn out to be the case.

JULIA CORNWELL McKEAN: That's correct. We ended up running a pre-poll at our Berrigan Shire Council offices, Monday to Friday, and there was an additional pre-poll staffed by the commission in Tocumwal. We've never had two pre-poll places, and we ended up, in fact, with a bill at the end of the elections.

The Hon. NICHOLE OVERALL: That you weren't expecting, obviously, and hadn't budgeted for either.

JULIA CORNWELL McKEAN: Correct.

The Hon. DAMIEN TUDEHOPE: In relation to the 2024 election, you say—just in response to Nicole's previous question—that the costs far exceeded the NEC's initial estimate. Do you recall what the initial estimate was?

JULIA CORNWELL McKEAN: I'll ask Karina, our CEO, to answer that specific question.

KARINA EWER: Our initial estimate for a proper, full election, which wouldn't have been an uncontested election, was $130,000. But we had an uncontested election initially and then a by-election. Then we were asked to assist. So we've had to change locks on buildings. We've had to provide staff to do the pre-poll work, to accept prospective councillor registrations and all of that sort of work, and it still ended up costing us more than a full election. So, no, it wasn't a great outcome.

The Hon. DAMIEN TUDEHOPE: What were the key cost overruns that you had?

KARINA EWER: Mostly the fact that we had to engage our staff to do the work, and we still ended up with a returning officer in the office demanding more time of my staff. We also had to change locks on a couple of doors because you have to have all of your voting stuff locked away so it can't be tampered with and all of that sort of stuff—fair enough. It did not end up being a great experience for us. We wouldn't do it again.

The Hon. DAMIEN TUDEHOPE: I understand. Dr McKean, one of the other issues we've been exploring today is in respect of the filling of casual vacancies. Are there major parties which actually contest elections in your local government area?

JULIA CORNWELL McKEAN: No, we have eight Independent councillors and have had for time immemorial. We have had groupings from time to time, and often that's where you've had a longstanding candidate who's very popular looking to bring on a new candidate, and that has been successful in that regard. But none have been affiliated specifically to any of the major parties or even smaller parties.

The Hon. DAMIEN TUDEHOPE: One of the concerns I think you would agree with is that, if there was a resignation from council, that would precipitate a by-election, and there is a cost associated with this by-election. Do you favour a position where the automatic default position is a countback rather than a by-election?

JULIA CORNWELL McKEAN: One hundred per cent. We prefer a countback because we, in fact, ended up with seven candidates walking in last time, out of an eight-chair council. We had to have a by-election for the eighth position, and now we can't rely on the outcome of that eighth position election for a countback if we lose another councillor. So we're up for the money yet again if that happens. These things happen. People's lives change, people pass away and all these sorts of things. But we know that if any of our councillors leave this term we're up for another by-election and no countback opportunity.

The Hon. DAMIEN TUDEHOPE: Would you also favour a position that, if there is a group candidate, the group replaces the candidate who has left office? Or do you still favour a countback position as the preferable way to go?

JULIA CORNWELL McKEAN: A countback position is definitely preferable for councils like us, which is made up of Independents. It may be different for ones that are more motivated by party affiliations, but definitely not for smaller councils such as ours, which are largely community based.

The Hon. DAMIEN TUDEHOPE: In relation to pre-poll voting, do you favour a position where the pre-poll would be from Saturday to Friday?

JULIA CORNWELL McKEAN: We believe as long as possible is best, particularly for those people coming in from out of town to vote. It also is another thing in terms of the community becoming aware of meeting the candidates. The longer time they have for new candidates, the more opportunity they have to meet and engage with them. One of the criticisms over the last couple of council elections has been, "I don't even know who those people are." In fact, when we had the walk-in election, that happened quite commonly—commentary of that nature—because we didn't get to have an election and we didn't even get to have a pre-poll. That's a really important time for the community to engage with local government and understand what's happening.

The Hon. DAMIEN TUDEHOPE: That would include additional cost for running pre-polling for the additional periods of time, though, would it not?

JULIA CORNWELL McKEAN: I do appreciate that, and I know elections cost money, but that's the cost of democracy. As long as it's cost recovery—we appreciate that there's a cost. We would like to keep the cost down. I know other States opt for postal votes for local government elections. Again, that creates issues with people not necessarily understanding their own council. I don't know if we would encourage that. We prefer the in-person out here in Berrigan. Yes, we appreciate the additional costs, but that also means that we might get a greater voter turnout. We do think that's probably a priority over a small increased cost.

The Hon. DAMIEN TUDEHOPE: You have told us that your staff were very heavily involved in the election and that was generally because the Electoral Commission didn't provide sufficient staff, in your view. What was the commitment by the Electoral Commission in the quote that they gave you in relation to the provision of staff and manning of polling booths during the election?

JULIA CORNWELL McKEAN: I'll ask the CEO.

KARINA EWER: We were told we wouldn't need a returning officer until the last point, which is when they would be required to be, on the voting day, doing the work that needed to be done, and that we would do all of the other stuff leading up to the election. That did not come to pass. We ended up with a returning officer and their assistant in our office. We had to provide them with office space and all of the rest of that to support them. I don't know why that happened. We weren't given sufficient information as to why that was necessary in the end to have the returning officer here, when we had an agreement with them that we would provide that function in order to save ourselves money.

The Hon. DAMIEN TUDEHOPE: Have you raised these issues with the Electoral Commission?

KARINA EWER: Absolutely.

The Hon. DAMIEN TUDEHOPE: Have you had a response?

KARINA EWER: Yes.

The Hon. DAMIEN TUDEHOPE: On notice, can you provide a copy of your correspondence and the response from the Electoral Commission in relation to those issues which you have raised?

KARINA EWER: Sure. Is there an email address for me to send that to?

The CHAIR: Our secretariat will be in touch with you to gather the details of those. I might just shift to some other questions about your experience running elections. Has Berrigan ever used a private provider to run an election?

JULIA CORNWELL McKEAN: No.

The CHAIR: You would agree that, under the previous Government, costs more than doubled even though there was a private alternative available. To what extent did the existence of this option for a private provider reduce the cost?

JULIA CORNWELL McKEAN: It didn't reduce the cost, the private provider. They were charging more, I think. CEO, did you want to add anything else?

KARINA EWER: We went out and actually got quotes from a couple of private providers. Both were quite expensive because of where we were. I went with the same council grouping that would occur through the Electoral Commission. We all agreed we probably should go and—at least there was some competition and we had a choice to stay with the NSW Electoral Commission. The feedback from those people who provided us quotes was that it was the distances and that they would have to have staff out there with accommodation and all of those sorts of things. While it didn't save money for us to go with a private provider, I think that competition does at least make sure that, for people out in rural and regional areas—because we are generally forgotten out here that we exist—it at least keeps the cost of the election down a bit because there is some competition in the market.

The CHAIR: Has that effectively worked, given that the costs have doubled?

KARINA EWER: No. The costs for us have increased significantly through the Electoral Commission, too—yes, they have.

The CHAIR: In terms of by-elections, you spoke of your experience with a recent by-election. How would you suggest that the Government avoids by-elections?

JULIA CORNWELL McKEAN: I don't think that by-elections can necessarily be avoided in the circumstance that we had. We had eight seats, a new council election and only seven people put their hand up—some more promotions so that we don't end up in that scenario. We do find—again, because we're on the cross-border—that most of our media comes from Victoria. The commission does not promote the election through that Victorian media. We certainly as a council tried to promote the election more so we did get enough candidates. We wanted to run an election. We certainly don't want to have our positions—and we have people calling us unelected councillors. Obviously, we're not, even though it was a walk-in. A bit more promotion at the front end would have helped us.

If we were talking about a scenario where we did have a fully elected council, as we did last term, the countback method—I know we voted for an 18-month period last time—we didn't need to take that option up. I think that's a very effective option, to go down to the next candidate. Perhaps if you were to have that function for a longer period—rather than 18 months, perhaps a four-year term, for three years or something like that and for the last year you can run short. They're some ideas. For us, I'm at a loss at what we can do now. Ideally, having had a by-election for that final position, we would like to be able to have a countback on the outcome of that, but that's not permitted either.

The CHAIR: In terms of the issues of attracting candidates you've just described, would you agree that having more places and more time for pre-poll, as you've also suggested, may also act as a deterrent for people running for council because for many it means, as you've just described, an impost of time, a loss of income and an impact for people who have caring responsibilities.

JULIA CORNWELL McKEAN: My experience has been quite the opposite. At pre-poll here, we're not politically affiliated with parties. You don't have to be there eight hours a day for the whole period, but if you do turn up, put your poster out, get your name around and have a few volunteers, you can get the job done. What I have found, and this is particularly so with the recent by-election in November, is that the Electoral Commission relies on the candidates to promote the election. They rely on the candidates to do flyers to every letterbox in the community. That's expensive.

For us here, it's over $1,000. Our councillors get paid $13,000 per annum, so to get onto council and you're running an election, it's going to cost you $1,000 to do a mail drop—to every candidate. Our three

candidates in the by-election, none of them chose to do that. That means the community didn't get numerous umpteen—depending on the number of candidates in the election—flyers. Therefore, people didn't even know the election was on. It shouldn't be incumbent on the people standing for council in a small place like us to each be $1,000 out of pocket to promote an election.

The CHAIR: Do you have recommendations to lower the cost for elections?

JULIA CORNWELL McKEAN: Cost recovery. I actually don't think it is cost recovery. It should be cost recovery. The CEO may step in with me in a moment. I believe the Valuer General—Karina might correct me if I'm wrong—was going to charge councils a fee and they got told recently to wind it back to a lower fee. Was it the Valuer General, Karina? Can you remember? Yes, because it wasn't cost recovery.

The CHAIR: When you say it's not cost recovery, what evidence do you have to support that?

JULIA CORNWELL McKEAN: The Valuer General wasn't. I don't know if it is or it isn't. If it is cost recovery—if, on their accounts, they are genuinely cost recovering and asking us—then what they are not doing is keeping in mind that they are spending ratepayers' money, treating it like it's money out of their own pocket and actually trying to be efficient and to save costs.

The CHAIR: So you're aware that the rate peg methodology that's currently in place means that your organisation doesn't have to and ought not to cut services to provide a general election.

JULIA CORNWELL McKEAN: Yes.

The CHAIR: Are you also aware that the costs that you do pay are subsidised by 55 per cent by the State Government?

JULIA CORNWELL McKEAN: I'm not aware of that specifically. CEO?

KARINA EWER: I'm aware that we get some money back. I don't believe it's 50 per cent. I'll have to have a look.

The CHAIR: It's 55 per cent.

KARINA EWER: I don't think we receive that much. Anyway, I'll go and have a look.

The CHAIR: Yes, if you could check, please, and provide it on notice, that would be great. Your submission suggests also that having a system where replacing a political party candidate with another candidate from that ticket would disadvantage Independents. I'm curious as to how that would be the case.

KARINA EWER: In our experience, when they go for a group, it's usually either a friend group or, as Julia has said, they are a group of people where there's an incumbent long-term councillor who has brought other people on to try to get them onto council. We discussed whether that would actually assist us in our area, because we don't have political parties and all of that sort of thing. My concern then was that you're carefully weighting a faction, and that might not have the best outcome for the community, as such, rather than being based on the next highest voter numbers. That was the discussion that we had had as to whether that would unfairly weight a faction. If it's one particular issue that they are running on, that might not be the best outcome for a council.

The CHAIR: So you say that you might not have political parties, but I think you'd agree that having candidates that run as an endorsed group on a ticket will mean that you still have people that are members of political parties, in effect, would you not?

JULIA CORNWELL McKEAN: We haven't actually had groups run for council, I believe, for three or four elections.

The CHAIR: No, but what I'm saying is that, regardless of that, you still have members—people that live in the Berrigan shire that will be members of a political party. Regardless of whether they run on a ticket as a group or not, they're still members of a political party.

KARINA EWER: There would be members of a political party, yes. They're allowed to be that.

JULIA CORNWELL McKEAN: Sorry, I don't quite understand the question, though, because when they stand for Berrigan shire, they are listed as Independent. No-one is listed as having any affiliation. Whether they do or they don't is not relevant to what appears on the ballot.

The CHAIR: No, I think we're talking at cross-purposes now, because I think the CEO made a statement about there not being political parties in Berrigan, which is something completely different. Do you consider that electors would vote differently if this new system was in place?

