



PARLIAMENT OF NEW SOUTH WALES

Joint Standing Committee on Electoral Matters

REPORT 4/55 – MARCH 2014

INQUIRY INTO THE 2012 LOCAL GOVERNMENT ELECTIONS





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MATTERS

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Membership

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Terms of Reference

That the Committee inquire into and report on the 2012 Local Government Elections with particular reference to following matters:

- (a) the cost of the elections;
- (b) the experience of councils that conducted their own elections;
- (c) possible legislative changes to improve the efficiency of, and participation in, Local Government elections;
- (d) non-residential voting in Local Government elections;
- (e) the impact of requirements under the *Election Funding, Expenditure and Disclosures Act* on participation by candidates in Local Government elections and possible legislative changes to remove any barriers to participation; and
- (f) any other related matter.

Chair's Foreword

On 8 September 2012, 4.8 million voters across 152 councils went to the polls to elect mayors, councillors, and to vote on a variety of referendum questions. On the whole, these elections went smoothly with few complaints or areas of concern. Nevertheless, such a large event will always raise issues of interest and this Inquiry pursued these matters on the 2012 local government elections.

The major difference in this election compared to previous elections was that councils were able to choose whether to engage the services of the Electoral Commission to run their elections or whether they would manage their own elections. Most councils that chose to run their own elections contracted a third party – the Australian Election Company – to assist them. On the whole, the Committee heard that these arrangements went very well. The majority of those councils that chose to work with the Electoral Commission and those that did not indicated that they were happy with the conduct of their elections.

However, the Committee was concerned to learn of the experience of two councils that sought to make changes to the arrangements administering their elections due to difficulties they encountered. These changes were sought at relatively short notice and although their elections were ultimately successful, there is no guarantee that this would always be the case. Therefore, the Committee has recommended that those councils who choose not to work with the Electoral Commissioner either provide evidence to the Department of Premier and Cabinet that they are capable to conduct an election or have secured contracts with another electoral service provider, at least 15 months prior to the election.

There were a significant number of candidates who stood for election and most of these had positive experiences. Nevertheless, certain issues were identified which could encourage more candidates to stand and simplify the processes for those that do so. Many of the difficulties encountered by candidates involved the requirement to have an official agent to manage campaign finances. The Committee was advised that it can be difficult to identify an appropriate person to act in this role and that official agents add an unnecessary level of complexity, particularly for independent candidates and those running in elections in smaller councils. Therefore, the Committee has recommended that the mandatory requirement for a candidate to appoint an official agent be removed, although should candidates wish to appoint an official agent they remain able to do so.

The Committee was pleased to see a considerably high voter turnout in the 2012 elections and commends the work of the Electoral Commission in maximising voter awareness. The Committee is also eager to see as many people vote as possible and has made recommendations to remove the eligibility criteria that are required for voters to cast a postal vote or a pre-poll vote. It also recommends that technology assisted voting (or iVote) is made available to all electors for the 2016 local government elections.

In addition, the Committee recommends that councils be given the option to conduct its elections via a postal ballot rather than by attendance voting. Not only will this make the process of voting simpler for electors but it will also lead to significant savings for those councils who choose to conduct their elections via postal ballot. The Committee received

evidence from the Victorian Electoral Commissioner and the Lord Mayor of Melbourne where postal voting has become an extremely popular and successful system.

Another area where the Committee was grateful for input from Victoria was that of non-residential voting. The Committee was concerned to hear that non-residential rate-payers in the City of Sydney were not exercising their right to vote. To improve the situation, the Committee recommends following a similar model to that in Melbourne and introducing deeming provisions for non-residential voters in the City of Sydney to ensure that they are enrolled to vote. The Committee has also recommended that the Government consider extending this franchise to other Councils with large business communities.

Having appeared before this Committee to give evidence as a witness in 2008, I was pleased to not only take part in this inquiry but to work with committee members to produce a report that seeks to maximise the opportunity for participation in the local government election process.

I would like to thank all the stakeholders who contributed to this Inquiry, particularly the NSW Electoral Commissioner. I would also like to thank my fellow Committee members and the Committee secretariat for their contributions and assistance.



Mr Gareth Ward MP
Chair

List of Findings and Recommendations

RECOMMENDATION 1 _____ **12**

The Committee supports the current arrangements that grant local councils the authority to conduct their own elections. However, the Committee recommends that both the Department of Premier and Cabinet and the Joint Standing Committee on Electoral Matters review the administration of future elections.

RECOMMENDATION 2 _____ **12**

The Committee recommends that each council that administers its own election be required to submit information relating to candidate participation and voter turnout to the Division of Local Government.

RECOMMENDATION 3 _____ **15**

The Committee recommends that each council that resolves to administer its election in-house be required to prepare a report for the Division of Local Government in which it demonstrates its capacity to conduct a successful election. This report should include council's access to suitably qualified returning officers, as well as possible substitutes, and be prepared no later than 15 months prior to the 2016 elections.

RECOMMENDATION 4 _____ **25**

The Committee recommends that the Department of Premier and Cabinet takes steps to ensure that all councils not utilising the services of the Electoral Commission, or that are not conducting their elections in-house, have secured contracts with an electoral service provider at least 15 months prior to the 2016 elections.

RECOMMENDATION 5 _____ **32**

The Committee recommends that the Division of Local Government provide guidance to the Electoral Commission with respect to the extent and mode of electoral roll data that can be disclosed to councils that conduct their own elections. Particular weight should be given to ensuring councils are granted sufficient access to roll data, while safeguarding elector privacy.

If this is not possible, the committee believes it is the democratic obligation of the Electoral Commission to provide soft copy access to rolls so that Councils can exercise their right to undertake their own elections, should they decide to do so.

RECOMMENDATION 6 _____ **38**

The Committee recommends that the Government raise the threshold for a candidate to open a campaign account to \$2,500, indexed annually to inflation.

RECOMMENDATION 7 _____ **39**

The Committee recommends that the Government remove the mandatory requirement for a candidate to appoint an official agent but that candidates may choose to appoint an official agent if they wish.

RECOMMENDATION 8 _____ **42**

The Committee recommends that the Government remove the requirement that a candidate information sheet is made in the form of a statutory declaration.

RECOMMENDATION 9 _____ **48**

The Committee recommends the introduction of a countback system, modelled on the one currently operating in Victoria, as an option for councils when casual vacancies arise within 18 months of the original election in lieu of a by-election.

RECOMMENDATION 10 _____ **55**

The Committee recommends that the Government abolish the existing eligibility requirements with respect to whether an elector is qualified to cast a postal vote.

RECOMMENDATION 11 _____ **55**

The Committee recommends that each council be granted the option to conduct its elections via a postal ballot in lieu of attendance voting on a designated polling day.

RECOMMENDATION 12 _____ **56**

The Committee recommends that the Government abolish existing eligibility requirements with respect to whether an elector is qualified to cast a pre-poll vote. Further, the Committee recommends that the Government retains the existing two week pre-poll period.

RECOMMENDATION 13 _____ **59**

The Committee recommends that the Government extend technology-assisted voting (or iVote) to be available to all electors ahead of the 2016 Local Government elections and subsequent State Elections. The Committee recommends that there is an independent software review and report on the integrity of iVote systems prior to implementation.

RECOMMENDATION 14 _____ **65**

That the Government amend the Local Government Act to provide for permanency of the non-residential roll across all NSW Councils so that electors are not required to re-apply for inclusion prior to each election.

RECOMMENDATION 15 _____ **70**

The Committee recommends that the Government introduce the model used by the City of Melbourne for the City of Sydney in all its respects including the deeming provisions and the compulsory voting aspect for electors on the non-residential roll.

Furthermore, the Government consider applying this model in City Council areas with significant economic centres such as Newcastle, Wollongong and Parramatta.

Chapter One – Introduction

- 1.1 On Saturday, 8 September 2012, 4.8 million electors in 152 local government areas across NSW went to the polls to elect new councillors, mayors, and vote on a suite of referendum questions. This massive and complex exercise in grassroots democratic participation was largely successful and event-free. But, as with all major events, a sober reflection on the strengths and shortcomings of the election process is warranted.
- 1.2 As such, the Joint Standing Committee on Electoral Matters (the Committee) has considered these issues in its Inquiry on the 2012 Local Government Elections. This Report is the result of that effort.

Terms of Reference

- 1.3 The Committee is a current joint standing committee of the Parliament of New South Wales, first established on 14 May 2004 and re-established for the 55th Parliament on 22 June 2011. The Committee primarily oversees the activities of the NSW Electoral Commission (the Electoral Commission), undertakes periodic audits of electoral legislation, and reviews the conduct of State and Local Government elections following each round of elections.
- 1.4 As with equivalent committees, the terms of reference of the Committee enable it to examine, inquire into and report on matters related to the functions and operations of the Commission. These matters may be referred to the Committee by either House of Parliament, or by a Minister. The Committee's establishing terms of reference do not provide an avenue for the self-referral of inquiries.
- 1.5 The Committee is able to inquire into and report on matters that relate to electoral laws with respect to the following legislation:
- (a) *Parliamentary Electorates and Elections Act 1912* (with the exception of matters pertaining to the distribution of electorates);
 - (b) the *Election Funding, Expenditure and Disclosures Act 1981*; and
 - (c) provisions of the *Constitution Act 1902* that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than matters pertaining to the distribution of electorates and the equal apportionment of voters across electorates).
- 1.6 On 12 November 2012, following a referral from the Minister for Local Government, the Hon. Don Page MP, the Committee adopted terms of reference to inquire into and report on the 2012 Local Government Elections (the Inquiry).
- 1.7 The Committee resolved to conduct the Inquiry with particular reference to following matters:
- (a) the cost of the elections;
 - (b) the experience of councils that conducted their own elections;

- (c) possible legislative changes to improve the efficiency of, and participation in, Local Government elections;
- (d) non-residential voting in Local Government elections;
- (e) the impact of requirements under the *Election Funding, Expenditure and Disclosures Act* on participation by candidates in Local Government elections and possible legislative changes to remove any barriers to participation; and
- (f) any other related matter.

1.8 This Inquiry is the second review of the conduct of local government elections, and follows from the previous committee's review of the 2008 local government elections. The review of the operation of elections has become a routine feature of equivalent committees on electoral matters following elections across each of the States, as well as the Commonwealth.

Conduct of the Inquiry

- 1.9 The Committee made a public call for submissions in November 2012 by writing directly to key stakeholders, including all local government authorities, the Electoral Commission, the Australian Election Company, political parties with elected representation in NSW, consumer and advocacy groups, and other potentially interested parties. The Committee also advertised the Inquiry on the Parliament's website, in *The Sydney Morning Herald*, and received some coverage in community publications.
- 1.10 In total, the Committee received 77 submissions from a broad range of sources. While the overwhelming number of submissions received was from local councils, the Committee also received correspondence from registered political parties, the Electoral Commission, the Australian Election Company, and various individuals providing submissions in their personal capacity. The complete list of submissions received can be found at Appendix One, and copies of the submissions are available on the Committee's webpage.

Public Hearings

- 1.11 The Committee held three public hearings at Parliament House, Sydney on 19 August 2013, 26 August 2013 and 16 September 2013, and a further hearing at the State Library, Sydney on 28 February 2014. The Committee received evidence from 34 witnesses, representing 20 organisations, many of which had earlier made a submission to the Inquiry.
- 1.12 The public hearings gave the Committee an opportunity to examine in further detail some of the issues raised in the submissions, as well as giving stakeholders a second opportunity to raise their concerns and identify appropriate responses where warranted.
- 1.13 The complete list of witnesses who appeared before the Committee can be found at Appendix Two. Transcripts of the evidence provided are also available on the Committee's webpage.

- 1.14 The Minister initially requested that the Committee report by 30 June 2013. Given the extensive workload of the Committee, especially in light of its previous three Inquiries, the Committee advised the Minister that the report would be tabled by the final week of November 2013 to allow for the finalisation of these previous inquiries. In late November, the Committee also resolved to conduct a fourth hearing to hear from representatives from the Lord Mayor's office in Melbourne, as well as the Victorian Electoral Commission, to understand how Victoria handles matters which the current Inquiry has revealed as problematic in NSW. Given this further hearing, the Minister was subsequently advised that the report will instead be tabled by the last week of March 2014.

Overview of the Report

- 1.15 This report has been organised into five chapters. Chapter Two provides an overview of the legislative and administrative framework, including the various regulatory changes that took place preceding the 2012 elections, and those changes that have taken place subsequently, in advance of the 2016 elections.
- 1.16 Chapter Three undertakes a comparison of the experiences of councils that conducted their elections either in-house or outsourced to a third party, or through the services of the Electoral Commission. This chapter will also consider the relative costs associated with each method of election available, as well as the overall funding arrangements between the Government, the Electoral Commissioner, and each of the councils.
- 1.17 Chapter Four examines the overall experience of candidates who both ran and/or were elected to council, with a particular emphasis on the potential barriers to participation. This Chapter also examines the issue of filling casual vacancies to council, with particular consideration of the experience of by-elections, and the possibility of using countbacks as an alternative method of councillor replacement.
- 1.18 Chapter Five considers the experience of voters, again with a particular emphasis on the potential barriers to participation. This Chapter focuses on two principal issues. The first is voter awareness, with an emphasis on identifying methods to ensure voter literacy on the elections taking place. The second issue is voter accessibility. This will assess possible alternatives to engage with voters less inclined or able to vote, and consider the tools available to maximise the turnout rate.
- 1.19 Lastly, Chapter Six examines the experience of non-residential ratepayers in both enrolling for, and voting in, local government elections. The Committee will have particular regard to the relatively low enrolment and turnout rates for non-residential ratepayers, examine possible reasons for this, and consider methods of boosting non-residential ratepayers' awareness of, and participation in, local government elections.
- 1.20 As appropriate, this report draws on the submissions and evidence received throughout the course of this Inquiry, through both the correspondence received by the Committee, and the Committee's formal hearings at Parliament House. Where relevant, recommendations for both the Electoral Commission and the Government are provided.

- 1.21 Through the submissions received by the Committee, formal evidence provided at the public hearings, and together with additional research from a wide variety of sources, the Committee has developed 15 recommendations. These recommendations provide for changes to clarify the requirements for councils in conducting elections, remove barriers to candidate participation, boost voter participation, and simplify arrangements for non-residential ratepayers.
- 1.22 The Committee thanks all those participants in the Inquiry, particularly those stakeholders who provided submissions and witnesses who gave evidence at the Committee's four formal hearings.
- 1.23 The Committee notes that the Government is required to respond to the recommendations contained in this report within six months of tabling. The Committee will also have an opportunity to review this response as part of future inquiries, particularly an inquiry into the conduct and administration of the 2016 local government elections.

Chapter Two – Legislative and Administrative Framework

- 2.1 This Chapter examines the legislative and administrative framework of local government elections, including a brief analysis of the many amendments to both acts and regulations that have occurred since the last local government elections in 2008.