JULIA CORNWELL McKEAN: I think electors would be confused. As I mentioned, people are already calling us unelected councillors because it was a walk-in council. They figure that we were never elected. Even the basic "1", "2", "3", "4", and the preferences and those sorts of things on the ballot, people have difficulty understanding. I think it makes it more complex. The group thing is definitely more complex. It's something that is not well understood in Berrigan and, as I mentioned, very infrequently used, historically.

The CHAIR: You argue also that the appointment process might lack transparency, but the person appointed would have to have run for office at the election. Is there something that is not transparent about that?

JULIA CORNWELL McKEAN: No, I appreciate that anyone who puts their hand up to stand for election anywhere in the country is doing something for the community, and it's quite a thing to put yourself out there. I appreciate that it's a different method. It's one, though, that I don't know that the community would necessarily understand, and it's one that we don't believe would work for Berrigan shire.

The CHAIR: If councillors knew with certainty that their own vacancy would be filled by someone who was, I think you used the words, from their friendship group—or politically aligned, some may say—would ungrouped Independents be more likely to run as grouped or ticketed candidacies in the future?

JULIA CORNWELL McKEAN: I think that's possible as we do have a younger cohort coming through. In fact, in Berrigan shire we are quite a young council. I'm the second oldest on our council and we have six women, so a little better understanding perhaps of how these things work and how you can play the game. It is possible.

Ms CATE FAEHRMANN: So it would be a concern for Berrigan council if this bill goes through. Basically you would be required to, based on your experience with no group tickets, go to by-elections, if this bill goes through. You've just said in your opening statement that a by-election or an election costs 3 per cent of your budget. That is a big concern. That's one of the main problems, isn't it?

JULIA CORNWELL McKEAN: Absolutely—the cost to the community. I know in my heart of hearts if I was in a situation where I thought, "I really probably need to resign from council", and it was going to cost us $150,000 give or take, I'd probably think very hard about pushing through whatever it is, whether it's illness, family commitments or whatever, rather than putting the community through that sort of expense. That's just not fair on people who have lives.

Ms CATE FAEHRMANN: In terms of the cost, when I'm looking at the first page, you've got the cost implications broken down, the Electoral Commission's fees and the by-election at almost $100,000. Did they break this down any further for you? The uncontested election is $41,000. What does that charge mean?

KARINA EWER: We have no idea. I believe that's an administrative charge.

Ms CATE FAEHRMANN: So uncontested election, you've got by-election and then the staff time, and then you say over the page in your submission that the Electoral Commission said that if you undertook the majority of work to support the by-election, there'd be significant savings in the costs to council. Did the Electoral Commission outline what those significant savings would be? Do you have any further information as to why that promise, if you like, wasn't met, maybe, by the Electoral Commission in your words?

KARINA EWER: No. It was a verbal promise. We did not get an estimate of what the election would cost us until after the election had been run. The estimates came out after.

Ms CATE FAEHRMANN: I assume you took it upon yourself to undertake what you view as the majority of work?

KARINA EWER: Yes, that's what I had committed to to try and save the community some costs of the election.

Ms CATE FAEHRMANN: You're saying that this by-election cost almost the same as it would have for an ordinary election, and did the council undertake, for the by-election, much more work than it would during an ordinary election—but you didn't see that comparison in terms of the saving. Is that your argument?

KARINA EWER: Yes, absolutely. Significantly more work is what we undertook. Like I said, we had staff here doing pre-poll. We had staff here accepting applications of councillors and processing them. We did as much as we possibly could and we ran a polling day, pre-poll and everything out of our offices. That is extra to what we would normally have done. We normally really don't have to get too engaged other than providing some form of assistance. We actually took on a fair amount of the work and still ended up with the same bill.

Ms CATE FAEHRMANN: In terms of what the State Government provides back, which is what the Chair was saying earlier to you, the 55 per cent of the cost, is it your understanding that the council was reimbursed

something against this final figure of almost $161,000, or that the 55 per cent that the State Government covered is on top of that $161,000 fee? Do you know that?

KARINA EWER: I don't know that, and I would have to go back and have a look. As I said, the estimates weren't provided until after the election, so I don't believe that we have received any payment yet. I would be surprised if we have. I'll have to go back and have another look.

Ms CATE FAEHRMANN: That would be very useful, to find out whether you're subsidised and whether it's 55 per cent of that. That is all the questions I've got.

The CHAIR: I have a follow-up. Has council given any consideration to reducing the number of councillors, given the trouble that you've had with encouraging candidates and replacing vacancies?

JULIA CORNWELL McKEAN: We have not. We had 13 candidates in the prior election. We have never had a walk-in problem in the past. I've been asked about why it is. I suspect the—we do have an ageing population, and, traditionally, our councillors were retired men. We are changing that cohort, and we are being active in doing that. We did, regrettably, have on local social media some keyboard warriors come out, coincidentally, at the precise same time as nominations. I have to say that if I hadn't already put my hand up a couple of times and if you didn't have broad shoulders, you'd probably go, "Yes, don't want to be part of that." That really did impact, I believe. I did find it really interesting, and some of our new, younger councillors who are last-minute nominations, when it was really looking like a walk-in, have said to me, "If I thought there was going to be an actual election, I don't think I would have nominated." There's the fear of putting yourself out there. I think it does indicate that we need to be more active in recruiting people and training people, and younger people being willing to put their hand up and backing themselves.

The CHAIR: Perhaps joining a political party. Anyway, food for thought.

The Hon. NICHOLE OVERALL: I would just raise the point that—and, Karina, I don't think you're in a position to answer this, but just for your information I will be raising this with the Electoral Commissioner—the current model, apparently, of the cost recovery is 55 per cent to 45 per cent. My reading of it is that could change because it's about direct costs and what the OLG refers to as "corporate costs". I will be clarifying that this afternoon to determine how that model works and how it pertains to councils. The final point that I would make—and I guess it is a bit more of a statement, Chair, rather than a question—is that for our smaller local government areas, and particularly those in our rural and remote regions, whether it's staging elections, finding candidates or servicing voters to the degree that they need to have the services and support provided, the effects are disproportionate. We're not just going to say, "Well, you can no longer have local government representation," or "You should have three councillors to do this democratic work." You would agree, I'm sure, that the effects are disproportionate, and we should be taking that into account in the decision-making that we put forward?

JULIA CORNWELL McKEAN: Absolutely. I agree with that.

The Hon. NICHOLE OVERALL: Excellent. I love to finish on a bit of agreement.

The CHAIR: Are there any further questions from my colleagues?

The Hon. PETER PRIMROSE: No, and I don't have any statements either.

The Hon. NICHOLE OVERALL: Come on, Mr Primrose.

The Hon. PETER PRIMROSE: I'd raise issues about multiculturalism and other issues, but I won't raise that, because that's irrelevant here.

The CHAIR: Thank you to you both for appearing today for the inquiry. For any questions that were taken on notice, as I mentioned, our secretariat will be in contact to discuss those.

(The witnesses withdrew.)

(Luncheon adjournment)

Councillor ALLY DENCH, Councillor, Wollondilly Shire Council, affirmed and examined

Councillor RODNEY PRYOR, Councillor, Mid-Western Regional Council, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome and thank you to our next witnesses for joining us and for your punctuality. Would either of you like to start with an opening statement?

ALLY DENCH: Thank you, Chair and Committee members, for the opportunity to be here today. I'd like to begin by acknowledging the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation, and paying my respects to Elders past and present. I also acknowledge any Aboriginal and Torres Strait Islander people here today. My name is Ally Dench and I'm a councillor at Wollondilly Shire Council. I have worked across all levels of government and the community sector for more than 30 years, including 17 years as executive director for corporate and community at Wollondilly Shire Council and some time as executive director at the Office of Local Government. I've seen local government from all angles—inside councils, inside the department and now as an elected representative. That gives me a broad understanding of how these electoral reforms might affect councils and communities from both a strategic and a practical perspective.

My submission reflects a strong commitment to ensuring that electoral reforms protect the core principles of accessibility, representation and local voice, while also supporting efficient and transparent election delivery. I do support consistency and integrity in how elections are run. But I also believe there's a real risk that some of the proposed changes—such as centralising electoral delivery, shortening the pre-poll period and tightening the process for filling casual vacancies—could unintentionally disadvantage smaller councils, Independent candidates and communities that are already facing barriers to participation.

We are seeing more people stepping up as Independents. Community members with strong local ties are often motivated to run because they feel the voices aren't being heard. Party-affiliated councillors also bring valuable experience and commitment. Independent groups don't operate like political parties. There's often no shared platform or structure to manage succession. That's why proposed options such as by-elections, where appropriate, make sure replacements still reflect the community. Ultimately, this isn't about ideology; it's about good governance, fairness and designing systems that reflect the changing realities of local representation.

Many councils, especially in regional and peri-urban areas, continue to value non-partisan, community-led leadership, and the reforms must ensure that these voices aren't lost. Just as these questions are being asked at the local level, they're becoming increasingly relevant at the State level too, especially with the rise of Independents in the Legislative Council, where countback provisions don't apply. We can improve how elections are run without losing the things that matter most to our communities. In the end, I'm asking the Committee to keep local voice, fairness and community connection at the heart of these reforms. Thanks again for the opportunity to speak today. I'm happy to answer any questions.

RODNEY PRYOR: I could only hope to speak as eloquently as Councillor Dench. My experience goes to the experience that I have endured during the recent council general elections and the by-election. I am fully supportive of the changes proposed by Minister Ron Hoenig. The only caveat I'd put on that is that, rather than limit it to a countback for candidates within a group, I think it should remain as it is and be extended to individual candidates if it gets to that exhausted level. I know that there'd be an argument saying that a person could be elected on very small numbers of votes, but that, after all, is the proportional representative voting system. Backtracking a little bit, the experience I had was a group of councillors were actually preventing that proportional representation. They collaborated to exclude the voice and the representation of a significant portion of the electorate—nearly 12 per cent. It takes only 10 per cent in our electorate to actually get elected to council.

Within moments of taking the oath, they made three decisions that were very controversial. They didn't act in the best interests of the community. They didn't act on the best available information. The Electoral Council of Australia and New Zealand clearly state that the most democratic thing to do in the circumstances that I was caught up in would be to do a countback. They brought the council into disrepute. That was actually brought out through the by-election campaign—a by-election that it was highly unlikely that I would win because I would have to go to a general election to get the overall majority of the vote rather than a proportion of the vote. The people of the Mid-Western Region LGA were absolutely outraged, disgusted and appalled with the decision that the council had made, to the point where I did actually win that by-election—and you probably are aware of the circumstances—by just one vote.

I didn't do a prepared speech, and perhaps maybe I should. This situation that I was caught up with was absolutely appalling. I don't think any community should have to go through it again. The expense to the community was large, despite comments by councillors saying that in the greater scheme of things it was a small

amount of money. It is interesting—I listened to some earlier comments through the meeting saying the expense of elections and by-elections is onerous on councils. Our particular council seemed to consider it a small and insignificant amount of money to go to a by-election. I find that gobsmacking. I'll wrap it up there. I'm happy to take questions. I have quite a lot to say on this issue. I thank you again for allowing me to actually address this meeting.

The CHAIR: Thank you, Councillor Pryor. We'll now move to questions.

Ms CATE FAEHRMANN: I'll go to you, Councillor Pryor, to begin with for just a little bit of clarification around the circumstances of what you've just briefed us on. The councillor—did they pass away before the first meeting where the way in which a casual vacancy would be filled was decided?

RODNEY PRYOR: I meant to address that in my opening speech. It was basically unprecedented. Our lead candidate, Sharelle, was diagnosed with a terminal illness just days before polling day. It was actually the Thursday before the Saturday polling. She thought she was doing the honourable thing and notified the general manager of council that she would not be able to take the position. The council was forewarned and well-prepared at the first meeting knowing that they had a casual vacancy. As a block of councillors all very much on the same page, they were not interested in ensuring the representation of the people that voted for a Labor group ticket and in installing me personally. It was both political and personal. They wished to exclude me from council. Actually, I'll elaborate a bit further outside the scope of your question. They basically collaborated with a very senior political party member—I believe the GM and the mayor—to select a candidate to contest the by-election to ensure that I did not win.

Ms CATE FAEHRMANN: Was it just Labor who had a group ticket for the election?

RODNEY PRYOR: That is a very good question. Mid-Western Regional Council, unfortunately unlike Cowra, had a gobsmacking 63 candidates in 11 groups and 11 individuals standing. That would possibly bring me to further comment about group candidates at local government elections. Personally, I believe there should be no groups. That would get rid of all these problems, I would say. Groups actually do disadvantage individual Independent candidates. Voters are exceptionally lazy. They vote above the line, and the format of the actual electoral paper—the ballot paper—gives the voter the chance to vote above the line first and, as a second thought, Independent candidates are listed on the right-hand side of the ballot paper underneath the line. It's almost like a second thought or a last thought. That's just my penny's worth on group tickets.

Ms CATE FAEHRMANN: Thank you, Councillor Pryor. I'm sure there are going to be a few more questions for you yet. Councillor Dench, you've got a very comprehensive, excellent submission. What are your thoughts in terms of groups, and do you have any concerns in terms of what Councillor Pryor said around groups?

ALLY DENCH: Yes, I agree with Councillor Pryor in regards to groups. Often groups are formed with Independents just to be above the line. I know in our instance, in Wollondilly, a couple of councillors that were elected on were surprised that they actually got on board. They were what we call our "accidental councillors". They weren't expecting, but the group was formed purely so they can be above the line. Of course, the vote on the day went as such that that whole group, virtually, was elected in. We had a popularly elected mayor and, of course, the mayor had run his own group and pulled everybody else across the line that way.

Ms CATE FAEHRMANN: Councillor Pryor, the argument that you just ran would seem to imply, then—because you said you supported, I think, part of what the Minister is doing in terms of filling a casual vacancy. But if you look at all of the options available, because I think we need to remember that it's not like the—we've got a joint standing committee on electoral matters here. Usually that committee would examine an issue like this quite thoroughly, look at all the options, look at what the issues are and approach it, hopefully, in a multipartisan way. However, this time, we've just been given this option in this bill. But there are other options, potentially, are there not, in terms of filling a casual vacancy, for example, legislating countback where it is available and only going to a by-election where it's not, regardless of groupings? What's your view on something like that? And I'll go to you as well, Councillor Dench.

RODNEY PRYOR: I'm fully supportive of the countback option. As I said in my opening statement, the Electoral Council of Australia and New Zealand clearly states that the most democratic and fairest thing is to do a countback to accept the next person that's in line, whether they're in a group or otherwise. To send the community to a by-election, instead of getting a proportion of the vote, you actually get to get the overall majority. As another submission earlier said, what that does is actually give the community a second bite at the cherry to get another councillor of their choice on and exclude that representational voice that was quite successfully won to the council. It's a perversion of justice, and in my case it was done deliberately.

Ms CATE FAEHRMANN: You would be strongly, I think, in favour of therefore taking the power out of the newly elected councillors' hands.

RODNEY PRYOR: Definitely. Absolutely. There is no reason that the council should have that option.

Ms CATE FAEHRMANN: Councillor Dench?

ALLY DENCH: I look at a different approach: maybe an expression of interest with oversight by the NSW Electoral Commission.

Ms CATE FAEHRMANN: Expression of interest in terms of—

ALLY DENCH: If a casual vacancy was to come by. Automatically appointing someone purely based on a ballot paper and the order on a ballot paper really risks placing someone in a position of significant decision-making without genuine current mandate or connection. Expressions of interest—councils already use open and transparent EOI processes to appoint critical roles, such as advisory committees, planning panels and even CEOs. That in itself could be another option on how they may be able to fill a casual vacancy.

Ms CATE FAEHRMANN: One more clarification on that, Councillor Dench. Isn't it better if the candidates on the ballot paper are able to indicate whether they are wanting to withdraw or not in terms of a countback?

ALLY DENCH: Yes.

Ms CATE FAEHRMANN: Because with an expression of interest situation—

ALLY DENCH: If there's nobody.

Ms CATE FAEHRMANN: —at some point those candidates would still need to go to some kind of vote, wouldn't they?

ALLY DENCH: Yes, they would. Definitely.

The CHAIR: Councillor Pryor, I'm keen to explore some of your opening statement in which you detailed your path to council. In your view, do you think the status quo is currently open to abuse?

RODNEY PRYOR: Where you have a significant majority in council with the same bias, same opinions and same views, in the situation that occurred at Mid-Western Regional Council where they knew that they had a casual vacancy at their first meeting, yes, it is open to abuse. Most councils, as you are probably well aware, have pretty much across the board at their first council meeting voted to do a countback, which then covers the first 18 months of term, to save themselves the expense of going to by-elections. Mid-Western Regional Council has historically done that in the past. It was out of sorts and out of order that they actually—they didn't even follow the normal procedure as far as I'm aware. I may be wrong; you could correct me. The default, if a decision or a motion is not put to council to do a countback, is to go to a by-election. Quite tellingly, at the first council meeting, a motion was put up to go to a by-election, not a motion put up to actually do a countback. It was pretty blatantly an abuse of power.

The CHAIR: In terms of the current bill that we have before us, how would this bill have saved your council time and money?

RODNEY PRYOR: It would have saved a considerable amount of money.

The CHAIR: How much money?

RODNEY PRYOR: It was an expense to council just shy of $300,000. I was of the understanding that a countback would cost anywhere between $6,000 and $10,000. On top of that, the vote was so close and I believe my reputation, or the circumstances around my getting elected, is travelling far and wide. In the by-election, I was actually up 700 primary votes and the expectation was there was no way the preferences could beat that result. I got very few preferences. I was elected pretty much on primary votes, and I won the by-election by one vote—just one. A re-count was called for, which then added to the expense of the by-election. Quite surprisingly, the vote went up and down. Some informal votes were challenged and some votes were approved. My vote and the contender's vote both went up by two votes and, again, I won by one vote.

The CHAIR: Do you think it's okay that councillors who would expect to gain a political benefit from the result of a by-election can influence whether or not a by-election occurs?

RODNEY PRYOR: I'm trying to process that question. It seems pretty logical that they would benefit from a by-election because proportionally you're looking at—a quota is 10 per cent of the vote. If you don't get 10 per cent of the vote or a lot of candidates don't get 10 per cent of the vote, you can sit on council with less than 4 per cent of the vote if it gets to that extreme. I'm sorry, could you give me the question again so that I can process it properly?

The CHAIR: I'm trying to understand whether or not you think it's okay for councillors, if they expect to gain a political benefit from the result of a by-election—say, in your case, the majority of the councillors were, as you put it, of a certain view. They expect to get a certain result from the by-election. Do you think it's okay that they can influence whether or not the by-election actually occurs, or should that decision be taken out of their hands and not politicised?

RODNEY PRYOR: It should not be their decision to make. I'm sorry to say, but it's pretty obvious that if you're elected by one section of the community on 10 per cent of the vote and that is prevented from happening, and then you have to go a general election where you have to convince 90 per cent of the people that didn't vote for you to get elected to reinstate the representation for people who voted for you, it is highly unlikely that you will get elected. That was the case with me. They did not expect that I would be re-elected and they presented a very high-profile candidate to guarantee that result. Yes, of course they can affect the outcome.

The CHAIR: Noting that you ran in a group the last time around—is that correct?

RODNEY PRYOR: Yes.

The CHAIR: In the instance of a countback, you would have received the excess votes from former Councillor Fellowes. Would you say that it makes sense that your mandate would come from your party affiliation, or being on a group ticket?

RODNEY PRYOR: In this instance, it would have. The percentage vote that we got, and the lack of percentage votes that other candidates got, put me in contention to actually be elected in my own right as the second candidate, so it was very close. It took 57 counts of preferences to get nine councillors elected. I think I was eliminated at the fifty-third or fifty-fourth count of preferences, so I was pretty close to getting elected in my own right anyway.

Ms CATE FAEHRMANN: Chair, I was just going to ask for clarification and also see if Councillor Dench wanted to answer that one, too.

The CHAIR: I'm about to ask them both. Just a question that is posed to you both around pre-poll and the challenges that you experience, or may not experience, with covering pre-poll. I would like you to talk about your experience. Obviously, you may have different experiences of covering pre-poll and campaigning during that period in terms of the impact that it may have on your other obligations, whether that is work or other things.

ALLY DENCH: I found a pre-poll rather intense, particularly being an Independent and not having the structure behind me with volunteers and that to help. There were multiple polling stations that needed to be covered. Pre-polling is where you do a lot of your chatting and a lot of your talking and influencing, and expressing what your views and your values are to the electors. It was difficult to get around to the different ones. I found that if you were able to understand which booths were the most popular ones, or not the most popular, where you were to go on that particular day—not having that inside knowledge as an Independent, it was really difficult at times to know where to go.

The CHAIR: Councillor Pryor, do you have a comment?

RODNEY PRYOR: Yes. I'm quite supportive of what Councillor Dench has just said. Two weeks to pre-poll is quite onerous. I was fortunate in our electorate that there is only one pre-poll booth, but having it for a week, including the Saturday prior, would be much easier. Even though I ran in a Labor Party group ticket, the amount of help that we had through the campaign was very similar to an Independent. We didn't have massive amounts of volunteers. We didn't have a lot of financial support. I think you can understand that when we went to the election, it was during the period leading up to the Federal election, and most political parties were directing all their resources towards that, so there was very little support at a local council level from the party. When it came to polling day, you had in the electorate something like five or six, six or seven different polling booths to cover, which is really quite difficult to do.

The CHAIR: In terms of pre-poll as well, isn't the point of pre-poll to provide an alternative for voters who are busy on election day?

I'm keen to get your thoughts about why we should or shouldn't feed this trend of increasing the number of pre-poll days, if 10 years ago it was sufficient to have election day and the option of postal voting, for example.

ALLY DENCH: I think now, with the way that work is structured, it's really difficult for shift workers. It's really difficult for people with caring responsibilities. It's more an acknowledgement of the complexities of contemporary life as to why there is a need for a bit of a pre-poll, definitely, to get to those polling booths. It makes it a lot more accessible for those who aren't able to get there on one specific day—particularly when you can't vote out of area if you're away on holiday or leave, unlike what you can in other elections, where you can

vote out of area, whereas you can't for local elections. I'm supporting the seven-day pre-poll. I think that's a better balance than going down to five, because you definitely do need a Saturday or a weekend to be able to get out to lodge a vote. Yes, it's a recognition of caring responsibilities and contemporary life at the moment. That's why we do need that pre-poll period.

RODNEY PRYOR: I'd have to endorse exactly what was just said. I can only elaborate on it and say that there are a lot of disaffected voters out there that simply, in my experience, just want to get it out of the road. It was convenient that on their way home from work they could duck into a polling booth and just get their name crossed off. Yes, we need that convenience for people who are shift workers, do different job times or are in a rural area and don't come to town every single day, rather than to say that they have to come to town. If their normal day in town is a midweek day to get the essential shopping done, they can go and do polling on that day, rather than to have the expense of two trips into town, one of them just to vote.

Ms CATE FAEHRMANN: I will jump in just about the methods for filling a casual vacancy. Just to be clear, in the case of groups, the bill before us doesn't allow casual vacancies for Independents that don't have a group to be determined by countback. It forces those councils to go to an election. Councillor Dench, I want to get your views on that, firstly.

ALLY DENCH: Yes, definitely. Where there is no group and an Independent, there's no-one to fall back upon. It would need to go to a by-election. That's why I'm proposing an "expression of interest" style or approach—because of the cost.

Ms CATE FAEHRMANN: Councillor Pryor, in terms of some of the discussion earlier about making sure that it's fair on everybody, to be clear, being forced to go to a by-election is not what you would support.

RODNEY PRYOR: I don't know why there's been a cut-off on the countback for Independent candidates. I don't understand why that is occurring. As it stands now, if the council at their first meeting choose to vote for a countback, it extends to Independents who are next in line. I don't see why that's now been cut off. It doesn't make any logical sense to me, especially if it's close to the general election. If it was three years down the track, possibly you might look at it differently, but I still don't see the logic behind it. By extension, if it's going to be for groups, it should be for the Independent candidates next in line.

Ms CATE FAEHRMANN: Is this being put into this bill because of your situation, Councillor Pryor? It's just dawning on me that that's what I think is going on.