Background to Current Arrangements

- 2.2 The Electoral Commission is the chief body required to conduct elections for councils, where the council has selected the Commission. According to the Commission:
- The key requirement of the Commission is that it delivers impartial elections in accordance with the law whereby voter participation is maximised and informal voting minimised.¹
- 2.3 The Commission, in its previous capacity as the State Electoral Office, was first involved in the conduct of local government elections following passage of the *Local Government (Elections) Amendment Act 1987* which transferred responsibility for local government elections from Town and Shire Clerks (as they then were) to the Electoral Commission. (From 1867 up until 1987, the Town and Shire Clerks had been independently responsible for conducting elections.)
- 2.4 The reason for this change was to facilitate greater uniformity in the administration of elections across councils, as well as to capitalise on the expertise of the Electoral Commission in running elections. As such, from 1987 onwards, the Electoral Commission was the sole responsible authority. While in the 1987 and 1991 elections, the Town and Shire Clerks were appointed as Returning Officers under the auspices of the Electoral Commission, this was changed in 1995 to provide for independent Returning Officers.
- 2.5 In 2008, following a review of local government election pricing by the Council on the Cost and Quality of Government, the Electoral Commission conducted the September 2008 ordinary elections on a full cost recovery basis. This prompted a number of complaints from councils who had been affected by a significant and apparently unexpected increase in costs.
- 2.6 This issue was investigated thoroughly in the previous Committee's report on the *2008 Local Government Elections*, in which many councils aired their concerns about the cost shift.
- 2.7 On this issue, the Minister for Local Government, the Hon. Don Page MP has stated:

¹ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p31

Those complaints were supported by the Local Government and Shires Associations of NSW. Thus, in its publication titled *NSW Election Priorities 2011*, the Local Governments and Shires Associations stated that the increase in costs and ... the cost shift from the NSW Government to councils totalling \$9,050,150 made it clear that the responsibility of conducting local government elections should stay within individual councils should the council wish to do so.²

Pre-election Reforms

Local Government (Elections) Amendment Act 2011

- 2.8 Following the concerns about council autonomy and the conduct of elections, changes were made through the *Local Government Amendment (Elections) Act 2011* in advance of the 2012 elections. The object of the amendment Act was to, amongst other things, transfer the responsibility of local government elections from the Electoral Commission and revert this control back to the general manager of each of the councils.
- 2.9 In his Second Reading Speech, the Minister told Parliament:
- The bill fulfils the Government's commitment to return autonomy to local councils by giving them back the powers they enjoyed in the past to conduct their own elections.³
- 2.10 The parameters for the conduct of Local Government elections are established under section 296(1) of the *Local Government Act 1993*, which provides that local government elections are now to be administered by the general manager of the council concerned.
- 2.11 Rather than necessarily conduct the elections themselves, the legislation allows for councils to choose between the general manager or the Electoral Commission to conduct its election. The role of the general manager in conducting the election is set out under section 296A of the *Local Government Act 1993* while the role of the Electoral Commission in conducting elections is largely mirrored in equivalent provisions under section 296B.
- 2.12 Additional transitional arrangements were included for the purposes of the 2012 election only. This included a requirement that councils resolve by 30 November 2011 whether the Electoral Commission was to conduct its elections in 2012. A further provision ensured that those councils that resolved the Electoral Commission to conduct its elections were not required to enter into a contract with the Electoral Commission, contrary to current legislative requirements under section 296(1) of the *Local Government Act 1993*.
- 2.13 Given the absence of individual service contracts, when the elections are conducted by the Electoral Commission, the costs are recoverable from the council as a debt owed to the Electoral Commission on a full cost recovery basis,

² The Hon. Don Page MP, *Legislative Assembly Debates*, 15 June 2011, at p2331

³ The Hon. Don Page MP, *Legislative Assembly Debates*, 15 June 2011, at p2331

including the remuneration of election officials.⁴ Similarly, when the elections are conducted by the councils, the cost is met entirely by the council.

- 2.14 The amendment Act also made miscellaneous changes with respect to the reduction in the number of councillors, and the abolition of wards without a constitutional referendum, as well as allowing that a casual vacancy need not be filled in certain circumstances.
- 2.15 While this was the major reform ahead of the 2012 elections, other miscellaneous amendment Bills were passed that helped streamline the operation of the elections. They are as follows:

Local Government Amendment (Elections) Act 2012

- 2.16 Following the 2011 amendments, further reform was achieved through the *Local Government Amendment (Elections) Act 2012*. The objective of this Act was to provide for a system of continuous automatic enrolment of electors on the rolls for State parliamentary elections to extend to local government elections.
- 2.17 Further amendments were made which enabled residential electors to enrol and cast a provisional vote at an election on polling day, subject to proof of identity.
- 2.18 Together with other miscellaneous changes, these amendments helped clarify the arrangements and improve the conduct of local government elections.

Local Government Amendment Act 2012

- 2.19 The object of the *Local Government Amendment Act 2012* (introduced as the Local Government Amendment Bill 2011), was, amongst other things, to amend the principal Act to provide that the voting system in a contested election is to be preferential if only one councillor is to be elected, and proportional if two or more councillors are to be elected.
- 2.20 This change is a shift from previous elections in which the optional preferential method was used when one or two councillors were to be elected, and proportional if three or more councillors were to be elected.

Local Government Regulations

- 2.21 The object of the *Local Government (General) Amendment (Election Procedures) Regulation 2012* was to amend the principal Regulation on a number of miscellaneous matters largely outside of the scope of this Inquiry. This included regulations concerning paid electoral advertisements, the requirement of certain information to be specified in a candidate information sheet, and other matters of a minor or machinery nature.

Post-election Reforms

- 2.22 Following the 2012 elections, further reforms were introduced that, while obviously not impacting on the operation of the 2012 elections, will undoubtedly affect the preparation and conduct of future elections.

⁴ *Local Government Act 1993*, s296(7)

Local Government Amendment (Conduct of Elections) Act 2013

- 2.23 The object of the *Local Government Amendment (Conduct of Elections) Act 2013* is to provide more flexible arrangements for the administration of local council elections by the Electoral Commission. The arrangements before these amendments required a council to decide whether to have the Electoral Commission administer its elections within 12 months after the previous ordinary election of councillors. It was considered that this timeframe did not allow councils sufficient time to test the market and make a fully informed decision about an event that is to occur three years in the future
- 2.24 These changes now provide that councils must resolve to authorise an arrangement with the Electoral Commission no later than 18 months before an ordinary election. The arrangement must be entered into no later than 15 months before the ordinary election.
- 2.25 The effect of these changes is to essentially allow the councils an additional one and a half years to consider whether to undertake the services of the Electoral Commission, or not.

Local Government (Elections) Amendment Act 2011

- 2.26 Following the 2012 elections, the transitional arrangements ceased to be in effect and a key provision under section 296(2) is now operative. This section provides that a council can now enter into an arrangement with the Electoral Commission, by contract or otherwise, for the Electoral Commission to administer elections of the council. If such an arrangement is entered into, the Electoral Commission is to administer elections of the council in accordance with the arrangement.
- 2.27 This provision essentially enables councils to enter into arrangements with the Electoral Commission and allows councils to negotiate the level of service required by, and fees to be paid to, the Electoral Commission. This is now in effect ahead of the 2016 elections.

Chapter Three – Election Processes and Costs

- 3.1 This Chapter considers the experience of councils that resolved to conduct their own elections or outsource to a third party, with those that engaged the services of the Electoral Commission. Particular attention is paid to the feedback of councils and any particular difficulties that arose. The Chapter also compares the costs incurred by all councils in administering the 2012 elections, as well as a comparison of costs in 2012 from 2008.

The Outsourcing of Elections

- 3.2 As a result of the amendments to the *Local Government Act 1993* (the Act) that enabled councils to conduct their own elections, 14 councils exercised this option.
- 3.3 There had been some discussion about the appropriateness of allowing councils to conduct their own elections in the lead-up to the changes, and the matter was not settled without some controversy.
- 3.4 In its submission, the Hills Shire Council summed up its reasons for why the Electoral Commission should be the sole authority with responsibility to administer elections. It explained its reasoning as follows:

The conduct of the election at arms-length ensures independence, ensures the general manager is not under any pressure by either existing or potential councillors and when tough decisions need to be made ... these decisions are made at arms-length.⁵

- 3.5 The Electoral Commission had itself earlier cautioned against this change, noting the possible implications on the integrity of the election, inconsistencies in the provision of services, and logistical issues that could arise.⁶
- 3.6 Specifically, the Commissioner stated:

I'm not quite sure it was the Government's intention to allow for the privatisation of the conduct of local government elections. Even if it was understood that council might delegate to a private entity its new function to conduct its own elections, the electors for that council are would rightly expect some regulation around the provisions of services around those entities.⁷

- 3.7 Although not expressly referring to the matter of council-run elections, the previous Committee made the following comments in relation to the 2008 elections, prior to the decision being taken to allow councils to run their own elections:

⁵ The Hills Shire Council, Submission No 3, at p1

⁶ Colin Barry, Electoral Commissioner, *Transcript of Evidence*, 26 August 2013, at p13

⁷ Colin Barry, Electoral Commissioner, *Address to the Joint Standing Committee on Electoral Matters*, 26 August 2013 at p6

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
ELECTION PROCESSES AND COSTS

The Committee supports the current legislative and policy framework and is of the strong belief that the Electoral Commissioner's role in conducting local government elections is significant in terms of the independence and integrity of the election process, consistency of services and the transparency of procedures for voters, candidates and the local government sector.⁸

3.8 The current Committee recognises that there was some initial hesitation to grant councils autonomy on electoral matters. The Committee also notes that the purpose of a full time Electoral Commission and staff is to prepare and conduct elections for varying spheres of government, as well as clubs, and industrial and statutory boards.

3.9 However, the Committee is also mindful of the alternative view, one that maximises the flexibility of councils and grants them choice to conduct elections under their own auspices. This is particularly pertinent given cost burdens on councils, who ultimately have to be responsible to ratepayers for all council expenditure, including the cost of elections.

3.10 As a result, the *Local Government Amendment (Elections) Bill 2011* was introduced into Parliament, designed to fulfil the Government's commitment to return autonomy to local councils by giving them back the powers they enjoyed in the past to conduct their own elections.

3.11 In his second reading speech to Parliament, the Minister for Local Government, the Hon. Don Page, advised that:

This Bill was introduced following a significant increase in fees faced by all councils following the Electoral Commission's decision to conduct elections on a full cost recovery basis. The Local Government and Shires Association (as it was then known) pressed this issue in its publication entitled 'NSW Election Priorities 2011' that given the cost shift from the NSW Government to councils, then the responsibility of conducting elections should stay with the individual councils should it wish to do so.⁹

3.12 It was considered that with local knowledge, onsite resources and in-kind contributions – including utilising existing staff – councils could save considerably on cost.

3.13 Following the announcement of the change by the Government, Local Government NSW issued a press release in which it applauded the decision, stating:

Councils now have the flexibility and choice to determine if they will manage the elections themselves, or to appoint the NSW Electoral Commission to do so. Councils will now be fully aware and able to manage the costs associated with running elections themselves.¹⁰

⁸ Joint Standing Committee on Electoral Matters, *2008 Local Government Elections*, June 2010, at p10

⁹ The Hon. Don Page MP, *Legislative Assembly Debates*, 15 June 2011 at p2331; Local Government NSW, *NSW Election Priorities 2011* at <http://www.lgnsw.org.au/policy/nsw-election-priorities-2011>, accessed 28 January 2014

¹⁰ Local Government NSW, *Media Release: Councils applaud the returning of power to manage their own elections*, 23 June 2011

- 3.14 The Committee is mindful of the two schools of argument being discussed. The Committee appreciates the valid concerns that administrators of an election should be sufficiently independent to maintain high levels of integrity with the election process. Similarly, the Committee is aware that substantial costs savings could be made where individual councils undertake their own election.
- 3.15 The Committee notes that, despite some initial reservations, providing councils with the flexibility and autonomy to conduct their own elections has been well received. In its *Review of 2012 Council Run Elections*, the Department of Premier and Cabinet gave no indication of any dissatisfaction with the outcome of the elections, or intention to retreat on the reforms.¹¹ In fact, laws are now in place to further enhance the ability of councils to negotiate tailored packages for the conduct of elections to best meet individual council needs.
- 3.16 For its part, the Electoral Commission also recognised the positive experience many councils had in running their own elections. In evidence provided to the Committee, the Commissioner said:

From the perspective of the commission the experience of councils who have conducted their own elections varied. However, in reading their submissions they all have said that they have done a satisfactory or good job and in reading evidence from their recent roundtable here they will all do it again. I think that is good. Choice is terrific. Councils will be able to decide on the most appropriate administrator for their elections. New players who come into the process will revitalise the election procedures and more attention will lead to further innovation within the industry.¹²

Committee Comment

- 3.17 The Committee has considered the views of the many stakeholders that participated in this Inquiry and notes the broad satisfaction concerning the ability for councils to run their own elections. The Committee also notes the general lack of concerns about the performance of council-run elections in submissions to this Inquiry, especially when compared to some of the matters that were discussed prior to the 2012 elections.
- 3.18 As a result of these considerations, the Committee does not deem it necessary to revisit discussions about the appropriateness of council-run elections. The Committee is of the view that the current arrangements are appropriate, and there is no need to vary or rescind the current autonomy granted to councils.
- 3.19 However, the Committee does consider it necessary that a continual review of the arrangements take place following each round of elections. This is particularly pertinent given that the 2016 elections will be conducted under a different regulatory environment.
- 3.20 To this end, the Committee recommends that both the Department of Premier and Cabinet and the next Joint Standing Committee on Electoral Matters reviews the administration of future elections to ensure that the objectives and standards of holding the elections continue to be met. The Committee stresses that

¹¹ Premier and Cabinet, Division of Local Government, *Review of 2012 Council Run Elections*, June 2013

¹² Colin Barry, Electoral Commissioner, *Transcript of Evidence*, 26 August 2013, at p13

particular emphasis be placed on reviewing the success of council-run elections, ensuring that they are conducted without political interference, and at appropriate arms-length from candidates and elected representatives.

RECOMMENDATION 1

The Committee supports the current arrangements that grant local councils the authority to conduct their own elections. However, the Committee recommends that both the Department of Premier and Cabinet and the Joint Standing Committee on Electoral Matters review the administration of future elections.

Data Collection

- 3.21 During the course of this Inquiry, the Committee was unable to compare certain data between councils that conducted their own election, and those that contracted the services of the Electoral Commissioner.
- 3.22 For example, overall figures relating to voter turnout were unavailable given the lack of data provided by councils that conducted their own election. Similarly, it was difficult to ascertain statewide totals of candidates that nominated for election as data for councils that conducted their own election was likewise not submitted.
- 3.23 Under section 393A of the *Local Government (General) Regulation 2005*, elections administered by council are required to report on the conduct of its election to the Division of Local Government. The list of matters in which they must report on include: time spent running the election; costs, including the remuneration of staff; electoral services provided; and other operational details of the election. There is no requirement to provide information on the number of candidates nominating or the voter turnout.

Committee Comment

- 3.24 The Committee considers it useful that data on the number of candidates nominating, together with overall voter turnout figures, be included in the council's report on the conduct of the election. This will make comparisons between elections administered by councils and elections administered by the Electoral Commission, significantly easier for future inquiries.

RECOMMENDATION 2

The Committee recommends that each council that administers its own election be required to submit information relating to candidate participation and voter turnout to the Division of Local Government.

Council-run Elections

- 3.25 Fourteen councils that resolved to conduct their own elections did so under a range of different administrative arrangements. Ten councils outsourced the running of the election in its entirety, including the ballot count, to the Australian Election Company. A further three councils used the services of the Australian Election Company to varying degrees, including Botany Bay and Sutherland which purchased manuals and other resources, but otherwise conducted their elections

in-house. Lane Cove similarly used some services from the Australian Election Company but otherwise managed its own count. Only one council, Gunnedah, conducted its election wholly in-house.

- 3.26 Another council, Narrabri, had initially resolved to conduct its own election but subsequently faced considerable difficulties in making the necessary arrangements to ensure a successful election. As a result, Narrabri was forced to make alternative arrangements by engaging the services of the Electoral Commission fairly late in the electoral cycle. The issue of Narrabri Council is canvassed in broader detail below.
- 3.27 One further council, Cessnock, also sought to change their arrangements by switching from an outsourced election to one conducted by the Electoral Commission, but was unable to do so due to legislative limitations and lateness.¹³
- 3.28 Under arrangements ahead of the 2012 elections, all councils were granted until 30 November 2011 to engage the services of the Electoral Commission. Narrabri had resolved to conduct its election in-house on 15 November 2011. By May 2012, it became apparent that it would not be able to secure a suitably qualified returning officer, which would be critical to ensuring a viable election. In discussions with the Division of Local Government, the council expressed its concern that it may not have the necessary arrangements in place by the September 2012 elections.
- 3.29 As the deadline for councils to engage the Electoral Commission to conduct their elections had expired six months earlier, this necessitated a change to the *Local Government Regulation* to allow the Electoral Commission to conduct the election so late in the process. As a result, the *Local Government (General) Amendment (Narrabri Elections) Regulation 2012* was made in May 2012. This extended the deadline for Narrabri to engage the Electoral Commission to administer its elections, polls, and constitutional referendums until 1 June 2012, an option which the council subsequently invoked.
- 3.30 The experience of Narrabri prompted the Department of Premier and Cabinet to comment in its *Review of 2012 Council Run Elections* that:
- Councils need to be mindful of the risks associated with making the decision to conduct their elections and ensure that they have the capacity to conduct the election and have all necessary arrangements in place prior to deciding to do so.¹⁴
- 3.31 The Department of Premier and Cabinet stated that this would include each council being confident that it has a suitably qualified returning officer and substitute in place. The Department further noted that this may not be achievable for many councils, particularly those in remote and rural regions, and stressed that the success of an election is dependent on having access to competent and experienced returning officers.