RODNEY PRYOR: One could conclude that.

Ms CATE FAEHRMANN: Yes, they could, couldn't they?

RODNEY PRYOR: I wrote a letter to the Minister for Local Government about this situation and saying that the legislation at section 291A should be altered so that a disgraceful situation like this should never be allowed to happen again.

Ms CATE FAEHRMANN: I think he has overreached on that one.

The Hon. DAMIEN TUDEHOPE: There are a number of other issues in relation to the conduct of these elections. There is a provision that polling booths only be located in the local government area. Do you support that, Councillor Dench?

ALLY DENCH: Within the local area. Because of the nature of local government elections, it's extremely difficult to administer if it was outside the local area. That's why I think the pre-poll period is so important in how we implement that. But my support is for it within the local government area.

The Hon. DAMIEN TUDEHOPE: Did Wollondilly council ever consider using anyone other than the NSW Electoral Commission to conduct its campaign?

ALLY DENCH: My understanding is no.

The Hon. DAMIEN TUDEHOPE: Do you recall how much the Electoral Commission charged the council for the conduct of the election?

ALLY DENCH: No, I don't. I'd have to take that on notice.

The Hon. DAMIEN TUDEHOPE: Can you take that on notice?

ALLY DENCH: Yes, I can.

The Hon. DAMIEN TUDEHOPE: Do you have any insight as to whether the council obtained a quote for the NSW Electoral Commission conducting the election campaign prior to the election?

ALLY DENCH: My understanding is they would have sought a quote of how much it would cost. I can confirm that and take that on notice as well.

The Hon. DAMIEN TUDEHOPE: Can you also confirm whether in fact the council did explore an option about a private provider?

ALLY DENCH: I can't confirm that. I wasn't working at the council at that time. I'd need to take that on notice.

The Hon. DAMIEN TUDEHOPE: Even if you tell us what you were advised, that would be helpful in relation to that.

ALLY DENCH: Yes.

The Hon. DAMIEN TUDEHOPE: In terms of the manner in which the election campaign was conducted in 2024, are you aware of any concerns which may have arisen as a result of the conduct of that election?

ALLY DENCH: No concerns.

The Hon. DAMIEN TUDEHOPE: And you're unaware as to whether the actual cost of the campaign was as the NSW Electoral Commission quoted to the council prior to the election?

ALLY DENCH: I am not aware of the actual costs. Like I say, I'll be able to take that on notice.

The Hon. DAMIEN TUDEHOPE: Do you support the removal of the option for councils to obtain private companies to carry out election campaigns?

ALLY DENCH: No, I don't.

The Hon. DAMIEN TUDEHOPE: You don't support that?

ALLY DENCH: No, I don't.

The Hon. DAMIEN TUDEHOPE: You think that there should be potential competition between—

ALLY DENCH: I believe that we need to caution against monopolies. I believe that it reduces local responsiveness and flexibility. I do support consistency and integrity offered by the NSW Electoral Commission, but removing the option for councils to engage in alternative providers entirely may unintentionally create that monopoly, and it risks stifling innovation, flexibility and also accountability in the long term. I'm not opting for councils to opt out, just for the legislative option to remain for that to be there.

The Hon. DAMIEN TUDEHOPE: We've developed into some confusion relating to where everyone stands in relation to casual vacancies, but I just want to put three alternatives to you. The first alternative is that a casual vacancy is filled immediately by a by-election. The second is that the casual vacancy is filled by way of a countback. The third is that the casual vacancy be filled by reference to the group from which the candidate who has caused the casual vacancy came, and if that is exhausted, then, by way of alternative, a countback. Of those alternatives, which do you support?

ALLY DENCH: I support the countback.

The Hon. DAMIEN TUDEHOPE: A countback which doesn't allow for a group to have its next placed representative.

ALLY DENCH: I have some concerns of ongoing consistency with groups.

The Hon. DAMIEN TUDEHOPE: Mr Lawrence put a proposal to a previous witness in relation to that, that the groups, in fact, represent and are voted for not so much on their personalities but often because of the set of values which attaches to that group, and all members in that group, in those circumstances, would adhere to that set of values. Would you accept a proposition that it seems consistent for people who vote for a group with a set of values, that the next person who represents those values should be, in fact, elected?

ALLY DENCH: Yes. Those groups that have the same set of values quite often are consistent with political parties. I know with Independents, sometimes those values can shift and alter and not be as strong.

The Hon. DAMIEN TUDEHOPE: So you'd agree with agree with me that candidates fall into potential two categories? There's the ungrouped and the grouped. The ungrouped ones, you would say, it stands to reason that they should be the subject of countbacks. Is that your position?

ALLY DENCH: Correct.

The Hon. DAMIEN TUDEHOPE: However, the grouped ones you say should also be the subject of countbacks. Tell me why.

ALLY DENCH: That's because sometimes those views and ways of Independent groups can change over a period of time. Often Independents, as I say, are voted in based on issues and views. I believe that sometimes, depending upon the length of time, people—

The Hon. DAMIEN TUDEHOPE: Is it the case that people who are within the groups change their allegiances? Is that what you're suggesting?

ALLY DENCH: Yes, they can.

The Hon. DAMIEN TUDEHOPE: They may not remain members of the particular group to which they are espoused of belonging, if they do change their allegiances. You put that proposition on the basis that it is sometimes—

ALLY DENCH: Not all the time.

The Hon. DAMIEN TUDEHOPE: Yes. The general rule is, if I could put this to you, that a group generally has members of that group who, to use a word in the vernacular, caucus together about generally issues which are before the council?

ALLY DENCH: Correct.

The Hon. DAMIEN TUDEHOPE: And they vote according to the values of their group and the manner in which their group decides. It is unusual, is it not, in your experience, that they would vote outside that caucused position?

ALLY DENCH: It is unusual that they would. It depends upon their stance—

The Hon. DAMIEN TUDEHOPE: Whereas the Independents can flow—

ALLY DENCH: Whichever way, because there's not that structured approach as to a political group.

The Hon. DAMIEN TUDEHOPE: Other than the sometimes, which you've identified, generally, the position I think that you would adopt is that most of the time people who are part of a group—

ALLY DENCH: They will vote the same or similar way.

The Hon. DAMIEN TUDEHOPE: Would it not be the case that members who are elected as part of a group, if in fact a vacancy occurred in that group, then the next person who was not elected as part of that group should in fact fill that position?

ALLY DENCH: As long as their view hasn't changed over that period of time.

The Hon. DAMIEN TUDEHOPE: And if they remain an adherent. You qualify—if there is to be a qualification at all—if they remain a party or a member of the group, then in those circumstances your position would be that the group then should nominate the person to fill that vacancy?

ALLY DENCH: Yes.

The Hon. DAMIEN TUDEHOPE: Let's put it in straight terms. If the person was a member of the Labor Party and a member of the Labor Party resigned and they were still a member of the Labor Party, you would agree with me that then that person should fill the group and not by way of a countback, which may deliver, in fact, a different result?

ALLY DENCH: Yes, and I've outlined that in my submission. It's different for Independents as to the party politics, the party group.

The Hon. DAMIEN TUDEHOPE: Were you ever aware whether Wollondilly council was consulted in relation to the provisions of this new Act?

ALLY DENCH: No, I'm not aware. Sorry, can you clarify that?

The Hon. DAMIEN TUDEHOPE: There's a bill that we're considering.

ALLY DENCH: Yes.

The Hon. DAMIEN TUDEHOPE: Was the Wollondilly council ever consulted in relation to this bill?

ALLY DENCH: As councillors?

The Hon. DAMIEN TUDEHOPE: Yes.

ALLY DENCH: Yes, there was a request for councillor input into a submission, but nothing has come to council.

The Hon. DAMIEN TUDEHOPE: No, before the bill came to the Parliament.

ALLY DENCH: I am not aware.

The Hon. DAMIEN TUDEHOPE: So only after the bill had been introduced were you made aware?

ALLY DENCH: Yes.

The Hon. NICHOLE OVERALL: Given the statements that you've made about breaching the code of conduct three times in your personal situation and being elected councillor, have actions been taken against the council in this regard?

RODNEY PRYOR: No, not at all. I didn't see any benefit in doing it, to be quite honest, at the time.

The Hon. NICHOLE OVERALL: No codes of conduct have been lodged against those that you're claiming these things?

RODNEY PRYOR: No.

The Hon. NICHOLE OVERALL: Councillor Dench, echoing Ms Faehrmann's points, you made a very detailed submission. You've said to Mr Tudehope that there wasn't the opportunity for input and consultation prior to this bill being brought before Parliament. Would you say that you feel, given the research and the length of your submission, that more consultation and input is required before this would be progressed?

ALLY DENCH: Yes, definitely.

The Hon. STEPHEN LAWRENCE: I should put on record, just out of an abundance of caution, that I worked on Councillor Pryor's election campaign, and he is a political associate of mine.

The CHAIR: Thank you both so much for appearing today and giving evidence to the inquiry. Our Committee secretariat will be in touch with you both if there were any questions that were taken on notice.

(The witnesses withdrew.)

Ms RACHEL McCALLUM, NSW Electoral Commissioner, NSW Electoral Commission, affirmed and examined

Ms ANDREA SUMMERELL, Executive Director Elections, NSW Electoral Commission, affirmed and examined

The CHAIR: Welcome to our next witnesses and thank you very much for making time to make a submission and give evidence at the inquiry today. Would either of you like to start by making an opening statement?

RACHEL McCALLUM: Thank you for the opportunity to appear here today. The Electoral Commissioner, as you know, is an independent statutory office holder created by this Parliament under legislation to administer State, local government and other elections in New South Wales. The Electoral Commission is the independent election regulator and electoral funding administrator, also established by this Parliament to support the State and local systems of representative democracy in New South Wales. We have provided a written submission to assist the Committee with its important work in examining the proposals in the bill.

Whatever legislative model the Parliament ultimately decides should apply to the administration and regulation of future local government elections, this would be implemented by the commission and commissioner with its usual focus on integrity, participation, public value and safety. We would be pleased to provide further information today about some of the matters that have been raised in submissions and evidence to this point which might include, for example, how the costs of running elections for councils are currently met as between the State and the councils. Thank you for the opportunity to appear today.

The Hon. DAMIEN TUDEHOPE: We've heard a lot of evidence about the NSW Electoral Commission providing quotes to local government officers and then the final invoice being delivered which is significantly in excess of what the quote was for and that bill having to be picked up by the relevant LGA for the services of the NSW Electoral Commission. Is that right or wrong?

RACHEL McCALLUM: There were a number of final invoices that were higher than the original estimates that the commission provided to our client councils in 2023 before the 2024 local government elections, yes. I can give you some statistics, if you like, on how many those were. So 58 per cent of those invoices were within 10 per cent, plus or minus, of those estimates that were provided to councils. And 24 per cent of our invoices were lower than the 2023 estimates, which was due mainly to greater than predicted efficiencies due to the sharing of some costs between councils. Around 18 per cent of those invoices were higher than the original 2023 estimates.

The Hon. DAMIEN TUDEHOPE: In circumstances where they were higher, what was the chief reason for that?

RACHEL McCALLUM: Generally, unestimated staffing costs—greater numbers of temporary staffing to be engaged in the local council area for the election event.

The Hon. DAMIEN TUDEHOPE: Is there a separate agreement entered into by the individual councils that they will pay the final invoice notwithstanding that it may in fact be larger than the original estimate?

RACHEL McCALLUM: Yes, that's right. There are quite significant written agreements between the commission and all the councils who choose to engage us.

The Hon. DAMIEN TUDEHOPE: If we were making recommendations in relation to protecting ratepayers, should it not be the case—and this might be a policy decision, you will say—that the tab for any increase should be picked up by the Electoral Commission or the State Government?

RACHEL McCALLUM: In relation to the Electoral Commission, I would say that we don't have a source of income other than the appropriation bill—

The Hon. DAMIEN TUDEHOPE: Budgeted.

RACHEL McCALLUM: Yes—budgeted or on a cost-recovery basis from the councils. To the second question, I would say that is a policy question as to who is best placed to meet the cost of elections.

The Hon. DAMIEN TUDEHOPE: The Australian Election Company also conducts elections on behalf of organisations. To the best of your knowledge, is the cost which they charge to individual councils lower or higher than the Electoral Commission?

RACHEL McCALLUM: I don't have any specific knowledge of whether their final invoices are lower or higher than ours. I don't have visibility on what they charge their—

The Hon. DAMIEN TUDEHOPE: Do you have a view on whether the NSW Electoral Commission should conduct all local government elections or whether there is a possibility that other organisations can just as easily conduct elections in local government areas?

RACHEL McCALLUM: In our submission, I indicate support for a move towards the NSW Electoral Commission running all the local council elections. That is not because I have any views about the appropriateness of any particular other provider that might be in the business of elections and running those events. For the reasons that we do outline in our submission, we do think that there are benefits to having the one provider. We ran all but two—

The Hon. DAMIEN TUDEHOPE: In the last election?

RACHEL McCALLUM: The elections at the last ordinary elections. There are many functions that we undertake in relation to election regulation and electoral funding which apply to all the councils no matter who is the organisation that might run the nominations, voting and counting parts of the election process. There are opportunities, I think, that are set out in our submission which would indicate that it would be appropriate for us to run all of the elections.

The Hon. DAMIEN TUDEHOPE: A lot of that is centred around data, is it not?

RACHEL McCALLUM: Could you just clarify, sorry, what you mean by that?

The Hon. DAMIEN TUDEHOPE: Effectively, the efficiency of the NSW Electoral Commission is based on its experience and the collection of data and the manner in which it has the ability to analyse the needs of a particular electorate.

RACHEL McCALLUM: Yes, we obviously have a long history and significant access to experience and, as you say, data about how those very visible services that voters and councils see during an election event should be planned and run.

The Hon. DAMIEN TUDEHOPE: And that's a level of expertise which you have garnered over many years, whether it's in relation to State government elections or local government elections.

RACHEL McCALLUM: That's right. There is definite overlap between the experience of running a State election event and a whole-of-State local government event.

The Hon. DAMIEN TUDEHOPE: One of the concerns which was raised with us was in relation to regional areas where the Electoral Commission entered into agreements in respect of community facilities in circumstances where the local council itself could have got a much better arrangement in relation to those community facilities for the purposes of using them as polling stations during the election campaign. And then they were charged back for the use of those facilities.

RACHEL McCALLUM: Yes, I am aware that from time to time councils do raise with us the choice of venues for voting and other activities that occur during the election. I can't recall which witness raised that specifically, so I can't talk to the specifics of that. But, certainly, councils do like to talk to us about venue choices. We make choices based on a number of factors, including safety and including, as you say, the data we have about where the voters are and where the most convenient places are for voters and things like accessibility and other factors. There may be a number of reasons why the Electoral Commission may form the view that a council premises is not suitable in a particular circumstance. In that case, yes, that is the election administrator making a decision about the way in which the election should be run well.

The Hon. DAMIEN TUDEHOPE: In relation to pre-polling, one of the issues which has been raised is whether pre-polling and polling on election day should be conducted within the confines of the local government area. Do you support that contention?

RACHEL McCALLUM: Sorry, just to clarify, is your question about whether or not there would be multi-centre pre-polling?

The Hon. DAMIEN TUDEHOPE: Indeed, yes.

RACHEL McCALLUM: Our submission notes that, potentially, the way the bill is drafted at the moment, it may omit—the proposal to abolish the concept of multi-area voting centres is not extended to the pre-poll period, but that may or may not be intentional. We have made a number of points about what some of the advantages, as we see it, from an operational perspective, might be for having multi—

The Hon. DAMIEN TUDEHOPE: Let me just put to you a practical example which has been raised with us. Why shouldn't, for example, someone who works in Parramatta but lives in Cumberland be able to go to a polling centre in Parramatta to cast their vote in a local government election?

RACHEL McCALLUM: There are perhaps some policy considerations there that we wouldn't take a position on. But generally we would choose to set up multi-area voting centres where there is an opportunity to increase participation by the voters of neighbouring local government areas.

The Hon. DAMIEN TUDEHOPE: Because it's not the same as an absentee vote. It would just be for Cumberland and Parramatta, someone could go and vote at a centre in Parramatta.

RACHEL McCALLUM: Yes. Well, that does happen now in relation to multi-voter centres. I'm not sure if there's anything specific about Cumberland or Parramatta that you—

The Hon. DAMIEN TUDEHOPE: Let me ask you in relation to regional areas. For regional areas the distance to a local polling facility may be some distance whereas the distance to potentially a polling facility in a neighbouring local government area may not be nearly as far.

RACHEL McCALLUM: Yes.

The Hon. DAMIEN TUDEHOPE: Should there not be an opportunity for regional areas to have potentially multi-voting facilities in adjoining local government areas?

RACHEL McCALLUM: One of the considerations in currently establishing multi-voting centres is precisely that scenario where there is a boundary that means people just on the other side of the boundary in a different local government area would have to travel a significant distance to be able to vote. With the aim of increasing voter participation in local government elections, yes, that's one of the considerations. We do currently establish centres to meet exactly that demand from rural/regional councils.

The Hon. DAMIEN TUDEHOPE: But if the bill was to mandate—

RACHEL McCALLUM: We wouldn't be able to do that.

The Hon. DAMIEN TUDEHOPE: You would not be able to do that, would you?

RACHEL McCALLUM: No. We wouldn't be able to do that.

The Hon. DAMIEN TUDEHOPE: So that would be something that potentially you would recommend should be changed in the bill to allow the Electoral Commission to have multi-voting centres?

RACHEL McCALLUM: I think there's a public policy balancing exercise there. There would be presumably other public policy reasons for the proposal in the bill, so they would need to be balanced against what would be lost if voters, for instance in a rural or regional area, were forced to travel long distances to be able to cast their vote in person, or to rely on postal voting. I probably wouldn't wish to undertake that balancing test here or weigh up those different competing public policy considerations that might exist here, but we certainly take the opportunity to establish them now in order to serve the voters.

The Hon. DAMIEN TUDEHOPE: But there's no practical impediment for the NSW Electoral Commission to running multi-voting facilities, is there?

RACHEL McCALLUM: No. We do them.

The Hon. NICHOLE OVERALL: Just a point of clarification: Is it in your opening statement you mention that councils sharing costs created cost efficiencies?

RACHEL McCALLUM: Yes. There could be.

The Hon. NICHOLE OVERALL: Is that in relation to what Mr Tudehope is asking here?

RACHEL McCALLUM: Yes. There could be cost efficiencies by providing a multi-voting centre—that's right—for the shared resources that are provided by that voting centre.

The CHAIR: Ms McCallum, the LGNSW position is to recommend that the Government amend the local government regulations to commence the period of nominations earlier than currently is scheduled and extend its duration. Does the NSW Electoral Commission have any comment about that proposal?

RACHEL McCALLUM: I don't have any comments. I'm sorry I can't quite recall at the moment. Was that in the context of having a longer postal vote period?

The CHAIR: That was one suggestion, but there was also a suggestion to increase the period of time in which nominations are received—commence the period of nominations earlier and extend its duration. That's for nominations.

RACHEL McCALLUM: In relation to some of the practical impacts of that, perhaps Ms Summerell might be able to offer insight into that.

ANDREA SUMMERELL: The period of nominations for local government elections is longer than the lodgement period for State elections. We understand that people need some time to prepare their nominations, make sure that they're meeting all of the requirements, and make sure that they lodge a valid nomination at the point when that specific lodgement period is available. What we do do is have a pre-lodgement period where people can prepare their nomination and have us validate that all of the information is met at the point that they can lodge their nomination.

In relation to extending that period, we feel like we've addressed that somewhat by creating this pre-lodgement period and having our systems available so people can prepare and see that they've met the requirements. It would be somewhat extending that period but allowing them to lodge. In local government elections, there is a bit of a difference between the publishing of candidate nominations once they're accepted. Often we find that in local government elections there's a lot of preparation time but people sometimes leave their nomination to a later stage of that lodgement period because who's nominated becomes public. We found that that's something that may, even if we extended it, still mean that people are waiting for the time closer to the close of nomination to lodge.

The CHAIR: Or missing the deadline entirely. They also recommend that the bill amend the local government regulation in terms of reducing the closing time for postal ballots, as you've touched on. The proposal is to reduce it from 6.00 p.m. on the thirteenth day following election day to 6.00 p.m. on the sixth day following election day. Are there any challenges that you could foresee in doing that?

RACHEL McCALLUM: My first reaction to that is there would be likely a lot of postal ballots that did not make the count on that basis. The thirteen days is aligned with other elections, so that is not unique to local government. That's the same now as the recent Federal election and State elections. It has the benefit of consistency across the three levels. Part of the reason it has gone to 13 days is to ensure that more ballot papers are able to be included in the count. Australia Post has publicly said that it is moving to delivery every second day, and that does impact, particularly, rural and regional areas, which clearly have greater distances and fewer facilities. Any limitation or contraction of the current period would, in my view, result in fewer ballots making the count. On that basis, I would have a concern about that. I do understand the reason behind that. I understand that there is a short period of time between when the elections are finalised and when a council is required to meet first, so there is a challenge there. But a six-day period would see a lot of mail coming in after that date.

ANDREA SUMMERELL: If I could possibly add, before we had that extension to 13 days, around 65 per cent of postals were returned within that deadline. Once we extended it out to 13 days, it was 80 per cent. There was a significant increase in the number of postal ballots that we were able to include in the count when we had that extension to 13 days.

The CHAIR: That's an interesting statistic, thank you. When a private provider is selected by council, what is the role of the NSW Electoral Commission, if any, for that area?

RACHEL McCALLUM: As I mentioned in my opening, the commission, which is a three-member statutory commission, has legislative functions in relation to the electoral funding obligations of the candidates who might be running in those areas where the Electoral Commissioner has not been engaged to run the election event itself. There are enrolment-related obligations that we must fulfil in relation to all councils, regardless of whether we're running the election. They're the two main statutory responsibilities, I suppose, that we have in relation to those council areas. We are obviously not a regulator of other election service providers, so the manner in which they deliver their services to their client councils is not something over which we have any oversight. We do have regulatory functions, as I said, or enforcement functions in relation to breaches of electoral laws that might occur in a campaigning sense or in relation, for example, to the campaign, but we do not regulate the election service provider. That is not one of our functions.

The CHAIR: If someone had a complaint about an election service provider or a private provider in the conduct of their election, where can they go to lodge that complaint?

RACHEL McCALLUM: I guess it would depend upon the nature of it. In my view, there isn't a particular oversight body in relation to that service. There are, of course, opportunities. If there was a problem that was material to the validity of the election, then there are legal processes that a person could take to challenge the outcome, based on if they thought that there was a material issue with the conduct of the election. That would generally be a participant in the election themselves, who wished to challenge the outcome. That's ordinarily the NSW Civil and Administrative Tribunal, although the Supreme Court does have some original jurisdiction in relation to local government elections as well.

The CHAIR: In a lot of the submissions to this inquiry—and we've certainly heard it in the evidence today—are concerns around the costs associated with election delivery. How do you determine the prices that you charge for running elections?

RACHEL McCALLUM: A couple of years out from the big election event, we undertake an estimate process. We use our data to, and our past experience to, effectively, produce an estimate based on various line items of key inputs that we think we'll need to meet. We develop a cost estimate. We are quite clear it is an estimate, and it is quite a long way out from the election event, as I mentioned. I know it has come up here already today and in submissions, but we try to think of it in terms of what are the direct costs of councils that we may end up having to invoice. That is what we are telling councils in our estimates what we think at that point in time they could expect to be invoiced by us.

There is a lot of planning we need to do about the other costs that we must incur. As has been mentioned earlier today, the most recent elections have come out that 45 per cent of our costs had been met through invoicing to councils. The remaining 55 per cent of the costs, the extra costs that we have incurred for running that election, are met by the State in an ordinary appropriation through the budget process. That 55 per cent is not something that councils receive as some sort of reimbursement; that is funding to the Electoral Commission. The invoices and the estimates that we provide really only reflect quite a small proportion now—a relatively small proportion of the overall additional costs of running local government elections by us.

The CHAIR: If we were to take that 55 per cent aside, you would be invoicing councils for a considerably larger figure, in terms of running their electoral costs?

RACHEL McCALLUM: We would, yes.

The CHAIR: In terms of the costs, again, what efforts are made by the Electoral Commission to ensure that the services that you're providing when operating elections on the ground are cost-efficient for councils?