¹³ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p95

¹⁴ Premier and Cabinet, Division of Local Government, *Review of 2012 Council Run Elections*, June 2013, at p3

Committee Comment

- 3.32 The Committee supports the views of the Division of Local Government and emphasises the need for all councils that resolve to administer their own elections to be confident in their ability to put the necessary arrangements in place.
- 3.33 The Committee notes that of the 152 councils in NSW, only two resolved to administer their own election wholly in-house, Narrabri and Gunnedah. It was intended that both these councils would conduct their elections without the assistance of external third parties (most notably the Australian Election Company). Of those two, only Gunnedah was able to proceed successfully.
- 3.34 While all councils must decide whether to have the Commissioner administer their election by March 2015, it is possible that the Narrabri experience could be repeated, requiring the council to either outsource the conduct of its election to a private contractor or engage the services of the Electoral Commission at relatively short notice.
- 3.35 The potential lateness of this shift may result in an appreciable burden on either the contractor or the Electoral Commission to make suitable arrangements in time ahead of the 2016 elections. While the 2012 elections in Narrabri were ultimately successful and event-free on polling day, the same guarantee cannot be made for future elections.
- 3.36 It is the Committee's opinion that councils that resolve to administer their elections in-house be required to put a brief to the Division of Local Government, demonstrating its capacity to administer a successful election. This brief should include the council's ability to access experienced and competent returning officers, as well as possible substitutes. The brief should explain what contingencies the council has in place should difficulties arise during preparation for the election. This brief should be forwarded to the Division of Local Government at a minimum of 12 months ahead of the elections.
- 3.37 This requirement will compel councils to consider carefully their capacity to conduct their own election, together with the risks associated in proceeding with an in-house election, in advance. This will also allow sufficient time to make alternative arrangements in the event that a council finds itself in doubt as to its ability to conduct the election. Similarly, this will also allow ample opportunity to make those alternative arrangements should the Division of Local Government raise doubts or is not satisfied as to the ability of the council to conduct the election.
- 3.38 The Committee suggests that the brief be prepared and forwarded to the Division of Local Government no later than 15 months prior to the 2016 election. This will align with current and recommended requirements for all other councils to have their arrangements with electoral service providers in place at least 15 months in advance (see below).

RECOMMENDATION 3

The Committee recommends that each council that resolves to administer its election in-house be required to prepare a report for the Division of Local Government in which it demonstrates its capacity to conduct a successful election. This report should include council's access to suitably qualified returning officers, as well as possible substitutes, and be prepared no later than 15 months prior to the 2016 elections.

Costs of the Commission-run Elections

- 3.39 The responsibility for meeting the costs associated with conducting elections rests with the council, with expenses incurred by the Electoral Commission to be repaid on a full cost recovery basis.¹⁵ This has been the case since 2008, and the 2012 elections was the second time the Electoral Commission has operated on this basis.
- 3.40 The Act does not define the types of costs to be payable to the Electoral Commission, and does not make specific provision for either direct or indirect costs to be recovered.
- 3.41 The shift to full cost recovery was instigated ahead of the 2008 elections, and was the result of a Cost and Quality of Government (CQOG) review of the then State Electoral Office which found that it was not adequately recouping the costs associated with the conduct of local government elections.¹⁶
- 3.42 In its report entitled *2008 Local Government Elections*, the equivalent Committee of the previous Parliament similarly noted that:
- It should be appreciated that the move to a full cost recovery system was intended to reveal the hidden costs of running the elections and to record the costs that the Commissioner and councils had previously absorbed.¹⁷
- 3.43 While councils are required to ultimately foot the bill of their elections, the Electoral Commission does not require advance payment from councils as the NSW Treasury provides an advance to the Electoral Commission based upon estimates of the total cost of the elections.
- 3.44 In 2012, the NSW Treasury provided an advance to the Electoral Commission of \$29.6 million to facilitate the administration of the elections. Despite this, final expenditure incurred was significantly lower, at \$21.03 million. The Electoral Commission has advised that this was due to a decrease in the overall number of councils it serviced, together with the cost of the elections being lower than estimated initially.¹⁸
- 3.45 The Electoral Commission has also advised that, although councils are required to bear the cost of the elections, 'the reality is a little more complicated'.¹⁹ While

¹⁵ *Local Government Act 1993*, s296(7)

¹⁶ Joint Standing Committee on Electoral Matters, *2008 Local Government Elections*, June 2010, at p16

¹⁷ Joint Standing Committee on Electoral Matters, *2008 Local Government Elections*, June 2010, at p29

¹⁸ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p37

¹⁹ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p37

the State Government does not provide direct funding for the conduct of the elections, certain key and ancillary functions are in fact provided for by the State Government. For example, enrolment functions and the cost of maintaining and updating the electoral roll are met by the State Government, as well as capital equipment such as IT systems.

- 3.46 To allow councils to budget ahead of the 2012 elections, the Electoral Commission circulated a brief to all councils in NSW in August 2011 and advised of a general formula that could be applied to determine an estimate. Depending on consideration of expected costs, councils could then use this information to seek better and cheaper arrangements from the private sector. The formula was to be applied using final costs from the 2008 local government elections.
- 3.47 This formula consisted of four key mark-ups:
- (a) Wage increases in the public sector increasing over four years by 4% per annum;
 - (b) Other operational costs increasing over four years at CPI (cumulatively estimated at 12.8%);
 - (c) Total number of electors being serviced likely to have increased (a relative increase in roll numbers requiring an equivalent increase in costs); and
 - (d) Potential economy of scale losses with a reduced number of councils electing to use the services of the Commissioner. The result would be a distribution of overall costs across a smaller pool of client councils. The Commission was unable to quantify the impact ahead of the elections.²⁰
- 3.48 Following this advice, 136 of 152 councils –representing 91.6% of all councils in NSW – chose to engage the services of the Electoral Commission.²¹
- 3.49 Across those 136 councils, the total cost of running elections was \$23.4 million. This represented a cost saving of \$2.5 million from the 2008 elections, despite there being an additional 300,000 voters enrolled from 4.5 million in 2008, to 4.8 million in 2012.
- 3.50 However, this apparent cost saving is offset when considering that there were fewer council elections run by the Electoral Commission in 2012 when compared with 2008, in light of the fact that 14 councils exercised the option to conduct their own election. As such, the cost of the elections per capita – or the cost averaged out per elector – increased to \$6.49 in 2012 from a total cost of \$5.71 per elector in 2008.²²
- 3.51 As with many submissions received by the previous committee in its review of the 2008 Local Government elections, the Inquiry process revealed a number of complaints about the high costs of the Electoral Commission’s services. This is despite the fact that all councils were advised ahead of the elections of the

²⁰ Premier and Cabinet, Division of Local Government, *Review of 2012 Council Run Elections*, June 2013, at pp.9- 10

²¹ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p13

²² New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p14

expected costs and were accorded the opportunity to source alternative electoral service providers.

3.52 Wentworth Shire Council advised that:

As a rural remote council, the large costs incurred for the conduct of council elections is an added burden on Council's budget.²³

3.53 Similar sentiments were expressed by Lismore City Council, noting:

While Council had some ability to reduce costs through negotiating the number of booths, use of Council officers and offices for pre-poll, the cost remains an unreasonable burden on our Council...²⁴

3.54 Camden Council noted in its submission that:

Given that costings continue to increase, Council is concerned in regards to cost shifting and disproportionate expenditure to [the] number of electors...²⁵

3.55 However, other councils considered that the Electoral Commission's fees were either competitive or value-for-money. In particular, some councils expressed the view that the Electoral Commission's fees – while conceding that they were expensive – were nonetheless worthwhile because of its independence from council and ability to administer the elections at arms-length.

3.56 Mid-Western Regional Council noted that:

The Mid-Western Regional Council believes it is appropriate that the management and administration of the election process remains independent from Council bureaucracy. This Council sought two prices to undertake the management of the 2012 election process, one from the NSW Electoral Commission and the other from a private company. The estimate supplied by the Electoral Commission was very competitive. Thus Council is of the opinion that if private enterprise cannot undertake the election process at a lesser cost, then the amount Council paid must be reasonable.²⁶

3.57 Similarly, the Hills Shire Council made the point that:

A number of councils will complain that the Electoral Commission charges were too high and that they were able to run elections at a lower cost. I challenge these councils to justify that they have fully costed all activities. Further, if these councils have the facilities, staff and resources to conduct the elections, then I would also question whether or not in some situations that these councils are over resourced in the first place.²⁷

3.58 Some councils were concerned about the high cost but noted that it could be ameliorated through discussions to the satisfaction of all parties. Wollondilly Shire Council advised:

²³ Wentworth Shire Council, Submission No 8, at p1

²⁴ Lismore City Council Submission No 23, at p1

²⁵ Camden Council, Submission No 48, at p1

²⁶ Mid-Western Regional Council, Submission No 59, at p1

²⁷ The Hills Shire Council, Submission No 3, at p2

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... Through regular meetings those concerns were as much as possible addressed...²⁸

- 3.59 Other councils were satisfied that the fees were in line with their expectations, or even lower than initially expected. Rachel Symons of Bankstown City Council told the Committee:

In terms of costs, the final bill from the NSW Electoral Commission was around \$700,000 which represented an increase of around 8.8 per cent from the 2008 elections. When council was determining which way to go in terms of running our election, we had actually estimated that the increase between 2008 to 2012 could be in the vicinity of 10 per cent to 12 per cent so we thought the 8.8 per cent increase was reasonable.²⁹

- 3.60 Moree Plains Shire Council experienced something similar, and noted that:

Council has been satisfied with the way the NSW Electoral Commission has conducted the last two elections. The estimate provided by the NSW Electoral Commission on conducting the election was less than Council had originally budgeted. When the final invoice arrived, the actual cost was below their estimate by four per cent.³⁰

- 3.61 In response to the increased operating costs of conducting the election, Trevor Follett, Director, Finance, NSW Electoral Commission, advised the Committee that:

Our costs actually increased by 13.8 per cent between 2008 and 2012 if you look at it by the number of electors we serviced. We serviced 136 councils compared to 2008 where we were running the elections for all councils. Between those two election events we had four years of inflation and four years of wage increases. We lost some economy of scale out of only running 136 councils. We had a tendency to lose some of the bigger councils so again there was an economy of scale loss out of that. At the end, if you take it globally across the State, it was a 13.8 per cent increase but we were fairly comfortable with that when you look at inflation and wage increases across that period.³¹

- 3.62 In further responses to questions asked by the Committee that the Electoral Commission's main private competitor – the Australian Election Company – could provide similar services for a lower fee, Mr Follett continued:

There may be significant differences with the competitor in the market. I do not think we have ever claimed to be a low-cost provider. We provide services that are probably a little different to the competitor. We start planning for an election process 18 months ahead. We have a lot of costs that are imposts on us in that we are a State government department. For instance, we run an audit and risk committee and there will be six reviews done by an external accounting firm during the year so we would probably meet \$200,000 additional cost just through our governance of having an audit and risk committee, for instance. A portion of those

²⁸ John Sproule, Manager, Administration Services, Wollondilly Shire Council, *Transcript of Evidence*, 19 August 2013, at p28

²⁹ Rachel Symons, Manager, Executive Services, Bankstown City Council, *Transcript of Evidence*, 16 August 2013, at p32

³⁰ Moree Plains Shire Council, Submission No 69, at p1

³¹ Trevor Follett, Director, Finance, NSW Electoral Commission, *Transcript of Evidence*, 26 August 2013, at p14

costs are recovered against the local government election in the year that the election is conducted.³²

Committee Comment

- 3.63 While there was a general consensus that the Electoral Commission's fees were expensive, there appears to be a mixed response as to whether those fees are excessive or unreasonable. A broad theme appears to have emerged amongst these councils that while the fees of the Commissioner were high with sharp impacts on a finite budget, the Electoral Commission generally provided quality services. Most councils appear to be satisfied with the overall conduct of the Commission, and considering that 91.6% of councils resolved to nominate the Electoral Commission as the choice provider when the option was offered, this is indicative of broader contentment.
- 3.64 While many councils stressed that costs were high, with some regarding the costs to be disproportionate to the service provided, these costs were not unexpected. Unlike the previous elections in which there was a significant increase in the costs due to implementation of full cost recovery for the first time in 2008, the final invoice issued by the Commissioner in 2012 was met, or should have been met, with little surprise by most councils.
- 3.65 The Committee recognises the significant cost impost on local government given the Election Commission's complete recouping of expenses. The Committee appreciates the burden this presents to many councils, particularly those in rural and remote regions.
- 3.66 However, the Committee is also satisfied that the fee structure of, and costs associated with, a Commission-run election are not unreasonable. The Electoral Commission is a high quality provider, and its fees are not disproportionate to the services provided. The Electoral Commission does not present its self as a lower cost option but because of the nature of the organisation, must recover its costs for the service it provides.

Cost of Council-run Elections

- 3.67 As noted, the option for councils to conduct their own elections was exercised by a total of 14 councils. Generally, these councils had noted the sharp increase in the costs attributed to conducting an election, when compared with elections in previous cycles, including the 2008 election. As such, councils that resolved to assume responsibility for their elections nominated costs as the chief reason for doing so.
- 3.68 In particular, councils were concerned at the lack of fixed and detailed information for the final cost of elections conducted by the Commissioner with the four point formula discussed earlier as the only point of reference. In any case, councils that conducted their own elections were of the belief that they could do it cheaper, or contract out to a third party who could do it cheaper.

³² Trevor Follett, Director, Finance, NSW Electoral Commission, *Transcript of Evidence*, 26 August 2013, at p15

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- 3.69 During a roundtable hearing with a representative sample from these councils, the participants explained their reason for conducting their elections through a third party. As noted by Sutherland Shire Council:
- Our two main drivers in this exercise were, one, the reduction in cost and, two, the speed and efficiency and greater transparency for the candidates. As experienced by Lane Cove council the costs have increased over the years at Sutherland. In 1999 it cost \$300,000, in 2004 it cost \$400,000 and in 2008 it cost \$770,000. Using the Electoral Commission's indicative costs letter they were going to charge us \$880,000 for our council elections.³³
- 3.70 Following the election, all councils that conducted their own election were required to submit final costs to the Department of Premier and Cabinet, together with an indicative cost using the formula supplied by the Electoral Commissioner.³⁴
- 3.71 Specifically, clause 393A of the *Local Government (General) Regulation 2005* requires that report be submitted within six months of the declaration of the poll, which includes the requirement to provide certain information required under that regulation. This includes:
- (a) time spent on election services by the general manager and staff;
 - (b) remuneration of council staff dedicated to the election;
 - (c) remuneration of recruitment and training costs for the elections;
 - (d) cost of information seminars, venue and equipment hire; and
 - (e) other electoral services and operational details of running the election.
- 3.72 A complete, although non-exhaustive, list of information required to be provided is detailed more fully under the relevant clause.
- 3.73 From the pooling of this information, the Department of Premier and Cabinet was able to assess that the combined total of the 14 councils for actual costs in conducting their elections was approximately \$5,469,699.00.³⁵ This compares with an initial estimate of \$6,468,627.00 based on combined estimates calculated using the Electoral Commission's formula, and therefore an estimate of the anticipated combined cost had these councils opted to use the Electoral Commission.
- 3.74 The difference between the estimates and actual figures amounted to approximately \$1,000,000.00, representing an on-paper saving of 15%. While many of the councils that opted for Commission-run elections also reported that the actual cost was lower than the initial estimates, the figure approximating or approaching 15% still represents a significant saving.