RACHEL McCALLUM: If you don't mind, perhaps Ms Summerell could give you some detail about that.

ANDREA SUMMERELL: We were talking about council venues before and our ability to use them. At the beginning of each planning period, we do consult with councils and go through what our requirements are for the venues for that election event and, where possible, be able to use those venues. We undertake that exercise. As we said, it's not always possible that that venue is fit for purpose. We do have priorities around accessibility of venues that we want to meet. Sometimes it's a combination of commercial premises, along with council premises, but that is one savings that we can provide. In smaller regional areas, where there are very small pre-poll numbers that are going to be at a particular area but we have a requirement to have a pre-poll centre in a local government area, we look to be able to use the council staff to issue those votes, if it's not going to be overwhelming or they're going to be able to do that along with their other council activities. That is a saving, then, for us having additional staff in those venues.

In regional areas also, one of the bigger cost savings—and we see that when we have a standalone by-election where we can't apply the same—is that we regionalise some of those returning officers. We try to look, where possible, can we have one returning office venue, one returning officer and some senior office assistant staff that are managing multiple council areas? That brings a saving to all of the participating councils. We speak to them. Often councils will take turns from election to election as to where the returning officer is going to be located, so it feels fair and equitable across the council areas, but it brings a significant saving to councils. They're some of the things that we do.

The CHAIR: In terms of a countback election, my understanding is it can cost up to $10,000 to run that countback election. That's obviously cheaper than a by-election, which we've heard about today. But what would it cost to oversee a replacement from a group ticket?

ANDREA SUMMERELL: So, an attendance by-election—or, no, a countback.

The CHAIR: What the bill is proposing: that automatic replacement from the group ticket.

RACHEL McCALLUM: I can't give you a figure on that today. I don't think I would like to guess what that would be at this point. But, as you know, it's not the Electoral Commissioner who appoints whoever it is who's picked; it's the Governor. I would anticipate it would be less than $10,000, if we were to cost that at all in relation to filling by—

The CHAIR: In terms of a back-of-an-envelope calculation, what are we talking? How much?

ANDREA SUMMERELL: I guess what I could give you is the figures I do know. When we have countbacks—you mentioned the $10,000—that price does vary depending on how many possible candidates that

we'd be seeking applications from. If there are very few possible eligible candidates—say, for example, two or three that we were going out to—that countback would actually cost around $4,500. So you can start to see that scale between the countbacks of—how we can bring down that cost when there are less applicants being considered for the placement of the role.

The CHAIR: But in the case of, for example, the Mid-Western Regional Council—we heard the number of different tickets, counts and candidates that were on that—presumably that number would be somewhat more.

ANDREA SUMMERELL: I think in the proposed amendment, depending on where the vacancy occurred, we'd be going out to applicants within that group.

RACHEL McCALLUM: Just one.

ANDREA SUMMERELL: So it would be how many—most of our interactions and costs are around getting the information we need from those candidates, as well as all of the administrative work that has to go along with that, so it would be a smaller number than a whole-council countback.

Ms CATE FAEHRMANN: Looking at your submission in relation to the filling of a casual vacancy, I think you've got—since the 2024 local government elections—that five of the casual vacancies would have required an attendance by-election because they weren't part of a group. Did you provide 2021 as well or just 2024? Maybe just since 2024.

RACHEL McCALLUM: Yes.

ANDREA SUMMERELL: Yes.

Ms CATE FAEHRMANN: But, in terms of your argument, is that the cost for the Electoral Commission to have to support local councils? We've heard from some local councils today about the cost of the by-elections to them, but the cost to the Electoral Commission is potentially even more than we thought before you appeared today, because it's—did you say you get 45 per cent reimbursed as opposed to 55 per cent?

RACHEL McCALLUM: We've billed the councils, in total, 45 per cent of what we would say the additional costs of running the whole-of-State event are.

Ms CATE FAEHRMANN: You also stated at the back—

RACHEL McCALLUM: That does apply to by-elections as well. So there is—perhaps not to that precise ratio—a division of costs there that we are undertaking in relation to by-elections as well.

Ms CATE FAEHRMANN: Do we have that average in terms of how many casual vacancies there are every year—an average over the past five years, or the past 10 years? How many casual vacancies are created on local councils? Do you have those statistics?

RACHEL McCALLUM: I don't have that figure with me, but I could take that on notice and give that back to you.

Ms CATE FAEHRMANN: I thought that could be useful in terms of the capacity of the councils and the Electoral Commission, because you do make the point on the very last page of your submission—which could be easy for members to miss—in a small paragraph about Electoral Commission resourcing, that if there were this many by-elections, particularly in regional and remote New South Wales, it would have an impact on the Electoral Commission. Would you require additional staff to help facilitate those by-elections if, for example, the private providers were also ruled out, which is what this bill will also do? This is all more work for the Electoral Commission, isn't it?

RACHEL McCALLUM: Yes, it would be. More attendance by-elections is more work. We like running attendance by-elections, but it is definitely more work, and more resourcing would definitely be required. I can't tell you precisely how much would be required but, considering the number of countbacks that we have done versus what we think we would have had to run as a by-election, yes, that would have been more resource intensive for us, not just for the councils.

Ms CATE FAEHRMANN: Is there an average cost of conducting a by-election for, say, the regions or remote New South Wales that you could also provide us, or is it so tailored to each election?

ANDREA SUMMERELL: It is quite tailored because even in our regional council areas, we have councils that have 1,000 electors and then upwards towards our big metropolitan ones. But there are some very big regional ones as well. All of that would go into how we cost or estimate the cost of the election. There was some evidence with the Mid-Western election. I think the thing we can say is that a standalone by-election does cost more than the election at an ordinary election, where we are finding those efficiencies to be able to reduce

the cost a little for those local governments. That example of Mid-Western was that the by-election was 11 per cent more expensive than their ordinary election. As a guide, councils will know that they can use their last 2024 election and then know that that's how much it's going to cost, depending on wards and things like that. But, if needed, we could get some costs.

Ms CATE FAEHRMANN: In relation to how much it is costing in terms of private providers, we spoke with Fairfield council this morning who indicated that the Electoral Commission was invited to indicate how they could reduce costs of elections to potentially win a bid. We've got the private provider tendering, and we've got the Electoral Commission tendering to run an election. The question from me was whether the Electoral Commission tries to outbid, if you like, the private provider. I was told that the Electoral Commission didn't suggest ways to reduce costs but that the private provider came back with ways to reduce costs. If you don't know the answer specifically with that, that was something that Fairfield City Council said. Do you have any comments on that?

RACHEL McCALLUM: I did hear that evidence this morning. I'm not sure how Fairfield tests the market—other than we do provide an estimate. They seek an estimate; we provide an estimate. My understanding is that we certainly don't then seek to change that estimate or negotiate with the council to win the business over any other private provider. In this case there is only one, but whoever it might be tendering for the work. My understanding is that we haven't run an election in Fairfield—

ANDREA SUMMERELL: The last time was in 2008.

RACHEL McCALLUM: Since 2008. There isn't really a tender process as you might understand that word in ordinary procurement terms. There is an estimate that we provide and then I'm not sure about what the council might do with that estimate in terms of it seeking expressions of interest from private providers.

Ms CATE FAEHRMANN: I'll just ask about the other council, Berrigan, who also spoke with us and provided some costs of their 2024 election. They did say:

> The promises of the NSWEC however that if Council undertook the majority of the work to support the by election, there would be significant savings in the costs to Council, did not come to fruition …

No real savings were provided by doing so despite council taking on the bulk of the administrative duties of the returning officer. What do you say to those allegations? Because it does seem, from Berrigan's submission and their evidence, that in fact they were speaking to the Electoral Commission about significant savings being made if council took on a number of different tasks.

RACHEL McCALLUM: I might say generally in relation to Berrigan, from what I understand—I wasn't appointed at that point in time—the estimate that they were provided with was in fact higher than the final invoice. The final invoice was lower than the estimate, but the estimate was late in coming to them. We would have had to have run that election; it wasn't a situation where a private provider could have run that election. The final amount charged was, in fact, less than what our original estimate was in that case, albeit it was a late provided estimate.

Ms CATE FAEHRMANN: Can I just check that, because it does seem as though they have told us the opposite. I'm not meaning to grill you over these details in terms of a gotcha moment. I'm just curious. Maybe things can be provided on notice as well. They have said that the cost was almost $161,000. The initial estimate was $130,690, so it was over budget by $30,000. Firstly, it would be good to know those details and why that is the case. Secondly, does the Electoral Commission then issue a cheque to the council to subsidise that? Is the $161,000—that is 45 per cent of the cost?

RACHEL McCALLUM: Yes, that's right. I'm not sure if that amount is correct. Let me take on notice, if that's okay, the exact amounts estimated and then finally invoiced so that we can provide that to the Committee. There is no amount that is paid to the council by us or by the State in relation to that amount of invoicing. The 55 per cent, if you like, was related to the September 2024 local government elections. I'll probably have to also take on notice what percentage of the costs of Berrigan were met by the State. I will get that to you as well.

Ms CATE FAEHRMANN: Because, Chair, it would be useful to get that in detail and not just the very top-level line items or the cost of the invoice.

The CHAIR: Yes.

RACHEL McCALLUM: Could I just say that I am sorry to hear that they had a poor experience of that election. It was regrettable that they had to go to a by-election so soon after the election. I have expressed regret that they didn't feel that they got the service that they wanted from the commission in that regard. I do regret that. If we didn't meet their expectations in relation to the costs, I am also sorry about that.

I think one of the things that we can look to improve in the future is more transparency around how we arrive at these estimates and to come to councils earlier with a bit of a signal about how particular elements of those costings might be going up, be it in the information technology space, which is often a place where we—we are price takers sometimes in that space. I think there is room to be a bit more—or possibly a lot more—transparent about how prices are moving during that time for the purpose of councils planning their own budgets. I do appreciate that, even though, as I said before, I support being the only provider for the reasons set out in our submission. But I do, nonetheless, appreciate that councils have a complex budget situation to manage and that early information about what their invoices might look like is going to be useful to them.

The CHAIR: Just to clarify, with the questions taken on notice, witnesses will have 24 hours to provide them. We've got a very short inquiry time frame. It is a tight turnaround with questions taken on notice. We'll do our best to get that information.

Ms CATE FAEHRMANN: Sorry to keep you working 24 hours. I didn't realise that.

The CHAIR: That's unfortunately all we have time for this session. Thank you to you both for appearing today for the inquiry. The secretariat will be in touch with regards to that information on notice.

(The witnesses withdrew.)

Mr BRETT WHITWORTH, Deputy Secretary, Office of Local Government, Department of Planning, Housing and Infrastructure, affirmed and examined

The CHAIR: Welcome, Mr Whitworth. Would you like to make an opening statement?

BRETT WHITWORTH: Thank you for the opportunity to come here today. I don't have a detailed opening statement. I think the Government's position has been expressed in the submission that we made, which identifies four key policy areas and the rationale and the reasons for the change. I and members of my team have been following the debate and discussion today. I'm more than happy to take any questions. We'll try and avoid taking any questions on notice, given the short time frame. I'm happy to try and answer as much as I can here.

The Hon. NICHOLE OVERALL: Mr Whitworth, you mentioned the Government submission made. What about consultation and input from the actual local government sector? How much occurred?

BRETT WHITWORTH: I think the Premier made an announcement just after the elections last year that it was his intent to see a change to the Local Government Act to remove the private electoral providers component. There are other components of the regulation that deal with pre-polling, and they have been an evolution of regulation changes that were made prior to the local government election in September 2024. To say that these changes have been foreshadowed—certainly some of these changes have been foreshadowed. In terms of a more detailed consultation process, we were engaged with the Electoral Commission not on the policy elements but on the procedural, practical and legislative components. We did not undertake any further engagement. That was a government policy decision it took that it wanted to progress the changes.

The Hon. NICHOLE OVERALL: Obviously, with your answer there, you didn't seek input consultation with New South Wales LG nor seek their input?

BRETT WHITWORTH: You mean Local Government NSW?

The Hon. NICHOLE OVERALL: Yes.

BRETT WHITWORTH: No. I do believe that there was no specific engagement sought but I would like to think that I have a reasonably close working relationship with Local Government NSW. It certainly didn't say to them, "This is the bill that is being prepared", or the policy positions, but I certainly know that there was engagement with Local Government NSW before the bill was introduced into Parliament.

The Hon. NICHOLE OVERALL: But the representatives of the organisation were here this morning saying they hadn't, and they were disappointed not to have had the opportunity to be consulted and provide more input, and are only broadly in agreement with some of what's proposed in this bill and have issues with other areas of it. Would that not have been advantageous, if you do have a good relationship with them, which I'm sure you do, to have ironed out the kinks a little bit more before presenting it?

BRETT WHITWORTH: It would have been advantageous, yes; but also, as I said, there was a discussion with Local Government NSW that was held. I wasn't in the room for that, but it was held before the bill was introduced. There was certainly foreshadowing of the changes around private election providers. That was made when the Premier made his announcement. I believe it was in December last year. I take on board that criticism. I don't know how I can answer that any differently.

The Hon. NICHOLE OVERALL: It's not necessarily being critical. It's just pointing out what has been relayed to us during the course of the day. Where, then, had the proposals for this—and if the Premier had noted them prior to an election—emerged from? If it's not from the local government sector directly in terms of their peak body, has it come from the Office of Local Government?

BRETT WHITWORTH: This is a bill that has been prepared for the Minister for Local Government. The Minister for Local Government will have a strong role in shaping what's in that bill. It's his bill. There were some elements that had come from the Office of Local Government. For example, the issues around the Brewarrina by-election were particular examples. The ability to resolve some of the issues that the Electoral Commission had identified certainly came from the Office of Local Government, but there were some pretty clear policy positions that the Government had identified that it wanted to take.

I believe that's entirely appropriate for a government of the day to say, "These are the policy positions that we want to take." As I said, the Premier foreshadowed the private election providers bill. I'm sure that if you go back through parliamentary records, you'd probably see a long history of the Minister for Local Government, in previous roles, identifying concerns about what he said was the privatisation of election management and concerns about that.

The Hon. NICHOLE OVERALL: It's essentially come from the Minister. You also mentioned that the Electoral Commission has had input to this bill prior to it coming forward. Are you suggesting that that didn't include the potential for the NSW Electoral Commission being the only provider?

BRETT WHITWORTH: Sorry, just two elements—one, we consulted the Electoral Commission on the provisions of the bill, not necessarily the policy intent of the bill. The policy intent was shaped by the Government, and our engagement with the Electoral Commission was effectively, "The Government wants to do this, and this is the shape and form of the bill." The second part of your question was going to whether there was a—

The Hon. NICHOLE OVERALL: Being the potential removal of private providers—was that analysed with NSW EC?

BRETT WHITWORTH: Analysed to the extent—

The Hon. NICHOLE OVERALL: Brought forward or discussed?

BRETT WHITWORTH: I think I have had—maybe not with this Electoral Commissioner, Ms McCallum—conversations with the previous Electoral Commissioner where we have talked about the choice of elections. As we stressed in our submission, having a choice of electoral providers has created some regulatory complexity in the way the Local Government Act is written and the local government regulations are written. That regulatory complexity creates a risk of noncompliance. There has always been that we have this policy position from a former government about having the competition for electoral providers, but that contestability has only really manifested in having a single alternate election provider, and the number of councils that have used that alternate provider have dropped from the sort of high watermark of I think it was 14 that we set out in our submission, down to two at the last two elections. There was, I suppose, a question that was flagged—and this is conversational discussions and not formal correspondence—of do we have value out of having a complex regulatory system for a single election provider to provide elections for just two councils?

The Hon. NICHOLE OVERALL: The two councils have been mentioned quite a lot today, and Fairfield clarified some of the potential basis around why those figures might have altered in the last little while, but I'll move on. The Electoral Commission doesn't, and isn't there to, make a profit. However, when additional funds—and I believe it's through the OLG submission that has stated this—are received in excess of costs for elections, it goes into the Government's consolidated revenue. Is that correct?

BRETT WHITWORTH: No. Could you draw me to that point in our submission?

The Hon. NICHOLE OVERALL: I'll find the point, whether it was yours or whether it was the EC. I'm pretty much reading verbatim I think, "additional funds received", and it specifically noted that—

Ms CATE FAEHRMANN: I think that was Local Government NSW.

The Hon. NICHOLE OVERALL: It could have been Local Government NSW's submission. You're suggesting that when additional funds are received, it does not go into consolidated revenue? That's not accurate?

BRETT WHITWORTH: No.

The Hon. NICHOLE OVERALL: I'll try to find that.

BRETT WHITWORTH: The commission only invoices councils for the direct costs of conducting their election. The Government funds the commission's corporate overheads. Under the current funding formula, councils are invoiced for the direct costs of conducting their elections, while the Government funds the Electoral Commission's core costs or their corporate overheads. I have figures in front of me. What I do have in front of me is that it's about a 45 per cent to 55 per cent share, and councils provide 45 per cent of the total cost of running the elections and the Government provides 55 per cent. I think that figure is mentioned in our submission.

The Hon. NICHOLE OVERALL: The 45 per cent to 55 per cent, we've had quite a bit of questioning about that as well and we are clarifying some of the details. But, in other words, the model that is based on is not set in stone. That can change and alter and fluctuate. So when we say, "55 per cent is being covered by the Government," that doesn't necessarily mean every election in perpetuity is going to be covered by the Government at the level of 55 per cent or however it is coming back, not reimbursed costs et cetera. It's not a set in stone figure.

BRETT WHITWORTH: That's correct. It's not a set in stone figure. What it represents is that the Government is funding the core costs, or the corporate overheads, of the Electoral Commission. The direct costs—such as the printing for that council area, the venue rental and the appointment of staff to man the polling places—are from the council. Can I also say that, in perhaps a demonstration of the closeness by which Local Government

NSW and OLG work, Local Government NSW has just identified that the point that they were making is about proceeds from fines coming back.

The Hon. NICHOLE OVERALL: No, there was another point. I'm aware of the fines one as well.

BRETT WHITWORTH: All right. Well, that's coming from Local Government NSW.

The Hon. NICHOLE OVERALL: I recall reading it from LG. It's about the fines. It wasn't that specifically that I'm referencing, but I'll find that. Just quickly then, so as not to get down too much in the weeds on this, the corporate versus direct costs that you're referencing now, obviously they also alter but would—and I'm not talking about figures; I'm talking about what the core of them are. Would they remain the same, or does that alter?

BRETT WHITWORTH: The concept of what the—I'm not talking about figures; I'm talking about services provided. The core services of the Electoral Commission are funded by the Government. The direct costs of the elections—and I'm probably not the right person to ask that question; the Electoral Commission could have answered that as well. I'm assuming, but my understanding is that the direct costs are printing for the council ballots.

The Hon. NICHOLE OVERALL: So they remain the same? What's considered a direct cost and what's considered a corporate cost essentially remain the same, that will be unchanged?

BRETT WHITWORTH: Yes.

The Hon. NICHOLE OVERALL: That's what I'm clarifying. Thank you. Mr Whitworth, would you also acknowledge that councils—and it's not a new thing, and you in your position are aware of that—but their concerns are escalating as the costs of elections are also escalating?

BRETT WHITWORTH: Yes.

The Hon. NICHOLE OVERALL: Are the proposals that are being put forward as part of this bill really going to be able to address their concerns and ensure more cost-effectiveness for councils to operate in the current environment and the future environment?

BRETT WHITWORTH: I don't think it's fair to characterise that the bill has set out to reduce council election costs. I think it's fair to say that what the bill has set out to achieve is improving the public trust and faith in the conduct of local council elections, which is fundamental to democracy. The way to look at how election costs are increasing would be, I would believe, a different approach. We need to understand the councils' ability to cover and pass on to their rate base the increasing and changing costs of elections, which is what the IPART model for the rate cap does.

In the most recent rate cap determination, there was an increase up to 0.8 per cent that some councils could pass through. In terms of who is monitoring the Electoral Commission, in order to ensure that they are operating as efficiently and as effectively as possible, I mean, the Electoral Commissioner is an independent statutory officer, reportable to Parliament. I've heard the proposals that IPART review what the Electoral Commission does, and I am slightly nervous about one independent authority monitoring what another independent authority is doing. But I suppose that is a matter for Parliament to determine, because, ultimately, the Electoral Commissioner reports to the Parliament.

The Hon. NICHOLE OVERALL: It's wonderful that of course we want to improve public trust and faith in councils, but I'd say most communities are concerned more around how little councils have to work with. When you're referencing this 0.8 per cent that they can apply, that's in addition to the rate peg as it's set. Is that correct?

BRETT WHITWORTH: That's correct.

The Hon. NICHOLE OVERALL: But, again, when councils have been questioned about that today, all of them have admitted that it's not anywhere near enough to cover the costs that they incur at election periods. How is that 0.8 per cent determined?

BRETT WHITWORTH: That 0.8 per cent is a range. It's not a single factor; it's a range. The Independent Pricing and Regulatory Tribunal examines the election costs of councils, noting that they are varied and that the rates of change and increase will vary from one council area to another, depending on a range of factors from geography through to ward sizes through to the number of candidates that nominate. IPART has given an individual factor within what it calls its Base Cost Change model that it uses to set the rates. So, for one council, that increase could be anywhere between 0.2 and 0.8 per cent, depending on the increase.

The Hon. NICHOLE OVERALL: So 0.8 per cent is the top—is what you're talking about?—of this range.

BRETT WHITWORTH: It is the top.

The Hon. NICHOLE OVERALL: So 0.2 to 0.8 per cent is the variation that they're provided, regardless of how varied councils and their activities are.

BRETT WHITWORTH: But reflecting the costs and the cost increase that that council experienced.

Ms CATE FAEHRMANN: You said earlier that the Premier announced some of the changes contained in this bill post-election, particularly in relation to the private providers. Is that correct?

BRETT WHITWORTH: Yes.

Ms CATE FAEHRMANN: When did you first hear about the plan for amending how casual vacancies are decided?

BRETT WHITWORTH: I don't have a particular date that I can draw, but it was much later in the piece. It has been a more recent inclusion, and it was as part of that process of engaging with the Minister on the policy proposals to underlie the bill. I mean, obviously whenever—

Ms CATE FAEHRMANN: You said "to engage with the Minister on the policy proposals underlying the bill". Essentially, that was when you found out about it: when the Minister was talking to you about the draft legislation. Did the department provide any research, rationale or data to the Minister around conducting by-elections—for example, from group tickets—and what that would cost government if that was going to be undertaken?

BRETT WHITWORTH: We were asked to provide some data to identify what the number of elections—so 128 councils, but each individual ward is considered an individual election, so there are about 250-odd. We were asked to provide data on which of those elections had ungrouped tickets and solely ungrouped tickets. We weren't asked to provide costings because that's a harder thing to do. We don't control the costings. We don't generate the costings. That's an election commission process. We were asked to do that as part of the formulation of the policy position. I suppose I'm trying—everyone knows how a bill is formed: Government decides its policy position, Cabinet agrees et cetera. As part of that process, we were asked for information and we provided that. That helped shape the policy direction that was taken to government, and the decision that was taken, following that, by the Government.

Ms CATE FAEHRMANN: When you say "helping shape the policy direction", the data that you provided the Government—again, there's data, which are the facts: this many ungrouped candidates, this many groups, this many elections. There's that. At what point did the department form a policy recommendation from that—that any ungrouped candidates, should a casual vacancy arise, go back to the electorate for a casual vacancy? Or was that not what the department recommended, and the Minister—I'm just curious as to where that came from because I don't think the Government's submission, with respect, really provides a good justification for why the ungrouped candidates go to a by-election. I'm just wondering where that comes from.

BRETT WHITWORTH: The ungrouped candidates going to a by-election was more of a concern that we have been seeing, over time, increasing instability in some of the councils at the end of their term, when you have people resigning or retiring, or there have been unfortunate deaths in office and so on. The process by which the countback elections or by-elections have occurred has created an imbalance and impacted the stability.

Ms CATE FAEHRMANN: Yes. Mr Whitworth, what you're talking about is the 18-month rule. Is that correct?

BRETT WHITWORTH: It's partly about the 18-month rule. You can't use a countback 18 months prior to an election.