³³ Trevor Rowling, Manager Administration, Sutherland Shire Council, *Transcript of Evidence*, 19 August 2013, at p3

³⁴ *Local Government (General) Regulation 2005*, cl 393A

³⁵ One council did not account for staff cost, while another estimated the final cost

- 3.75 However, it should also be noted that the savings were not uniform across all 14 councils. While Sutherland Shire Council and Lane Cove Council reported a potential saving of 31% and 27% respectively, Kempsey Council reported that its final costs were 11% over the estimate, while Cessnock Council's costs were 15% over the estimate.³⁶
- 3.76 Councils also expressed disappointment at the paucity of information provided by the Commissioner, and this appears to have also been a driver for councils in choosing to outsource their elections. As noted earlier, the only information the Commissioner provided was a four point formula to apply to the final costs of the previous election. While this enabled many councils to gauge a rough estimate, this was not sufficient for many councils. Particular criticism was made of the lack of a fixed quote in which councils could budget for reliably and act with authority.
- 3.77 Greg Roberts, Executive Support Manager of Shoalhaven City Council, advised the Committee that:
- We were pretty disappointed with the views of the Electoral Commission in a number of areas when it first spoke to us about the election process in 2011. One was that we were not sure about the price, but "just add CPI on that for the previous years and that will give you a ballpark figure to work on" ...³⁷
- 3.78 This view was supported by other councils. In its submission, Sutherland Shire Council noted:
- The Electoral Commissioner adopted an intransigent position to control all aspects of the process but was not prepared to provide a contractual quote to Council prior to the decision date (in November 2011).³⁸
- 3.79 This failure to provide a fixed quote prompted Lake Macquarie City Council to recommend that:
- In future elections, the Commissioner should be required to submit a formal and firm quotation to all councils considering the use of their services.³⁹
- 3.80 Many councils considered that the failure to provide fixed quotes was particularly unfair in light of council's requirement to tender. The broad view was that there was not a 'level playing field' and that the Electoral Commission was exempt from the ordinary rules of tendering.⁴⁰
- 3.81 This concern was exacerbated by the Australian Election Company's ability and willingness to provide a fixed quote for councils that sought their services. As noted by Sutherland Shire Council:

³⁶ Premier and Cabinet, Division of Local Government, *Review of 2012 Council Run Elections*, June 2013, at p10

³⁷ Greg Roberts, Executive Support Manager, Shoalhaven City Council, *Transcript of Evidence*, 19 August 2013, at p2

³⁸ Sutherland Shire Council, Submission No 58, at p3

³⁹ Lake Macquarie City Council, Submission No 19, at p1

⁴⁰ Port Stephens Council, Submission No 14, at p2

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We went to the Queensland company and asked them for a quote ... [T]hey gave us a set figure, which was \$150,000 less than the indicative figure from the Electoral Commission.⁴¹

- 3.82 The Department of Premier and Cabinet also noted in its report *Review of 2012 Council Run Elections* that many councils had reported their concern about the lack of a fixed price quote or requirement to tender and suggested that the Electoral Commission be required to do so in future. On this point, the Department of Premier and Cabinet noted:

In raising this concern, however, it would appear the councils failed to recognise that the Commission was required under the transitional provisions to conduct the 2012 elections for councils on a full cost recovery basis.⁴²

- 3.83 The Electoral Commissioner responded in very similar language to the criticism levelled at his office, advising the Committee that:

...[W]here, in the past, councils have said we would not give them a quote, this is true. We would not give them a quote because we were not empowered to give them a quote.⁴³

- 3.84 To this end, as the Electoral Commission was required under the transitional provisions to conduct the 2012 elections for councils on a full cost recovery basis, there was no scope to provide fixed price quotes for the 2012 elections.

Committee Comment

- 3.85 The Committee is satisfied that the information provided by the Electoral Commission would have been generally sufficient to enable councils to determine an indicative cost of administering the elections. While there would have likely been some disparity between the initial estimate and the final cost, the difference should have been marginal in the majority of cases. On this point, most councils – while expressing concern about the high cost of elections in general – were satisfied that the information provided about expected costs was sufficient to determine whether or not to proceed with the Electoral Commission. However, the Committee would appreciate the Electoral Commission making every effort to give councils as close a cost estimate as possible. This will be a matter the Committee will review again following the 2016 Local Government Elections.
- 3.86 Considering the Electoral Commission's obligation to redeem expenses incurred on a full cost recovery basis, there appears to have been little room to manoeuvre.
- 3.87 However, the Committee also notes the frustration of some councils concerning relative lack of information, and the difficulty this may have created in appropriately budgeting for the election.

⁴¹ Trevor Rowling, Manager, Administration, Sutherland Shire Council, *Transcript of Evidence*, 16 August 2013, at p3

⁴² Premier and Cabinet, Division of Local Government, *Review of 2012 Council Run Elections*, June 2013, at p12

⁴³ Colin Barry, Electoral Commissioner, *Transcript of Evidence*, 26 August 2013, at p21

- 3.88 On these issues, the Committee also notes that the 2012 election was essentially conducted under transitional arrangements, and that new arrangements are in place ahead of the 2016 elections. These new arrangements may ameliorate some of the concerns raised by councils about the lack of a fixed quote ahead of the elections. These new arrangements have been canvassed below.

Future Commission-run Elections

- 3.89 As advised by the Department of Premier and Cabinet, the 2016 elections will be conducted by the Electoral Commission on a contractual basis. The upshot of this will be that the Electoral Commission will be free to negotiate with councils on commercial terms concerning the administration of each individual council election.

- 3.90 This change was facilitated by passage of the *Local Government Amendment (Elections) Bill 2011*, by which under new section 296(2), a council can enter into an arrangement with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the council. If such an arrangement is entered into, the Electoral Commissioner is required to administer the election in accordance with the arrangement.⁴⁴

- 3.91 On this point, the Electoral Commission has established its expectations as to how engagement with councils will be arranged for future elections, and how it will differ compared to previous years. In particular, the Commissioner advised the Committee:

For 2012 the Commission was not empowered to enter into a contract with councils. If councils resolved that they wanted the Commission to run the election then we ran the election on the transitional arrangements, which was basically how it had been in the past. In the future, however, the Commission will give councils a quotation—and we will have to sign a contract with councils.⁴⁵

- 3.92 The Commissioner has noted that these new arrangements do not come without potential problems. Specifically, with the new contractual arrangements the provision of electoral services for councils outside of the metropolitan area is not a viable economic proposition for the Electoral Commission.

- 3.93 The Commissioner has warned of the impacts of these changes in the following terms:

The costing model utilised to date to some extent evens out costs across NSW but this will not be possible in a contestable model going forward and it will be uneconomic for the Electoral Commission to provide election services to the smaller, more remote rural councils.

As the Electoral Commission is not compelled to conduct elections even if approached by a council, this raises public policy issues around the possibility that

⁴⁴ *Local Government Act 1993*, s296(2)

⁴⁵ Colin Barry, Electoral Commissioner, *Transcript of Evidence*, 26 August 2013, at p21

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some smaller or more rurally located councils may not have the same access to the providers of election services as other larger, metropolitan councils.⁴⁶

- 3.94 This issue may be exacerbated by the fact that there appears to be only one main alternative to the Electoral Commissioner on the market – the Australian Election Company – and it is conceivable there is a limit to how many elections the Australian Election Company can conduct viably. As the principal, Richard Kidd, advised the Committee:

The opportunity arose in 2011 to provide quotations to councils for the conduct of elections for local government in New South Wales for the September 2012 elections. We were overwhelmed with the response, quite frankly, and there were 65 councils that approached us. We provided detailed quotations to those councils and that ultimately derived assistance with 13 councils, basically outright running 10 of them.⁴⁷

- 3.95 In response to the capacity for the Australian Election Company to run 65 elections, Mr Kidd responded:

We would have been grappling but we would have done it. Failure is not a word in my vocabulary. We do not really want to run 65 elections and we did not expect that we would, but we would be happy to run a lesser number. But if we got 65 we would run them and we would run them properly, as well as we possibly could. We ramp up and ramp down as we need to, but recruitment is a little bit of a problem.⁴⁸

- 3.96 As such, with the new provisions and given the lack of a proper competitive market, it is conceivable that some councils will not have access to adequate electoral service providers ahead of the 2016 elections. This may require some councils to conduct their elections wholly in-house which, as the experience of Narrabri has demonstrated, may not be a viable option.

Committee Comment

- 3.97 The Committee notes that the 2012 elections were conducted under transitional arrangements and is cognisant of the fact that preparations will soon be underway for the 2016 elections to be held with greater flexibility and more options for councils participating in Commission-run elections.
- 3.98 However, the Committee is also mindful of the reality that, in enabling councils to lower their costs by independently negotiating with the Electoral Commission, this may result in other councils being excluded from access to qualified electoral service providers. This problem is particularly pronounced for rural and more remotely located councils.
- 3.99 These are serious matters which may come to the fore when negotiations are underway between councils and the Election Commission in the months preceding the 2016 elections.

⁴⁶ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p100

⁴⁷ Richard Kidd, Principal, Australian Election Company, *Transcript of Evidence*, 26 August 2013, at p2

⁴⁸ Richard Kidd, Principal, Australian Election Company, *Transcript of Evidence*, 26 August 2013, at p10

- 3.100 As it is Government policy to move away from default full cost recovery to a system that allows for councils to negotiate contracts on an individual basis with the Electoral Commission, it is incumbent upon the Department of Premier and Cabinet to ensure that all councils have secured appropriate alternatives should negotiations between a council and the Electoral Commission stall or fail.
- 3.101 This would require ensuring that, if a council has not resolved to proceed with an election in-house, that contractual arrangements should in place with an appropriate electoral service provider at least 15 months prior to the 2016 elections.
- 3.102 An amendment of this nature will align closely with existing provisions under section 296(3)(b) of the *Local Government Act 1993* that require councils in which the Electoral Commission is conducting its election, to have contractual arrangements in place no later than 15 months before the 2016 elections.

RECOMMENDATION 4

The Committee recommends that the Department of Premier and Cabinet takes steps to ensure that all councils not utilising the services of the Electoral Commission, or that are not conducting their elections in-house, have secured contracts with an electoral service provider at least 15 months prior to the 2016 elections.

Payroll Tax

- 3.103 One of the outstanding issues of concern was the perception that the Electoral Commission is exempt from payroll tax. As such, this puts direct private sector competitors – in particular the Australian Election Company – at a competitive disadvantage given the need for the Company to either absorb the payroll tax or pass it on to its client councils.
- 3.104 Citing the 5.45% payroll tax it is obliged to pay on all staffing costs, the Australian Election Company took issue that there was not ‘a level playing field’. They recommended that to ensure fairness, either the Electoral Commission should be required to pay payroll tax, or a special dispensation be made to electoral service providers that conduct NSW local government elections which similarly exempts them from payroll tax obligations.⁴⁹
- 3.105 These concerns were shared by a number of councils in which the Australian Election Company conducted the elections. Shoalhaven City Council advised the Committee that:

I notice the Electoral Commission is not liable to pay payroll tax. We were responsible, within the bill we received, for a component that was payroll tax. If we are going to be using a contractor in the future I think it would be appropriate that we have a level playing field and either both pay it or neither pay it.⁵⁰

⁴⁹ Australian Election Company, Submission No 72, at p4

⁵⁰ Greg Roberts, Executive Support Manager, Shoalhaven City Council, *Transcript of Evidence*, 19 August 2013, at p13

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3.106 Penrith City Council echoed similar sentiments concerning the additional payroll tax component of the invoice.⁵¹

3.107 In response to these concerns, the Electoral Commission has advised:

It has been mentioned that we do not pay payroll tax. That is not correct. We do pay payroll tax and in fact compared to other organisations would probably pay a little more in that we do not have a threshold benefit of \$750,000 tax free before the 5.45% comes in.⁵²

3.108 Schedule 3 of the *Public Finance and Audit Act 1983* provides a list of Government departments that together constitute a group that are required to pay the flat rate of payroll tax. The Electoral Commission is a listed department.

Committee Comment

3.109 The Committee understands that the Electoral Commission is subject to payroll tax, despite some misconceptions to the contrary. In the absence of further information to suggest otherwise, the Committee is satisfied that the current policy concerning the payment of payroll tax for all electoral service providers is appropriate. As such, the Committee does not recommend any alteration to these arrangements.

Fine Revenue

3.110 The Electoral Commission has an obligation under section 313(3) of the *Local Government 1993* to issue penalty notices for electors who fail to vote in elections and do not have valid reasons for not voting. Valid reasons include death, absence from the area on polling day, religious reasons, or any other ineligibility to vote.⁵³ The penalty for not voting is \$55.⁵⁴

3.111 While the Electoral Commission is responsible for undertaking this process for elections it ran, councils that ran their own elections were similarly responsible, in collaboration with the Electoral Commission.

3.112 On the issue of collaboration, Botany City Council advised the Committee:

You need to recognise also that, apart from sending out the notices, the councils did all the legwork in providing the information, marking off the rolls, providing the rolls back to cross-match who had voted and who had not voted. So it was really only that cross-matching and postage of the fine notices that was the responsibility of the Electoral Commission.⁵⁵

3.113 Although the Electoral Commission plays a significant role in the issuing of notices and assessing reasons for a failure to vote, the revenue from the fines itself is collected by the State Debt Recovery Office which forwards these revenues into the Treasury's Consolidated Fund.

⁵¹ Stephen Britten, Chief Governance Officer, Penrith City Council, *Transcript of Evidence*, 19 August 2013, at p31

⁵² Trevor Follett, Director, Finance, *Transcript of Evidence*, 26 August 2013, at p14

⁵³ *Local Government Act 1998*, s314(6)

⁵⁴ *Local Government Act 1998*, s314(3)(b)

⁵⁵ John Patterson, Manager Special Projects, Botany Bay City Council, *Transcript of Evidence*, 19 August 2013, at p13

- 3.114 This has been a cause of concern for Local Government NSW which, in its submission, argued that the fine revenue should be returned to the respective councils, deeming it inappropriate for the funds to collate in consolidated revenue. Local Government NSW cited the Victorian experience of returning fine revenue as an example.⁵⁶
- 3.115 Local Government NSW also argued that the amount of fine revenue generated was not insignificant and could be helped to offset some of councils' costs in running the elections.⁵⁷ This proposition received some support from Lane Cove Council which argued the returned moneys could be used on communications expenses to make voting more accessible in future elections.⁵⁸

Committee Comment

- 3.116 The Committee supports the concept of returning fine revenue to councils for electors that fail to vote in elections. Councils currently use the State Debt Recovery Office for fines issued by Councils for breaches of local by-laws and receive the corresponding revenue. Given that councils are paying for the conduct of their elections, they should similarly receive any corresponding fine revenue that accrues from this exercise.

Satisfaction of Election Providers

- 3.117 Costs aside, each of the councils that provided a submission to the Inquiry or who appeared before the Committee at one of its public hearings, had comments about the performance of both the Electoral Commission and the Australian Election Company, together with suggestions for improvement.

NSW Electoral Commission

- 3.118 The Committee received submissions from over 43 councils whose elections were administered by the Electoral Commission, and a further seven submissions from councils that did not proceed with the Electoral Commission.
- 3.119 Each of the councils that provided submissions to the Inquiry did so independently but there was generally a high level of satisfaction with the Electoral Commission's service. The issues that were raised in council submissions were generally ancillary or minor in nature, or were particular issues to that council and often not indicative of broader, systemic concerns.
- 3.120 The remarks from the participating councils at the Inquiry's public hearing in August 2013 reflected the overall opinion of the Electoral Commission's performance.
- 3.121 Wollondilly Shire Council informed the Committee:

The experience we had during those elections was good. We felt that from an administrative staffing point of view, due to the size of the council we would be better served by outsourcing the election to the New South Wales Electoral Commission. Throughout the process we had regular meetings with the commission

⁵⁶ Local Government and Shires Association, Submission No 64, at p3

⁵⁷ Local Government and Shires Association, Submission No 64, at p3

⁵⁸ Craig Wrightson, General Manager, Lane Cove Council, *Transcript of Evidence*, 19 August 2013, at p20

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and we were quite pleased with the result ... Apart from a number of minor issues there were no significant issues raised regarding the conduct of the election.⁵⁹

3.122 Similar sentiments were expressed by Albury City Council which, while identifying a couple of matters needing to be addressed, noted:

Albury City Council also used the New South Wales Electoral Commission. We were also very happy with the results, and the communication processes that were put in place for the 2012 elections.⁶⁰

3.123 Following the elections, the Electoral Commission surveyed the general managers of councils for feedback on its performance. The overwhelming majority of general managers responded to the survey, providing a reliable and statistically significant source of information.