Ms CATE FAEHRMANN: Taking the 18 months out of it—because the bill removes that requirement, which I think most witnesses today have recommended—then the instability comes from where? The Electoral Commission provided us with very good, sound information that I'm sure doesn't need to be fact checked. It says that out of the countbacks that the vast majority of councils elect to do, when they do countbacks—this is since the September 2024 ordinary elections—there have been 17 casual vacancies. Of the 15 finalised countbacks, 11 of the casual vacancies are in the office of a councillor who is a member of a group of candidates—so that's good. Then, in 10 of those countbacks, another member of the same group has been elected by countback. Then another five were casual vacancies that occurred in the regions. If the instability of the 18 months is out, it doesn't seem as though it would create that much instability, from the EC's submission and data.

BRETT WHITWORTH: That is a bit of a hypothetical because we'd be talking about what would happen as you move forward, and it would also be dependent on what the nature of the other elections have been, the way in which the quotas have been reached and how those quotas are then reallocated and so on. I come back to this: The policy proposition is that the countback has a risk of creating instability if you end up with an adverse outcome. The community thought they were voting for someone but, because of the operation of quotas and preferences and so on, they've ended up someone entirely different. If you're voting for a group ticket, it's quite clear who you're voting for. You're voting for that group ticket. If you end up with different people, then it does destabilise.

This is anecdotal—I can't give you any advice or data on it—but anecdotal advice is that there were a number of councillors who were facing another four-year term and thought, "I'd like to keep doing work for my community. There are still things that I want to do, but I want to make sure that I can hand over. I might not necessarily want to run for a full term." But they felt pressured to run for a full term because there was no way of handing that over. I'm not going to say that the model is a perfect representation of the casual vacancy process for the filling of casual vacancies in the Legislative Council, but it is predicated on that sort of concept. That is the policy proposition. I'm not going to argue with the Electoral Commission's data. I absolutely recognise that.

Ms CATE FAEHRMANN: The Government's submission states that when the vacating councillor is not a member of the group, a by-election must be held, which is obviously right.

BRETT WHITWORTH: Yes.

Ms CATE FAEHRMANN: The justification on the second-last page is:

> … the vacancy will be filled instead using a by-election giving electors a fresh choice in who they want to fill the vacancy.

Are there any other considerations from a public policy perspective that should be also considered there? We heard from Mr Ben Raue from the Tally Room earlier about the fact that, for example, somebody was elected and it was just 12 per cent of voters that elected that candidate, which is why he favours the countback method. Can you see that if therefore there was a by-election, all of the voters would get to vote, and it would potentially favour those candidates with the most resources and who have the potential to dominate council? Do you know what I mean? There is quite a few—

BRETT WHITWORTH: I can see your argument, yes. The concept of by-election is as a default position if aspiring councillors have not organised themselves into groups, remembering that this will not apply from the September 2024 election. If passed, it would apply from the September 2028 election. There is time for aspiring councillors to mobilise and organise themselves around groups. But if there was no group, then it is the ability for the community to say, "Well, there is no group." There are concerns about countbacks, as I've stated before. You do need another mechanism to enable those casual vacancies to be filled.

Ms CATE FAEHRMANN: With giving candidates the opportunity to mobilise themselves around groups—look, I'm from a political party. I love The Greens. I wish everybody put their hand up to run for The Greens. It's amazing, but that's not the reality in terms of respecting democracy. Independents are allowed to run. Is there a policy objective I'm missing here? Is it an object of the Local Government Act, for example, that candidates should be encouraged to run in groups?

BRETT WHITWORTH: My observation of those people that run as Independents don't—there are people that run genuinely as a single-person Independent. There are people that run as Independents but under a collective group. There are any number of groups that have successfully managed to obtain a majority on council that aren't actually affiliated with any party but are their own grouping of candidates. That's all that I was saying.

Ms CATE FAEHRMANN: Mr Whitworth, you are here selling a bill that I don't think is—

The Hon. NICHOLE OVERALL: Hear, hear!

Ms CATE FAEHRMANN: Hats off to you for doing this. You're being a very good public servant right now for your masters, shall we say, Mr Whitworth.

The CHAIR: Mr Whitworth is always a very good public servant.

Ms CATE FAEHRMANN: I'm conscious that the Chair probably has questions as well. I could go on and on about Independents, but I'll stop there.

BRETT WHITWORTH: I serve at the pleasure of the—

Ms CATE FAEHRMANN: This is about condensing the pre-polling. Maybe there is a bit more data or justification around this one. I am curious about the Saturday before polling day. Lots of our stakeholders have suggested that it would be worth it to extend it to the Saturday. What is the reason for the Government's five days?

It would seem to me that if somebody isn't going to be around on polling day and they work all week, that opening up the Saturday prior seems absolutely reasonable. You've got it in the Government submission about cost, although I think most stakeholders said cost would not be too much of a factor in having that additional Saturday. Actually, if you want to talk about costs, the whole situation of forcing by-elections in regional and remote councils is probably going to be more of a cost than this Saturday would be on the Government.

BRETT WHITWORTH: One of the things that people haven't talked about in terms of cost and the cost-benefit of reducing the pre-poll is the costs on aspiring candidates. That was certainly a factor in the mind of the Government as it formulated its policy view on this.

Ms CATE FAEHRMANN: I do get that with the two weeks. I think everybody is in agreement with the two weeks. But I'm really trying to push that Saturday. I hope, if the silly bill does get to get to Parliament, that we will be able to get some kind of amendment up about that Saturday before, because I can't see the reason for it. But, yes, I think we're in agreement maybe about the two weeks. It's just that weekend that I'm not sure would be a huge impost on candidates, that one additional Saturday.

BRETT WHITWORTH: Again, it does change the focus on elections—sorry, the whole point of pre-polling for local government elections is that there are no absentee votes. You need to be able to go and vote if you're unable to vote on the date of the election. But the date of the election is the Saturday. The Local Government Act says it's the Saturday in September. I feel like I'm veering into a more philosophical perspective on whether elections should be a week-long event or whether they should be a day event.

Ms CATE FAEHRMANN: Do you think it's slightly trying to dissuade people? There's a bit of a "No, we know you come to vote on the Saturday before polling day when you actually don't have to, so we're not going to give you the opportunity anymore."

BRETT WHITWORTH: I think that there is a component—I wouldn't say "dissuade". I would say "encouraged to come", not "dissuade". I would put it in the positive, "encouraged to come on the Saturday". It is also a recognition that the cost to candidates is challenging. But I take on board your comment. I'm not trying to argue that. But there's also the commentary that, when it has been reduced, there was a hope that the rental cost for the polling booth locations would somehow reduce. I don't know whether that has actually materialised.

The Hon. NICHOLE OVERALL: They wouldn't have to pay the Department of Education.

BRETT WHITWORTH: I think that the Electoral Commission said, "In order to alleviate crowding, we'll go for bigger venues." But I also think that that might even itself out over time, I hope.

Ms CATE FAEHRMANN: One very final question is about the role of the Joint Standing Committee on Electoral Matters, which I am also on. We have the chair in this inquiry as well. I understand that has looked at and considered the issue of engaging private electoral service providers. That was to review the Local Government Act. There was support, maybe, to do that. Has the issue of how to fill casual vacancies at Local Government gone before the committee and have any recommendations come from that? Are you aware?

BRETT WHITWORTH: No.

The Hon. NICHOLE OVERALL: I found this point, Mr Whitworth, to clarify the language. It is in the Office of Local Government submission on page 9 and it is in line with the proposal by LGNSW around the fines coming back to council. The language specifically states:

> Importantly, the NSWEC does not profit from the administration of council elections. The NSWEC provides an estimate of the cost of conducting council elections prior to each local government election and receives funding from the Government to cover those costs. Following the elections the NSWEC invoices councils for the direct costs incurred in running their elections and this and any surplus left over from the Government's funding allocation is returned to the Government.

My reference to that was in relation to the situation with the fines, asking whether anything has been looked at around those provisions to say can we not come up with a more effective relationship with councils when it comes to these sorts of funding arrangements?

BRETT WHITWORTH: I certainly think that the fines can be examined, subject to any legal impediment. Sorry, I can see now that it's confused because it's, again, the Government provides the Electoral Commission with an allocation for its core costs and, if there is any surplus, if it can run the election—

The Hon. NICHOLE OVERALL: Better, it's returned.

BRETT WHITWORTH: Yes. I think it's "and this and" is the problem there.

The Hon. NICHOLE OVERALL: So it's returned to Government. Thank you.

The Hon. PETER PRIMROSE: Just briefly, going back a bit into history, even before the last Government got into forced council mergers and did things like give businesses in the City of Sydney two votes as part of its "Let's get Clover" campaign, one of the things it did was obviously try to create competition against the NSW Electoral Commission by introducing the concept of private providers. The argument I recall from about 13 years ago was that that was being done to reduce costs. Clearly, councils have voted with their feet—two out of 127 used private providers at the last election—but my question to you is: Is there any evidence at all that private providers do reduce costs?

BRETT WHITWORTH: There was some evidence initially when the larger number of councils were using private providers, and that enabled a build-up in the ability of the provider to provide those services more efficiently so that there was economic value or economic return. But as the number of councils using the provider has diminished, the provider's core costs have remained the same, but they need to be distributed over less councils. And those core costs—I didn't talk about the computing process because there's a particular type of computing process that's needed to be used. There's the way in which the material is printed. There was a conversation around a certain type of printers for the pre-poll envelopes and so on.

That economic return was lost as the number of councils reduced in size. I think what we also don't necessarily see is that the private election providers are not being, for want of a better word, subsidised by the Government for its core costs, whereas the Electoral Commission has those core costs being subsidised by the Government. I think that's why there is an economic argument as to why having the Electoral Commission provide these services exists. There is also the price of the public value and trust in the way the Electoral Commission runs its elections.

The Hon. PETER PRIMROSE: Certainly 127 councils seem to agree with you.

BRETT WHITWORTH: Sorry, 126, yes.

The Hon. NICHOLE OVERALL: One hundred and twenty-eight.

The Hon. PETER PRIMROSE: One hundred and twenty-eight? It's gone up one.

BRETT WHITWORTH: There are 128 councils in New South Wales. There were two councils that chose to use the electoral provider, so 126 councils voted with their feet. The only—sorry, Central Darling didn't have an election, but is having an election in September this year.

The CHAIR: Mr Whitworth, just a question that was raised by Mr Seamus Lee of The Greens earlier today that we should retain the clause around the electoral roll in the draft bill.

BRETT WHITWORTH: Yes.

The CHAIR: Why was that kept in?

BRETT WHITWORTH: Sorry, I understand—

The CHAIR: Sorry, shouldn't be removed.

BRETT WHITWORTH: Shouldn't be removed, yes.

The CHAIR: Sorry, I meant both.

BRETT WHITWORTH: I understand there is an existing prohibition on the use of enrolment information under section 52 of the Electoral Act and this won't be displaced by the amendment. The reason we needed to allow other people to get access to that electoral information is because we had two providers. We had the electoral commission and we had another provider. It was really a consequential amendment, but I understand only the commission will have access to the roll in future elections. Under today's legislation in force, only the Electoral Commission and the private provider gets access to the roll.

The CHAIR: It was raised by LGNSW and subsequently Mr Tudehope in questions that the provisions should allow for three separate ways to elect a replacement councillor. Do you anticipate any regulatory complexities involved in that?

BRETT WHITWORTH: I anticipate quite an extensive amount of regulatory complexity. At the moment, a council, once it's elected, within a period of time—it's a very short period of time—needs to make a decision as to whether they're going to go with a by-election to fill casual vacancies or a countback method to fill casual vacancies. Council would need to make that election but also we'd need to have a way of saying there is a funnel through. You have group tickets for an election, so the group ticket gets preferenced for the casual vacancy fill. If there is no casual vacancy, then is it a by-election or is it a countback, and will a council identify that at that point in time? How do we frame that in the regulations? Is that simply on the basis of a council resolution or

will we need more robust regulatory controls? You're drafting regulations that are predicated on a resolution that the council makes and consequences of that resolution, and then setting out rules and processes. It's very much an "if, then that" or an "if not that, then this".

The CHAIR: That concludes our hearing for today. Thank you, Mr Whitworth, for appearing at this inquiry. If there were any questions that were taken on notice, the secretariat will be in touch and you'll have 24 hours to provide the detail of those.

(The witness withdrew.)

The Committee adjourned at 16:20.