3.124 Questions were asked on a broad range of matters. This included the quality and professionalism of returning officers, accuracy of the electoral roll, local and number of both pre-poll venues and polling places, and the efficiency of elections including the satisfaction with time taken to announce results.

3.125 The Committee notes that the satisfaction rate with the Electoral Commission exceeded 85.0% on most measures, including a high of 97.0% agreement that the elections were conducted impartially and fairly, and in accordance with the law. However, only 38.5% of respondents agreed that the 2012 results were declared sooner than in 2008. By its own admission, the Electoral Commission has nominated raising awareness of the elections, securing voter participation, and accurate preparation of the electoral roll, as areas in which it performed less satisfactorily.⁶¹

3.126 In its *Report on the 2008 Local Government Elections*, the previous Committee noted the valuable information that can be derived from stakeholder feedback.

Committee Comment

3.127 The Committee reiterates the views of the previous Committee with respect to the value of stakeholder surveys and subsequent feedback. The Committee welcomes the Electoral Commission's approach following the 2012 elections, and is satisfied with the results. Lastly, the Committee notes that while there is always room for improvement, the feedback provided has generally been positive.

Australian Election Company

3.128 The Committee received submissions from eight councils that either outsourced their elections to the Australian Election Company or engaged the Company for certain services, and heard from six of those councils at its public hearing in August 2013.

⁵⁹ John Sproule, Manager, Administration Services, Wollondilly Shire Council, *Transcript of Evidence*, 19 August 2013, at p26

⁶⁰ Judy Charlton, Director, Corporate Services, Albury City Council, *Transcript of Evidence*, 19 August 2013, at p26

⁶¹ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p28

3.129 Fairfield City Council noted in its submission to the Committee that 'overall, [the Council] was satisfied with the service provided by the Australian Election Company'.⁶² In further evidence given at the Inquiry's public hearing, a representative from the Council remarked:

From our perspective we were very excited about our elections and the result. We were excited about the learning. I think as an organisation we learnt a lot and we had to relearn a lot. The buzz as we were going through the whole process was phenomenal and our councillors were very pleased with the result. Our scrutineers were also pretty impressed with the process and the ballot paper counting software. Apart from the fact that it was a little bit long to get the results, the accuracy and the scrutiny was fantastic.⁶³

3.130 Similarly, Shoalhaven City Council expressed satisfaction with the conduct of its election, commenting that:

It is considered that the Company provided a satisfactory service and undertook an election that is capable of withstanding any scrutiny.⁶⁴

3.131 Lane Cove Council stated:

All candidates and elected Councillors expressed positive comments on the way the election was conducted by Council's Returning Officer (and staff) and were satisfied with the advice and assistance received throughout the process. The elections ran smoothly and fully complied with all legislation.⁶⁵

3.132 Lastly, Penrith City Council noted in its submission:

The Council was fortunate that ... the Australian Election Company sourced for us an experienced returning officer to manage the Council's election process. The feedback that the Council received from the candidates for the election was that the returning officer was professional and that he was knowledgeable with all facets of the election process. Additionally, some candidates have advised that they believed that the Council election that was held in 2012 was better managed than the election that was held in 2008.⁶⁶

3.133 However, it should be noted that not all councils expressed satisfaction with the performance of the Australian Election Company. In particular, in its report to the Department of Premier and Cabinet, Cessnock City Council notably criticised some aspects of the Company's performance.

3.134 The Council commented with respect to early issues with the conduct of the first returning officer that was appointed. After some consultation with the Australian Election Company, the services of the first returning officer were terminated and a substitute was found. However, the Council reported that the delay caused by an unsuitable first returning officer caused difficulties later on, advising that:

⁶² Fairfield City Council, Submission No 65, at p4

⁶³ Petra Tinker, Group Manager, Information Management and Services, Fairfield City Council, *Transcript of Evidence*, 26 August 2013, at p24

⁶⁴ Shoalhaven City Council, Submission No 51, at p1

⁶⁵ Lane Cove Council, Submission No 25, at p3

⁶⁶ Penrith City Council, Submission No 45, at p1

Cessnock Council staff were required to spend additional time on election matters than was originally anticipated due to the poor performance of the first returning officer provided by the Australian Election Company. The Company did not respond in a timely manner to correcting the issues raised with them and there was, initially, a reluctance to consider matter of concern raised with them. Also, it appeared that the contracted company was not fully conversant with NSW legislation and regulation relating to the conduct of local government elections.⁶⁷

Committee Comment

- 3.135 Despite these criticisms, they were largely unsupported by other councils. Without doubting the experience of Cessnock City Council, it appears that it was the exception concerning stakeholder satisfaction with respect to the performance of the Australian Election Company. As such, the Committee is satisfied that the policy of allowing third parties to conduct elections was successful, and is amenable to allow this practice to continue.

Access to the Electoral Roll

- 3.136 One of the recurring issues that emerged was the refusal by the Electoral Commission to provide councils conducting their own election access to a soft copy of the residential roll. While hard copies of the roll were provided, no such access was provided for soft copies.

- 3.137 Lane Cove Council submitted that:

Legislation ensured that the Election Commission provided certain information such as hard copy rolls, Registered General Postal Voter information and electronic access to the electoral roll database. However, the level of support was clearly limited and no doubt reflected the decision of the Electoral Commissioner to provide only minimum assistance to non-client councils.⁶⁸

- 3.138 Shoalhaven City Council similarly noted:

Access to roll data should be provided to councils or the election service provider conducting the election on behalf of councils. The Electoral Commission refused to provide the information to the contractor. Council is mindful of the fact that the roll data is retained by the Australian Electoral Commission, and the New South Wales Electoral Commission is effectively a broker of that data.⁶⁹

- 3.139 Perhaps the most pronounced criticism came from the Australian Election Company, given its responsibility in facilitating 10 council elections. In its submission, it criticised the Commission for:

Critically, and unfortunately, actual soft copy Electoral Roll data was not provided by the Electoral Commission to the Australian Election Company; although Candidates, upon application, could be provided the data.⁷⁰

⁶⁷ Lea Rosser, General Manager, Cessnock City Council, Letter to the Minister for Local Government, the Hon. Don Page MP, *Election Report for Cessnock City Council*, March 2013

⁶⁸ Lane Cove Council, Submission No 25, at p4

⁶⁹ Shoalhaven City Council, Submission No 51, at p3

⁷⁰ Australian Election Company, Submission 72, at p4

- 3.140 The Australian Election Company recommended that, should the outsourcing of elections continue to be applied in future elections, then it would be imperative that the Electoral Commission provide electoral data to relevant council service providers. The absence of easy access was regarded as a 'fundamental impediment to operational efficiency and service provision'.⁷¹
- 3.141 In response to these criticisms, the Electoral Commission advised that this complaint was misconceived. The Commissioner advised in an address to the Committee that:
- It is important to note that the Commission only refused to provide councils with a soft copy of the entire NSW roll as well as the use of the iRoll PDAs which contain the entire NSW roll.⁷²
- 3.142 The Commissioner explained that his position was guided by statutory obligation to protect the privacy of electors, and limits placed on his office on the disclosure of elector information in accordance with the *Parliamentary Electorates and Elections Act 1912* and the *Privacy and Personal Information Protection Act 1998*.
- 3.143 Further, the Commissioner explained that councils were provided with access to a secure Commission website which included enrolment details for electors enrolled in their area, as well the names and area for electors not enrolled so that council could answer electors' queries. In addition, councils were provided with a PDF that contained details of electors in their areas/wards to print, as well as a hard copy of the mark-off rolls for their area.

Committee Comment

- 3.144 The Committee is mindful of some of the difficulties experienced by councils that conducted their own election with respect to having sufficient access to a soft copy of the electoral roll.
- 3.145 The Committee notes that these councils and the Australian Election Company which ran their elections, felt encumbered by the limited access to the rolls. As it is likely that more councils will opt to undertake their own elections in 2016, it is important that this issue be resolved.
- 3.146 This may be best achieved by the Division of Local Government providing guidance to the Electoral Commission as to the extent and mode of data that can be provided to councils.
- 3.147 If this is not possible, the Committee believes that it is the democratic obligation of the Electoral Commission to provide soft copy access to rolls so that in the event a Council decides to exercise its right to conduct its elections, it is able to do so.
- 3.148 The Division of Local Government should give thought to minimising the barriers councils have faced in accessing roll data, while safeguarding elector privacy in ensuring that there is not an unreasonable disclosure of information.

⁷¹ Australian Election Company, Submission 72, at p4

⁷² Colin Barry, Electoral Commissioner, *Address to the Joint Standing Committee on Electoral Matters*, 26 August 2013, at p4

RECOMMENDATION 5

The Committee recommends that the Division of Local Government provide guidance to the Electoral Commission with respect to the extent and mode of electoral roll data that can be disclosed to councils that conduct their own elections. Particular weight should be given to ensuring councils are granted sufficient access to roll data, while safeguarding elector privacy.

If this is not possible, the committee believes it is the democratic obligation of the Electoral Commission to provide soft copy access to rolls so that Councils can exercise their right to undertake their own elections, should they decide to do so.

Chapter Four – Candidate Participation

- 4.1 This chapter examines some of the issues related to the experience of candidates who stood for election. The Committee received evidence from councils, successful and unsuccessful candidates, political parties and other interested stakeholders on various aspects of the election as it pertained to candidates. Some barriers to candidate participation were also brought to the Committee's attention.

Candidate Numbers

- 4.2 In the 2012 Local Government Elections, there were 3,939 candidates who stood across the 136 councils whose elections were managed by the Electoral Commission.⁷³
- 4.3 As discussed in Chapter 3, it is difficult to compare data with previous elections as the number of candidates who stood in elections not managed by the Electoral Commission is not included in the Commissioner's report, or reported elsewhere. Therefore, the number of candidates provided for the 2012 election does not include the data from 14 elections. As previously suggested, there would be a benefit in analysing the number of candidates who stood in all council areas in previous elections.
- 4.4 The number of candidates is significantly higher than that for State General Elections, with a total number of 809 candidates standing in the 2011 election.⁷⁴
- 4.5 Thirty-one political parties nominated candidates. However, in those elections managed by the Electoral Commission, the majority of candidates were not nominated by a political party and primarily relied on the Electoral Commission for information and support.⁷⁵ Information on candidates in those elections which were not managed by the Electoral Commission is not available.

Experience of Candidates

- 4.6 On the whole, candidates reported a positive experience during the election. Of those candidates who replied to a survey by the Electoral Commission, 82.8% were satisfied with the Commission's conduct of the election.⁷⁶ 74.2% of candidates responded that they received enough information from the Commission and the Election Funding Authority regarding election funding and disclosure requirements.⁷⁷
- 4.7 The Christian Democratic Party told the Committee that:

⁷³ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p13

⁷⁴ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p76

⁷⁵ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p76

⁷⁶ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p29

⁷⁷ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p28

There was a great deal of satisfaction in those Council areas where the Electoral Commission took responsibility for the administration of the elections.⁷⁸

4.8 Similarly, Lane Cove Council, who chose to run its own elections, reported positive feedback.

All candidates and elected Councillors expressed positive comments on the way the election was conducted by Council's Returning Officer (and staff) and were satisfied with the advice and assistance received throughout the process. The elections ran smoothly and fully complied with all legislation.⁷⁹

The Election Funding, Expenditure and Disclosure Act 1981

4.9 Despite the number of candidates who participated in the elections and their mostly positive experiences, the Committee did receive evidence of some impediments to standing for election, and information concerning where candidates encountered certain difficulties. Many of the problems encountered by candidates, or that caused people not to stand for election, related to the requirements of the *Election Funding, Expenditure and Disclosures Act 1981* (the Act).

4.10 Cowra Shire Council provided a summary of some of the general concerns surrounding the provision and level of required information that prospective candidates had. These reflected concerns raised by other stakeholders and are as follows:

- Many candidates found the completion of the required documentation [to be] a long and onerous procedure;
- Requirements were not clear, and ... a simplification of forms and procedures is necessary for future elections;
- There seemed to be instances of duplication with regards to information required from candidates;
- Candidates seeking additional information and support from the Election Funding Authority commented that responses received were impersonal, demanding and focussed too much on penalties associated with misreporting under the Act. Experienced Councillors commented that the lack of individual support could be a disincentive to less experienced candidates;
- The requirements of the Act ... cover all level of candidates, up to and including those standing as representatives of political parties. In small rural Councils, most candidates nominate as independents. Simpler reporting requirements for independent candidates may encourage greater participation.⁸⁰

4.11 Other specific issues with the requirements under the Act are discussed below.

⁷⁸ Christian Democratic Party, Submission 22, at p3

⁷⁹ Lane Cove Council, Submission 25, at p3

⁸⁰ Cowra Shire Council, Submission 53, at p2

Expenditure Disclosure and Auditing

- 4.12 The Act provides that all donations received and electoral expenditure incurred must be disclosed to the Election Funding Authority.⁸¹ In addition, should donations and/or expenditure exceed \$2,500, the disclosure must be accompanied by an audit certificate. Should a candidate not receive any donations and also not incur any electoral expenditure, they are still required to make a nil declaration.⁸² In addition, if a candidate receives donations or incurs expenditure greater than \$1,000 they must set up a campaign account.⁸³
- 4.13 The disclosure of expenditure was seen as overly complicated and an unnecessary burden on candidates who are required to complete a significant amount of paperwork.⁸⁴ The majority of issues raised concerned: the requirement for candidates to file a disclosure regardless of their donations and expenditure; keeping a separate campaign account to manage campaign funds; the threshold for requiring a disclosure to be audited; and the necessity of appointing an official agent.
- 4.14 Mid-Western Regional Council recommended that a limit on expenditure should be set for which candidates do not have to file large amounts of such paperwork. They suggested a limit of \$5,000, which could apply to independent candidates, candidates in groups and also electoral tickets.⁸⁵
- 4.15 Similarly, the Electoral Commission also noted that ‘the \$1,000 of political donations received or electoral expenditure incurred as the threshold for the requirement for a campaign account is too low’ and proposed an increase to \$2,500.⁸⁶
- 4.16 The requirement for a declaration of disclosure to be accompanied by a certificate of an auditor was also seen as problematic, particularly for candidates in regional areas. Ballina Shire Council told the Committee that in their area, it is very difficult to find an appropriate auditor. They stated that:
- ... the requirement for an audit certificate to be completed by a registered company auditor is unreasonable and arduous, particularly in regional areas due to the expense involved, the low financial threshold and the difficulty in identifying a service provider. For example in Ballina Shire we only have one registered company auditor.⁸⁷
- 4.17 Similarly, the Greens noted that the main difficulties encountered by candidates were ‘access to and the fees charged by Registered Company Auditors and the various thresholds for requiring an audit’.⁸⁸ They also highlighted the fact that:

⁸¹ *Election Funding, Expenditure and Disclosure Act 1981*, s88 (1)

⁸² *Election Funding, Expenditure and Disclosure Act 1981*, s91(5)

⁸³ *Election Funding, Expenditure and Disclosure Act 1981*, s96A(7)

⁸⁴ Albury City Council, Submission 62, at p5

⁸⁵ Mid-Western Regional Council, Submission 59, at p3

⁸⁶ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p97

⁸⁷ Ballina Shire Council, Submission 4, at p1

⁸⁸ The Greens, Submission 63, at p14

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For political parties the cost of auditing hundreds of ward campaigns that are fairly small is cumulatively high with no obvious benefit to the public.⁸⁹

- 4.18 To improve the situation, a relaxation of the requirements was recommended. Specifically, the Greens recommended that the threshold for requiring an audit be raised from \$2,500 to \$5,000 'for candidates and groups which are not entitled to electoral funding'.⁹⁰ To improve access to auditing services, they also recommended that:

Accredited accountants be included as permitted auditors for returns with amounts less than \$20,000.⁹¹

Appointment of Official Agents

- 4.19 A candidate who stands for election must appoint an official agent. A candidate's official agent is given significant responsibility to help ensure that a candidate or group comply with the relevant legislation, particularly when handling the campaign finances. Official agents must successfully complete an online training program prior to their appointment.⁹² A candidate cannot receive political donations unless they have an official agent and the agent is responsible for operating the candidate's campaign account and lodging a candidate's disclosure of donations and expenditure.⁹³ While a person can be an official agent for more than one candidate or group contesting an election, each appointment must be made separately.⁹⁴

- 4.20 The skills required and the responsibilities placed on official agents caused a number of candidates to have difficulty in identifying a suitable official agent. The appointment of an official agent was seen as a major barrier to candidates standing or planning to stand for election.

- 4.21 Concerns were raised that candidates may not be able to find a suitable person to act as an agent and they appear unnecessary for smaller campaigns. The South East Regional Organisation of Councils submitted that:

Again the role of the Official Agent poses a range of concerns that will discourage many people from standing for Council. Some candidates may not know a suitable person to undertake the role and there are a number of small Councils where campaign costs do not exceed \$100. The role of the Official Agent seems extreme where campaign costs are minimal and perhaps there needs to be a limit ie \$1000 where the appointment of an official agent is necessary.⁹⁵

- 4.22 An additional problem for candidates who are trying to appoint an agent is that there are significant penalties should they fail to carry out their duties. South East Regional Organisation of Councils observed that: 'significant penalties (up to

⁸⁹ The Greens, Submission 63, at p14

⁹⁰ The Greens, Submission 63, at p14

⁹¹ The Greens, Submission 63, at p14

⁹² *Election Funding, Expenditure and Disclosures Act 1981*, s27

⁹³ *Election Funding, Expenditure and Disclosures Act 1981*, s96A, s96B, and s90

⁹⁴ *Election Funding, Expenditure and Disclosures Act 1981*, s27

⁹⁵ South East Regional Organisation of Councils, Submission 35, at p3

\$22,000) can apply to official agents who have not carried out their responsibilities in accordance with the Act, even if it was unintentional'.⁹⁶

- 4.23 Other stakeholders also argued that there should be a threshold for donations received or expenditure incurred before a candidate requires an official agent. Narrabri Council informed the Committee that consideration could be given to:
- ... remove the requirement for candidates to appoint an agent where there is no intention to raise funds or spend over \$1,000. This will remove extra red tape in the nomination and candidature for Local Government.⁹⁷
- 4.24 Similarly, Weddin Shire Council suggested a threshold of \$2,000,⁹⁸ while the South East Regional Organisation of Councils informed the Committee that 'a more realistic figure would be \$5,000'.⁹⁹
- 4.25 Bega Valley Shire Council advised that 'in rural areas, candidates are often self-funded' and suggested that covering self-funded candidates in specific provisions in legislation would encourage more candidates to stand.¹⁰⁰
- 4.26 The Electoral Commission agreed that official agents appeared to be an unnecessary barrier stating that 'there does not seem any compelling argument that a person must appoint another person as their official agent'.¹⁰¹

Spending Caps

- 4.27 The Greens submitted that there should be an introduction of expenditure caps for local government elections. It was argued that otherwise, there was a risk that elections would become 'not contests of political ideas, but rather contests between political bank accounts'.¹⁰²
- 4.28 They suggested that the 'level at which the cap is fixed should be reasonably low to reflect the grassroots nature of local politics'.¹⁰³ They also recognised that the different number of voters in different wards meant that a flexible expenditure cap would be more appropriate. A formula should be devised that would 'create an expenditure cap that was not too low for councils/wards with large enrolments and not too high for councils/wards with low enrolments'.¹⁰⁴

Committee comment

- 4.29 The Committee recognises the importance of maintaining transparency for a candidate's donations and expenditure. The Committee notes that this can sometimes be an onerous process for candidates.

⁹⁶ South East Regional Organisation of Councils, Submission 35, at p3

⁹⁷ Narrabri Shire Council, Submission 27, at p3

⁹⁸ Weddin Shire Council, Submission 20, at p1

⁹⁹ South East Regional Organisation of Councils, Submission 35, at p3

¹⁰⁰ Bega Valley Shire Council, Submission 38, at p2

¹⁰¹ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p96

¹⁰² The Greens, Submission 63, at p11

¹⁰³ The Greens, Submission 63, at p11

¹⁰⁴ The Greens, Submission 63, at p11

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- 4.30 The Committee also notes that the legislation and corresponding regulations regarding a candidate's responsibilities is unnecessarily complex and can be unclear. This can lead to a considerable amount of confusion and ambiguity for prospective candidates. It is the Committee's view that while candidates should have specific responsibilities, and the transparency surrounding donations and expenditure be maintained, the legislation should be simplified.
- 4.31 The Committee has previously recommended that a new electoral Act be introduced which has a clarity of structure and more plain English, and has received a government response.¹⁰⁵
- 4.32 The Committee also notes the recommendation of the Local Government Acts Taskforce for 'the transfer of local government elections law to a single new Elections Act to consolidate all State and local government election provisions along with the regulation of campaign finance and expenditure'.¹⁰⁶
- 4.33 The Committee is of the opinion that the requirement for a candidate to open a campaign account if they receive political donations or incur electoral expenditure of \$1,000 is too low, and this discourages potential candidates from nominating.
- 4.34 Given that a candidate's disclosure is only required to be audited when political donations received or expenditure incurred exceeds \$2,500, the Committee considers that it is appropriate to increase the threshold for requiring a campaign account to \$2,500.

RECOMMENDATION 6

The Committee recommends that the Government raise the threshold for a candidate to open a campaign account to \$2,500, indexed annually to inflation.

- 4.35 It is the opinion of the Committee that the requirement for a properly registered company auditor to verify disclosures is appropriate and should be retained. The Committee recognises the difficulties for certain candidates to identify an appropriate auditor, particularly in regional areas. However, on balance the Committee considers that given a threshold must be reached before a disclosure is required to be audited this is not a significant barrier. The Committee also notes other recommendations made to simplify matters for potential candidates.
- 4.36 The Committee recognises the intention behind the introduction of official agents to assist in managing a candidate's campaign finances. The appointment of an official agent by a candidate helps to ensure that political donations are only spent on election campaigns with the agent managing the campaign account which can only be used for specific purposes. The official agent plays an important role in overseeing the financial records of candidates.

¹⁰⁵ Joint Standing Committee on Electoral Matters, *Review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981*, Report 3/55, Parliament of NSW, May 2013 and NSW Government Response dated 5 November 2013

¹⁰⁶ Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*, October 2013, at p35

- 4.37 However, on balance the Committee finds that the mandatory requirement to appoint an official agent is acting as a significant deterrent to a number of potential candidates. The Committee is of the opinion that should a candidate wish to, they may appoint an official agent to act in the capacity currently outlined in the Act.
- 4.38 Given the scrutiny of donations and expenditure discussed above, the Committee also considers that the appointment of an official agent adds an unnecessary level of complexity for candidates, particularly those running in elections in smaller councils.¹⁰⁷ It is the opinion of the Committee that the removal of mandatory official agents will encourage more candidates to run for election, and simplify the processes for those that do so.

RECOMMENDATION 7

The Committee recommends that the Government remove the mandatory requirement for a candidate to appoint an official agent but that candidates may choose to appoint an official agent if they wish.

Additional Barriers to Candidate Participation

- 4.39 In addition to the requirements under the *Election Funding, Expenditure and Disclosures Act 1981*, other barriers preventing prospective candidates from taking part in local government were brought to the Committee's attention.

Candidate Information Sessions

- 4.40 The Electoral Commission ran 66 information seminars across NSW during May, June and July for people planning to stand for election. The seminars were attended by 1,266 people. They included presentations from the Electoral Commission, the Election Funding Authority, the Division of Local Government, the Department of Premier and Cabinet and, in some locations, the relevant council and the Australian Local Government's Women's Association.¹⁰⁸
- 4.41 Some stakeholders, however, suggested that there were not enough information sessions held for prospective candidates. They stated that those that were held were often difficult for people to access. For example, Temora Shire Council recommended that information sessions should be held 'in each local government area'.¹⁰⁹
- 4.42 An issue which arose regarding the information sessions was the difference between those sessions hosted in councils which engaged the Electoral Commission to run their elections and those that did not. In council areas where the Electoral Commission did not run the election, the Electoral Commission did not advertise their information sessions to 'avoid candidates coming from other

¹⁰⁷ See, for example, South East Regional Organisation of Councils, Submission 35, at p3 and New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p96

¹⁰⁸ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p77.

¹⁰⁹ Temora Shire Council, Submission 44, at p1

council areas and being confused about messages about the way in which the election was being conducted'.¹¹⁰

- 4.43 For those councils conducting their own elections, the Election Funding Authority conducted their own seminar for the benefit of potential candidates. The Committee heard that these seminars were not as well publicised, particularly by the Electoral Commission, which led to confusion for candidates. Sutherland Shire Council advised that:

The Electoral Funding Authority paid for and organised the briefing sessions for candidates prior to the elections, yet the Electoral Commission failed to advertise the non-Electoral Commission ones on its website, which made it confusing for quite a few candidates in the Sutherland area. They thought that they had to go into another area to go to an Electoral Funding Authority briefing.¹¹¹

- 4.44 When asked about this issue, the Electoral Commission stated that, although they did not advertise the sessions in the major press, they did advertise the sessions hosted by the Election Funding Authority widely:

We advertised widely in all of the local papers in each local council area. We advertised on our website. The council advertised on their website and we invited councils to advertise as widely and as far as they chose to do themselves, being their own election, so it is quite the contrary. We did advertise in local papers for each of those.¹¹²

Committee Comment

- 4.45 The Committee is satisfied with the work of the Electoral Commission and the Election Funding Authority in providing information to candidates. The Committee recognises that the new arrangements regarding whether councils engage the services of the Electoral Commission or run their own elections can cause difficulties. The Committee is pleased that candidates are still able to attend information sessions in either situation.
- 4.46 The Committee fully supports the provision of information sessions for all prospective candidates and is confident that they will remain relevant and authoritative. The Committee also notes the provision of information and its clarity on the websites of the Electoral Commission and the Election Funding Authority.

Candidate Eligibility

- 4.47 The Committee received submissions from some stakeholders in which it was argued that additional restrictions be placed on who can stand for election in Local Government elections.

¹¹⁰ Brian de Celis, Director, Funding and Disclosure, NSW Electoral Commission, *Transcript of Evidence*, 26 August 2013, at p15

¹¹¹ Trevor Rowling, Manager Administration, Sutherland Shire Council, *Transcript of evidence*, 19 August 2013, at p16

¹¹² Brian de Celis, Director, Funding and Disclosure, NSW Electoral Commission, *Transcript of evidence*, 26 August 2013, at p15

- 4.48 The Greens expressed the view that the election of non-resident candidates leads to 'councillors who are more likely to have conflicts of interest due to having solely a financial interest in the council area and not as a resident'. For this reason, they recommended that only residents of a local government area be eligible to stand as a candidate in the area that they reside.¹¹³
- 4.49 The Christian Democratic Party also pointed out that although property developers are prohibited from donating to candidates, they are able to stand for election. Given that these developers will likely have access to more self-funding than other candidates and the danger of a property developer influencing planning decisions while on council, they recommended that 'property developers not be allowed to stand as candidates for council elections'.¹¹⁴

Committee Comment

- 4.50 The Committee notes these concerns, but in the interest of ensuring all individuals can participate in the democratic process, does not support the view of rendering candidates ineligible on the basis of place of residence, profession, or industry activity.

Candidate Information Sheets

- 4.51 According to section 308(1) of the *Local Government Act 1993*, 'a nomination of a candidate for election to a civic office is to be accompanied by a candidate information sheet in the form of a statutory declaration made by the candidate'.
- 4.52 These information sheets must contain the candidate's name and address and be signed and witnessed by a Justice of the Peace (JP). They may also contain other details, including whether they are nominated by a registered political party, or any personal statements, but these are not compulsory.
- 4.53 Some stakeholders told the Committee that there is insufficient information made available on candidates standing for election, in particular relating to their political affiliation, skills and qualifications.¹¹⁵ The NSW Business Chamber suggested that the provision of such information is made mandatory for candidates and that this is published online and made freely available. Candidates who did not provide this information would not be permitted to stand for election.¹¹⁶
- 4.54 Lane Cove Council observed that candidates were not always aware of how the information sheets are used or that they will be published on the council's website. If this was made clearer, candidates may provide more pertinent information:

¹¹³ The Greens, Submission 63, at p8

¹¹⁴ Christian Democratic Party, Submission 22, at p5

¹¹⁵ NSW Business Chamber, Submission 73, at p4

¹¹⁶ NSW Business Chamber, Submission 73, at p4

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Many candidates were unaware that the sheets were to be placed on the Councils' website and therefore failed to take the opportunity to state their political platform. This should be highlighted to prospective candidates.¹¹⁷

- 4.55 In order to simplify the process for candidates submitting their Information Sheet, it was put to the Committee that the requirement for candidates to have their signature witnessed in accordance with the *Oaths Act 1900* is unnecessary. The Greens noted that it can be inconvenient for candidates to find a suitable witness, 'especially if time is running short and particularly in geographically large LGAs'.¹¹⁸ It was recommended that this requirement be discontinued with just the candidate's signature, a sufficient replacement.

Committee Comment

- 4.56 The Electoral Commission agreed with this proposal stating that the removal of the requirement for a candidate's signature to be witnessed by a JP 'would both streamline processes and more closely align Local Government nomination forms with State General election provisions'.¹¹⁹
- 4.57 The Committee does not find it necessary for Candidate Information Sheets to take the form of a statutory declaration and be witnessed and signed by an authorised person under the *Oaths Act 1900*. The Committee notes the removal of this requirement is a simple and easy way to reduce unnecessary complexity in candidate nominations, and promote further candidate participation. Given that this is not a requirement for candidates in Federal or State elections, the Committee can see no reason for this practice to continue and Local Government nomination forms should be aligned with the provisions for State elections.
- 4.58 The Committee has previously recommended that 'the requirement that a candidate's signature on a local government election nomination form be witnessed by a Justice of the Peace be discontinued'.¹²⁰
- 4.59 Further, the Committee notes that Candidate Information Sheets (CIS) are not seen as particularly useful for voters who want to find out more about candidates. The Committee does not think it is necessary to make further sections of the CIS mandatory but more information should be provided to candidates to clarify how and where their CIS will be published.

RECOMMENDATION 8

The Committee recommends that the Government remove the requirement that a candidate information sheet is made in the form of a statutory declaration.

¹¹⁷ Lane Cove Council, Submission 25, at p5

¹¹⁸ The Greens, Submission 63, at p16

¹¹⁹ New South Wales Electoral Commission, *Report on the Local Government Elections 2012*, at p100

¹²⁰ Joint Standing Committee on Electoral Matters, *2008 Local government elections*, Report 3/54, Parliament of NSW, June 2010.

Pre-poll Voting

- 4.60 Pursuant to the *Local Government (General) Regulation 2005*, voters who are eligible to vote in person before election day may do so at the office of the returning officer from the twelfth day prior to until the day preceding the election.
- 4.61 Many stakeholders, including both councils and candidates, considered this to be an excessive length of time. Lismore City Council provided their own experience that:
- Two weeks of pre-poll is excessive and would appear to encourage voters to vote prior to election day for convenience only. One week of pre-poll is regarded as sufficient. As more people now appear to be voting pre-poll, the choice of the pre-poll venue and additional staffing will need to be considered for future elections.¹²¹
- 4.62 Candidates who had stood for election also told the Committee that the length of pre-polling was problematic as they could not allocate sufficient time and resources to attending pre-poll stations. As advised by Wingecarribee Shire Council:
- The current pre-poll period is excessive and an unreasonable burden on candidates attending pre-polling stations. Most candidates in Local Government elections are not, and cannot afford to be, full-time politicians and, even if elected, are not remunerated as such. It follows that an extended need to attend on a lengthy pre-poll process is a significant strain on candidates.¹²²
- 4.63 Similarly, councillors from Ku-ring-gai Council told the Committee that ‘it’s a massive task to have volunteers man the pre-poll for all day for the two weeks’.¹²³ Another councillor suggested that ‘five days is more than enough for pre-poll’.¹²⁴
- 4.64 In addition to the length of time made available for pre-polling, Gosford City Council also argued that an excessive number of polling places can make it ‘difficult for candidates and candidates’ parties to man each polling place’.¹²⁵
- 4.65 One of the main concerns for candidates was the length of time required to spend at the polling places to distribute how-to-vote material. One option presented to the Committee to improve this situation was to provide a notice board at the pre-polling station to which a candidate can post their information. This notice board would be controlled by the returning officer or their staff.¹²⁶

¹²¹ Lismore City Council, Submission 23, at p2

¹²² Wingecarribee Shire Council, Submission 31, at pp2-3

¹²³ Ku-ring-gai Council, Submission 68, at p2

¹²⁴ Ku-ring-gai Council, Submission 68, at p2

¹²⁵ Gosford City Council, Submission 29, at p1

¹²⁶ Narrabri Shire Council Submission 27, at p3

4.66 By contrast, other councils brought to the Committee's attention the popularity of pre-poll voting. A number of councils, including Bankstown City Council, found that 'larger than expected numbers participate[d] in pre-poll voting'.¹²⁷

4.67 Due to the popularity of pre-poll voting, other councils considered that the current length of time was adequate or could be extended. Fairfield City Council submitted that:

Pre-poll voting accounted for 12.1% of all voters, which is an increase from 2008. ... it could be assumed that there will be greater usage of pre-poll voting in the future.

One consideration for Council to help assist with this predicted increase will be the extension of pre-poll voting times and the possible introduction of additional pre-poll locations in each ward, particularly in the week prior to election day.¹²⁸

4.68 Furthermore, several councils supported a proposal to remove the preconditions that must be met before a voter is able to participate in pre-poll voting, especially as they are rarely checked.¹²⁹

Committee Comment

4.69 The Committee notes with interest the increasing popularity in pre-poll voting during this election. The Committee understands the pressure on candidates and some of the difficulties they encounter in staffing pre-poll voting locations. However, the Committee is eager to see greater voter participation in all elections and pre-poll voting is an important element of increasing voter participation. This issue, particularly as it relates to voter participation, is discussed further in Chapter 5.

Councillor Wages

4.70 Another aspect of local government that was seen as a potential barrier for people who wanted to stand was the salary for a councillor. Some stakeholders suggested that it was not high enough to make standing for election a viable option.

4.71 It was submitted to the Committee that the current remuneration for councillors in the Mid-Western Regional Council, which is \$10,000 per year plus at cost reimbursement of expenses is too low for candidates who do not have alternative sources of income.¹³⁰ The Mid-Western Regional Council told the Committee that:

Any community spirited person with limited resources could never have a chance to fully participate in Council and local democracy if they are not adequately compensated for their time and effort.¹³¹

¹²⁷ Bankstown City Council, Submission 70, at p3

¹²⁸ Fairfield City Council, Submission 65, at p5

¹²⁹ For example, Mr Peter Doyle, Manager, Executive Services, The Hills Shire Council, *Transcript of Evidence*, 19 August 2013, p32; Cllr Christine Forster, Councillor, City of Sydney; and Mr Peter Coulton, Director of Corporate Services, Local Government NSW, *Transcript of Evidence*, 16 September 2013 p23 and p29 respectively.

¹³⁰ Mid-Western Regional Council, Submission 59, at p3

¹³¹ Mid-Western Regional Council, Submission 59, at p3

4.72 The Greens also noted that 'councillor allowances are based on the council's size and presently range from roughly \$7,500 to \$25,000 annually with most councillors receiving no more than \$16,000'. They claimed that this is preventing people from running for office as they are unable to make the financial sacrifices necessary. As such, they recommended a wage increase for councillors based on an estimated work load of three days a week and that this be funded by the NSW Government.¹³²

4.73 Conversely, an existing councillor disagreed with the suggestion that the role should become full-time and attract higher pay. It was his argument that candidates are aware of the current situation and should be prepared to accept it if they wish to stand. He further argued that councillors can also rely on the council staff for support.

I don't support Councillors seeking to become full time nor the lobbying for commercial rates of pay. Serving your community is just that, service. If Councillors think the role is underpaid, then don't nominate ... Any argument for specific expertise overlooks why Councils have highly paid executive and employ consultants to provide just that.¹³³

Committee Comment

4.74 The Committee appreciates that councillors are often remunerated at rates that do not adequately reflect their time and effort in the job. The Committee is also aware that a higher wage would undoubtedly attract a wider pool of candidates given the larger monetary incentives on offer.

4.75 However, the Committee does not agree that this is an appropriate avenue of overcoming barriers to candidate participation, especially when there are other methods to consider. Election to office is a civic privilege and remuneration should be a secondary consideration when considering whether to nominate or not. Further, the role of a councillor is not a full time position, and wages should reflect this.

Countbacks

4.76 When a seat in a council becomes vacant, the vacancy is filled by holding a by-election. If this vacancy and by-election occurs shortly after the original election it was seen as a further impost on candidates who may be unable to allocate the time or resources to stand for election again.

4.77 An option presented to the Committee was to implement the system of a countback to fill casual vacancies. In this situation, the vacant seat is filled using the polling figures from the original election and the candidate with the largest vote who did not gain a seat fills the vacancy.

4.78 In support of the countback system, the Committee received evidence that Victoria, Tasmania and the ACT elect councils by proportional representation in a

¹³² The Greens, Submission 63, at p9

¹³³ Cllr Ian Scandrett, Submission 24, at p1

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similar manner to NSW (i.e. where there are two or more councillors to be elected in a council or a ward) and they fill vacancies using a countback.¹³⁴

4.79 Further information on the system used in Victoria is provided by the Victorian Electoral Commission:

Countbacks occur for local councils when the vacancy to be filled is in a multi-councillor ward or unsubdivided municipality. It must be six months or more until the next local council election day.

Voters do not need to vote again in a countback as the ballot papers from the previous election are used.

In a countback, votes for the vacating councillor from the last election are redistributed to unsuccessful candidates according to the voters' preferences. A candidate who receives more than 50% of these votes is declared elected. If no candidate receives more than 50% of the vote, the candidate with the least votes is excluded and their votes are also redistributed. This process continues until a candidate can be declared elected.¹³⁵

4.80 The Committee was further advised of some of the benefits of a countback rather than a by-election. In some cases, it was argued that conducting by-elections can lead to unfair representation, especially for minor parties. If a position becomes vacant that was held by an independent candidate or a candidate representing a minor party, a by-election is held and the likely outcome is that a party with large support will win the seat. This leaves minor views unrepresented. For that reason, it was suggested that a countback is a fairer method of filling a vacancy as the original votes cast will elect the 'replacement' councillor.¹³⁶

4.81 The Greens also supported the introduction of a countback method, recommending:

That a count-back method be introduced for the filling of any casual vacancies that may occur during the period between council elections.¹³⁷

4.82 When the issue of conducting a countback rather than holding a by-election was raised with various councils, many were in favour. They told the Committee that by-elections were a very costly process and that electors can suffer from 'election fatigue' due to the number of elections for the different levels of government.¹³⁸ Primarily, however, the view of most councils was echoed by Penrith City Council which told the Committee that they would prefer to avoid the costs of a by-election:

¹³⁴ Cllr Clinton Mead, Submission 43, at p4

¹³⁵ Victorian Electoral Commission, Countbacks, <https://www.vec.vic.gov.au/Vote/vote-about-countback.html> accessed 3 March 2013.

¹³⁶ Cllr Clinton Mead, Submission 43, at p2

¹³⁷ The Greens, Submission 63, at p8

¹³⁸ Cllr Christine Forster, Councillor, City of Sydney, *Transcript of Evidence*, 16 September 2013, at p26

Given that a by-election could cost \$200,000 to \$300,000, we would be very happy with a countback procedure.¹³⁹

- 4.83 Representatives of the Local Government and Shires Association (as it was then known) were also supportive of the introduction of a countback system given that it takes into account the original votes cast. They advised the Committee that:

If we go on the countback system it is still a fair result of whereabouts they might have voted before. So I think it is a fair result all the way round and I think that the people you have got to think of is not so much the councillors but the community, the cost to them, and their acceptance of what we are trying to do through local government instead of putting more and more impost onto them.¹⁴⁰

- 4.84 Some concerns were raised with the Committee that candidates may no longer wish to stand for election or may no longer be eligible.¹⁴¹ However, in such circumstances in jurisdictions which operate a countback system, the potential candidates are informed of the vacancy and asked to provide a written declaration that they are still willing and able to hold office.

- 4.85 It was also suggested to the Committee that a time limit could be imposed when a countback occurs. The Shires Association recommended that if the vacancy occurs later than '12 months following that election ... the people have the right to go back to the polls'.¹⁴²

- 4.86 According to the Shires Association, one of the major reasons for this was to ensure that 'people who may not have been eligible to stand, particularly young people, may after 12 months certainly be reconsidering their positions'.¹⁴³ It was highlighted that this was particularly relevant should young people be considering standing for election:

That is an important factor, particularly as local government is trying very hard to attract young people and much more diversity to the councils of New South Wales.¹⁴⁴

Committee comment

- 4.87 The Committee notes the amount of time and resources that councils spend on running a by-election should a position become vacant. In the view of the Committee, this is an unnecessary procedure should the vacancy arise within a certain time following the original election. Given that the countback system has been introduced in a number of other jurisdictions and continues to be used, this appears to be a viable option for casual vacancies that arise in local government in NSW.

¹³⁹ Stephen Britten, Chief Governance Officer, Penrith City Council, *Transcript of Evidence*, 19 August 2013, at p37

¹⁴⁰ Kevin Schreiber, Treasurer, Local Government Association, *Transcript of Evidence*, 16 September 2013, at p29

¹⁴¹ Peter Coulton, Director of Corporate Services, Local Government NSW, *Transcript of Evidence*, 16 September 2013, at p28

¹⁴² Maria Jane Woods, Councillor, Shires Association, *Transcript of Evidence*, 16 September 2013, at p28

¹⁴³ Maria Jane Woods, Councillor, Shires Association, *Transcript of Evidence*, 16 September 2013, at p28

¹⁴⁴ Maria Jane Woods, Councillor, Shires Association, *Transcript of Evidence*, 16 September 2013, at p28

- 4.88 The Committee recognises the concerns that voters, particularly newly eligible voters, may have had an opportunity to reconsider their views and may exercise their vote differently. For this reason, should the vacancy arise 18 months after the original election, it would be preferable to conduct a by-election as is currently the case.

RECOMMENDATION 9

The Committee recommends the introduction of a countback system, modelled on the one currently operating in Victoria, as an option for councils when casual vacancies arise within 18 months of the original election in lieu of a by-election.

Chapter Five – Voter Participation

- 5.1 This Chapter considers some of the barriers to voter participation in the elections. The Committee has recognised that turnout rates for local government elections remain comparatively lower when compared to State and Federal elections, and that civic engagement with electors still remains an issue in some respects. This Chapter examines some ways of promoting voter participation, including different methods of voting to maximise voter accessibility, and new ways of ensuring voter awareness.

Voter Turnout

- 5.2 One of the longstanding issues that requires review and consideration is that voter turnout is often lower when compared to turnout for State and Federal elections. This is despite the fact that enrolling to vote, and attending to vote, is compulsory under section 286 of the *Local Government Act 1993*.
- 5.3 Specifically, enrolling to vote and presenting at a polling place on election day are compulsory for people who are 18 years of age or over, carry Australian citizenship (or British subjects in certain circumstances), and have been living at their present address for at least the last month.
- 5.4 The statewide roll ahead of the 2012 elections was 4.8 million, an increase from 4.63 million prior to the State election 18 months earlier.
- 5.5 To promote enrolment, the Electoral Commission advised that it conducted ‘advertising campaigns and other communication strategies during the election period.’ This involved advertising in press and radio in metropolitan, regional, rural areas and in Aboriginal media, as well as in community press that covered 76% of non-English speaking individuals.¹⁴⁵
- 5.6 As advised by the Electoral Commission:
- Participation and informality rates provide a measure of the engagement of the community with the elections. The community’s views on the value of participating in democratic processes reflect a range of issues including perceptions of political options. These issues are not under the direct control of the Electoral Commission.¹⁴⁶
- 5.7 Across NSW, the overall participation for the 2012 elections was 82.1%, compared with 83.4% in the 2008 elections. As noted by the Electoral Commission, while this appears to be slightly lower, methodological issues make strict comparisons difficult.¹⁴⁷
- 5.8 Further data provided from the Electoral Commission’s Report found that 12.9% of all electors failed to vote in the 2012 elections. Non-voter rates ranged from

¹⁴⁵ Electoral Commission NSW, *Report on the Local Government Elections 2012*, at p49

¹⁴⁶ Electoral Commission NSW, *Report on the Local Government Elections 2012*, at p49

¹⁴⁷ Electoral Commission NSW, *Report on the Local Government Elections 2012*, at p30

7.9% in Weddin Shire Council to 37.1% in the Council of the Shire of Wakool (although only one ward was contested in that election). Interestingly, the Council of the City of Sydney had the second highest non-participation rate at 25.5%.

Committee Comment

- 5.9 The reasons for failure to vote are multifaceted. Given local government elections do not attract the same media and political attention when compared with State and Federal elections, a key driver in the high rate of a failure to vote may be the lack of awareness that an election was underway.
- 5.10 Issues concerning 'election fatigue' may also be responsible for suppressing voter turnout, given repeated elections at different tiers of government, together with the possibility of mid-term by-elections at an electorate or ward level.
- 5.11 In any case, voter turnout still remains considerably high and there is no evidence to suggest that voter engagement is a systemic issue warranting urgent action.
- 5.12 However, the Committee is always mindful of ways to engage with voters who fail to vote, in particular because of a lack of awareness that an election was being held, or because of lack of accessibility and ability to participate in the election.
- 5.13 The Committee notes the various strategies employed by the Electoral Commission to maximise voter awareness ahead of the 2012 elections. In particular, the Electoral Commission has paid careful attention to people from regional and remote areas, people with disabilities, people from across a range of culturally and linguistically diverse backgrounds, and young and first time voters.

Voter Awareness

- 5.14 To prepare ahead of the 2012 elections, the Electoral Commission published various information material in a variety of formats to promote voter awareness. These publications were both of a general nature, as well as being tailored specifically to a demographic cohort that the Electoral Commission was targeting.
- 5.15 For example, to reach out to electors from culturally and linguistically diverse backgrounds, a pamphlet that provided instructions on 'how to vote' was published in 20 community languages on the Electoral Commission's website. This was in addition to newsletters in community languages distributed through the Community Relations Commission's EmailLink, instructions for voting in specified languages in 15 diverse areas, and 'I speak [language]' stickers for multilingual staff to promote visibility in highly diverse areas.
- 5.16 Similar information was produced for electors with a disability by providing information brochures and other material in accessible formats. This included English in large print, Braille, audio clips, and Auslan clips, and this material was distributed as required. Easy Read Guides were also printed and distributed for electors with an intellectual impairment.
- 5.17 For Aboriginal and Torres Strait Islander voters, there was an emphasis on encouraging Indigenous people to work at the election, customised instructions

for voting, and posters for polling places with a high Indigenous population promoted with traditional Aboriginal colours and voting messages.

- 5.18 The Electoral Commission also established an Elector Enquiry Centre to ensure that 'relevant, timely and specific information was available to all electors' and to take the pressure off councils from receiving too many calls. The Elector Enquiry Centre was operational from 6 August 2012 until Friday 14 September 2012, one week after the elections.
- 5.19 The *Parliamentary Electorates and Elections Act 1912* was also amended in 2012 to allow voters for the first time to 'enrol and vote' at either pre-poll or on polling day. Upon establishing an appropriate proof of identity, electors were able to cast a declaration vote, declaration votes being those that are scrutinised for validity before being accepted into the count.

Committee Comment

- 5.20 The Committee notes that the most useful gauge of assessing voter awareness of local government elections is the final turnout figure. On this point, a turnout of 82.1% is a commendable figure and one that, at the very least, demonstrates at least the same number were aware of the elections taking place. The remaining voters were either unaware of elections taking place, or aware but chose not to vote.
- 5.21 The Committee commends the efforts in promoting voter awareness of the elections, including the significant efforts by the Electoral Commission, by individual councils, and by candidates themselves. While the turnout figures do appear to be declining marginally, the trends are not large enough to cause concern at this stage.
- 5.22 However, the Committee supports the Electoral Commission's ongoing engagement functions and trusts such outreach will continue ahead of future elections to ensure turnout does not become an issue of concern. In particular, the Committee commends the approach taken by the Electoral Commission is in targeting a range of community groups in which voter participation may otherwise be an issue of concern.

Voter Accessibility

Postal Voting

- 5.23 Postal voting is currently available as an alternative method of voting for voters who meet certain criteria which render them unable to attend a polling booth or pre-poll voting centre. The *Local Government (General) Regulation 2005* provides a detailed list of requirements for a person to be qualified to cast a postal vote at a local government election.
- 5.24 These requirements include, amongst other things: distance from a polling station; illness or disability; religious reasons; work or carer commitments; or silent electors or any other reason that may put the person in danger.¹⁴⁸

¹⁴⁸ *Local Government (General) Regulation 2005*, cl 313

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- 5.25 In preparation for postal voting at the 2012 elections, the Electoral Commission implemented a centralised postal voting centre – all postal vote applications were processed at the centre and postal vote ballot packs were sent directly to the elector. Political parties were also able to distribute their own postal vote applications to constituents. All postal vote applications had to be received by the Monday ahead of the elections. Meanwhile, completed postal declarations and ballot papers had to be received by the Monday following the election in order to be eligible to be included in the count.
- 5.26 Of the total votes cast for councillor positions, 3.5% were made as postal votes, although this only represents Commission-run elections. In any case, there was only a 3.8% rate of return on postal votes in the 2008 elections, so there is little reason to suggest the total numbers would have much higher even if postal votes from council-run elections are also included.
- 5.27 During the Inquiry, a number of participants advocated the introduction of universal postal voting as an option for the conduct of future elections in their council.
- 5.28 Universal postal voting consists of two key limbs. The first is abolishing the need for voters to have a reason why they are voting by post and opening up the franchise to cast a ballot to all enrolled electors. In order to facilitate this, existing eligibility requirements would have to be abolished. Instead, each enrolled elector would be sent a postal voting pack, which would contain ballot papers and information material, to be returned to the Electoral Commission.
- 5.29 The second limb is making a postal ballot the primary method of voting in lieu of attendance voting. This would remove the need for polling booths across churches, schools and community centres on a designated polling day.
- 5.30 On this issue, Albury City was in a unique position to provide its perspective. As a council that borders Victoria – a State which provides councils with the option of universal postal voting – it was able to provide some comparison on experiences between Albury City’s election, and the election in Wodonga City Council, just across the border.
- 5.31 In particular, Albury City submitted that the cost of running its election was higher on a per capita bases compared with Wodonga’s election due to postal voting in Victoria. As such, Albury City recommended that the *Local Government Act 1993* be changed to allow elections with postal voting for those councils who opt to use that method of election.¹⁴⁹
- 5.32 Another border council – Murray Shire Council – similarly expressed a view in relation to postal voting. Specifically, it advised the Committee that:

Victorian Local Government elections are conducted by postal vote and as we are on the border we see that their elections run smoothly with a reduced level of

¹⁴⁹ Albury City Council, Submission 62, at p62

administrative effort... By running the elections under a Postal voting system would negate some costs and help the election process run better.¹⁵⁰

- 5.33 The South-East Regional Organisation of Councils (SERO) echoed the view that an option for councils should be provided, stating:
- Councils should be provided the option of determining the most appropriate voting method for their respective areas. SEROC strongly supports Councils having the option to decide between 'Attendance Voting' or 'Postal and Online' voting.¹⁵¹
- 5.34 In considering this option, the Committee turned its attention to the experience in Victoria, as a model that may be suitable for adoption and adaptation in NSW. Under section 41A of the *Local Government Act 1989 (Vic)* provides that a council may decide that all voting at an election or at a poll of voters is to be by means of postal voting.¹⁵²
- 5.35 If a council makes such a decision, the relevant returning officer must publically notify the format and conduct of the election, together with distributing to each voter various election material. This includes: a postal vote certificate or declaration; ballot paper; prepaid envelope for return of certificate or ballot paper; instructions on how to vote; information on voting deadlines; and any other useful material.¹⁵³
- 5.36 At Victoria's recent local government elections, also held in 2012, some 70 of 78 councils decided that all voting in that council area will be conducted by post. This significant uptake, which has progressively increased following its introduction in 1994 and has since plateaued, demonstrates the interest and willingness for councils to partake in postal voting.
- 5.37 In evidence received at the Committee's public hearing of 28 February 2014, the Victorian Electoral Commissioner, Mr Warwick Gately, advised the Committee of the basic process that underpins Victoria's electoral system.
- 5.38 A key benefit of councils undertaking universal postal voting has been the correlation with voting procedure and turnout rates, with an evident increase in the turnout for those councils that undertake universal postal voting.
- 5.39 In particular, the Victorian Electoral Commissioner has advised the Committee that the turnout in councils with postal elections in the 2012 elections was 72.53%, compared to 63.62% for those councils in which attendance elections were conducted.¹⁵⁴
- 5.40 The Victorian Electoral Commissioner has speculated on the reasons for this, providing his observations as follows:

¹⁵⁰ Murray Shire Council, Submission 10, at p1

¹⁵¹ South-East Regional Organisation of Councils, Submission 35, at p35

¹⁵² *Local Government Act 1989 (Vic)*, s41A(1)

¹⁵³ *Local Government Act 1989 (Vic)*, s41A(2)

¹⁵⁴ Warwick Gately, Victorian Electoral Commissioner, *Transcript of Evidence*, 28 February 2014, at p3

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I think the principal factor is one of convenience to the elector where a postal voting package which contains significant material is sent to each elector. That contains not only the ballot papers but also the candidate statements, quite clear instruction sheets on how to complete that postal vote and all the material necessary to return it to the Victorian Electoral Commission and have it entered into the count.¹⁵⁵

- 5.41 The Committee was also advised of an incidental benefit of postal voting being that each candidate could potentially receive an equivalent amount of exposure through the voting pack material.¹⁵⁶
- 5.42 At the Committee's hearing with select councils, the question of postal voting was put and received with widespread support. Most councils recognised the substantial cost savings, the reduced burden on council staff, as well as the likelihood of maximising voting flexibility.
- 5.43 The Victorian Electoral Commission advised that the average cost per postal vote is \$4.00 compared with the average cost per attendance vote at \$4.80. This represents a saving exceeding 16%. If replicated in NSW, the cost imperative alone will be a significant incentive for councils to opt for postal voting.
- 5.44 The option of postal voting was also supported by the main providers of electoral services in NSW. In evidence he gave to the Committee, the Electoral Commissioner stated:

Another innovation that I would like to turn to and that I have previously recommended to the Committee is that the Government give councils a chance to choose to conduct their elections entirely as postal elections. This will save on the cost of the elections and be one solution to the inability to vote absentee as everybody on the roll will receive their ballot papers. I submit that the Committee consider this option and recommend that the legislation be amended to provide councils again with the choice, not mandating it, but give them the choice. There are a number of models around Australia for universal postal voting at local government elections.¹⁵⁷

- 5.45 Similar views were expressed by the Australian Election Company, in which the Principal stated:

I have also said in our submission that postal voting could be offered more generally. The step beyond postal voting is to scan the returns and the ballot papers to derive quick results. Small councils would, perhaps, benefit from having postal voting. As soon as the election nominations are closed the ballot papers are printed. The electors are sent ballot material to enable them to vote by post. That would be a lot cheaper for councils.¹⁵⁸

- 5.46 This proposal has also received support from the Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*. Specifically, the Taskforce stated that:

¹⁵⁵ Warwick Gately, Victorian Electoral Commissioner, *Transcript of Evidence*, 28 February 2014, at p3

¹⁵⁶ Elizabeth Williams, Victorian Electoral Commission, *Transcript of Evidence*, 28 February 2014, at p3

¹⁵⁷ Colin Barry, Electoral Commissioner, *Transcript of Evidence*, 26 August 2013, at p14

¹⁵⁸ Richard Kidd, Principal, Australian Election Company, *Transcript of Evidence*, 26 August 2013, at p5

... [it] is satisfied that councils are best placed to choose whether to use universal postal or attendance voting. Councils can satisfy themselves as to cost savings, efficiencies and voter acceptance when reaching a decision as to the appropriate method of voting. The Taskforce accepts that 'one size does not fit all' and notes that councils already have responsibility for deciding whether they will manage the election in-house or contract out the process.¹⁵⁹

- 5.47 It should also be noted that these views are a restatement of the recommendations of the previous Committee in its Report on the *2008 Local Government Elections*. Specifically, that Committee recommended that the *Local Government Act 1993* be amended to allow elections with universal postal voting for those councils who opt to use that method of election. The Committee continues to support this proposal.

Committee Comment

- 5.48 The Committee recognises that postal voting would provide a cheaper alternative to attendance voting in certain local government areas, particularly in rural and regional parts of NSW. Given the significant concern raised by councils at the high and increasing costs of conducting the elections, it is important to canvass lower cost alternatives.
- 5.49 On this proposal, there appears to be sufficient support from councils to shift to an option of a postal vote system, whereby those councils that wish to offer postal voting in lieu of attendance voting, are able to do so. This would involve abolishing the existing eligibility criteria that must be met before a postal vote can be cast. There is also broad support from the Electoral Commission, the Australian Election Company, and the Local Government Acts Taskforce.
- 5.50 The Committee notes that in Victoria, postal voting has been available for many years, and has largely been considered successful. To this end, the Committee considers that the Victorian model may be suitable for adoption and adaptation to NSW.

RECOMMENDATION 10

The Committee recommends that the Government abolish the existing eligibility requirements with respect to whether an elector is qualified to cast a postal vote.

RECOMMENDATION 11

The Committee recommends that each council be granted the option to conduct its elections via a postal ballot in lieu of attendance voting on a designated polling day.

Pre-poll Voting

- 5.51 Currently, pursuant to clause 321 of the *Local Government (General) Regulation 2005*, there are a number of qualifications which must be met before a person is entitled to vote before polling day. The majority of these qualifications cover

¹⁵⁹ Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*, October 2013, at p34

those people who will be unable to attend a polling place where they are entitled to vote on the day of the election. For example due to being out of the area or having significant difficulty in reaching a polling place. As noted earlier, the current pre-poll period is set at two weeks.

Committee Comment

- 5.52 Given this report's previous recommendation that alternative voting methods be adopted in lieu of attendance voting on one specified day, it is imperative that the timeframe in which to be able to cast a vote be reasonably lengthy to ensure maximum voter participation.
- 5.53 Casting a pre-poll ballot involves voting at a handful of designated polling places in a stipulated two-week period. This differs from attendance voting on a designated polling day insofar that attendance voting involves a much larger number of polling places with most voting taking place within a 10 hour period on a particular Saturday.
- 5.54 While the method and process of casting a pre-poll ballot is, in effect, identical to casting an attendance ballot, a key difference remains that voting takes place in more limited venues but within a lengthier timeframe.
- 5.55 On this point, the Committee reiterates its support for the current two-week pre-poll period at which electors can present at a designated polling place and cast a ballot. The Committee is of the opinion that there needs to be multiple avenues for which to cast a ballot in order to maximise voter participation, and that maintaining a pre-poll voting alternative is an important voting option.
- 5.56 On the assumption that postal voting is adopted, a pre-poll voting alternative can also provide individuals without a permanent address to which a postal pack can be sent, the opportunity to still cast a ballot. This would include people who rent, other people who are likely to move address frequently in between electoral cycles without updating their enrolment data, and people with no fixed address, particularly the homeless.
- 5.57 As such, the Committee considers it appropriate that the current eligibility criteria that an elector must meet before being able to cast a pre-poll ballot be abolished. This would open up the pre-poll franchise to all enrolled electors without first requiring a reason. This again maximises the options available to the voting public and promotes wide voter accessibility.

RECOMMENDATION 12

The Committee recommends that the Government abolish existing eligibility requirements with respect to whether an elector is qualified to cast a pre-poll vote. Further, the Committee recommends that the Government retains the existing two week pre-poll period.

Electronic Voting

- 5.58 One of the major innovations ahead of the 2011 State Election was the establishment and implementation of a remote electronic voting system called iVote. This enables certain electors to cast a vote either through the internet, or

by calling a dedicated iVote call-centre. At present, this is for exclusive use at State Elections and subsequent State by-elections,

- 5.59 The initial impetus for the development of this system was to enable electors who are blind or vision impaired to be able to cast a vote independently and in secret.
- 5.60 Electors who apply for iVote supply a PIN and are provided with an affirmation letter confirming their application for an iVote. The elector is then supplied with an iVote Number that will enable them to access the iVote system and vote. Casting a ballot is achieved through using a telephone keypad or computer interface.
- 5.61 iVote was largely well received following the State Election. Vision Australia, one of the peak advocacy bodies for people who are blind or vision impaired, informed the Committee:
- We indicated that iVote received a wide level of support amongst those who used it, and that the incorporation of both the telephone keypad interface and the home computer interface represented a set of options which provided accessible voting for a wide diversity of people who are blind or have low vision.¹⁶⁰
- 5.62 The importance of iVote was emphasised when compared with some of the concerns raised about only having the Braille option for blind or vision impaired voters, given relatively low rates of Braille proficiency.¹⁶¹
- 5.63 While the rationale was and remains to improve democratic participation and accessibility among individuals who are blind or have low vision, legislation that was subsequently introduced expanded the list of electors eligible to use iVote in State elections. This now includes electors who are illiterate, have other disabilities, live more than 20km from a polling place, or who will be interstate or overseas on polling day.¹⁶²
- 5.64 However, iVote was not available ahead of the 2012 Local Government Elections or any subsequent local government by-election and, as far as the Committee is aware, there are no plans currently afoot to introduce it ahead of the 2016 elections.
- 5.65 Submissions on this matter were thin in number and content, with a greater emphasis by stakeholders on other methods of enhancing voter participation, principally by postal voting.
- 5.66 However, where stakeholders did provide comment to the Inquiry on iVote, support for its extension into the local government sphere was generally widespread. The Committee is satisfied that on the evidence available, iVote has largely been a success. Everyone Counts, an electoral service provider, informed the Committee:

¹⁶⁰ Vision Australia, Submission 60, at p7

¹⁶¹ Vision Australia, Submission 60, at p7

¹⁶² *Parliamentary Electorates and Elections Act 1912*, s120AB

Our experience shows that projects such as iVote have brought many benefits and greater voter participation to State elections. Everyone Counts believes that iVote should be made available to any local government that chooses to implement it and realise the benefits to both election administrators and voters.¹⁶³

5.67 The South East Regional Organisation of Councils made the following observations:

The Allen Consulting Group carried out an evaluation of the technology on behalf of the NSW State Government and found that the take-up of the iVote system was highly successful. The actual number of users was in the order of four times the original estimates. Registrations and votes received from people in remote or rural areas exceeded original take-up estimates by almost three fold. It was found that the system had been effective in meeting its aims and additionally, it has been successfully demonstrated to work and be appropriate in a real election environment.¹⁶⁴

5.68 The Greens similarly noted:

Online voting has proved to be a success at NSW State elections. Its extension to Local Government elections should be made a priority. If additional funding is required by the Electoral Commission this should be provided.¹⁶⁵

5.69 Other political parties have similarly supported for extending iVote accessibility. In a submission to a previous Inquiry, Labor expressed the view that:

The larger than expected volume of iVotes cast at the 2011 NSW Election suggests that this system is helping more electors to cast a vote. NSW Labor is of the view that the iVote system should be extended to the 2012 Local Government Elections in NSW.¹⁶⁶

5.70 The Nationals have also expressed its satisfaction at the operation of iVote in an earlier submission to Committee, although did not refer specifically to local government elections. It has stated:

On the whole, the expansion of the iVote system looks to be successful, and as it is refined will be of immense value to those electors who are unable to attend polling booths.¹⁶⁷

5.71 Support for iVote is not limited to the political parties, as it has received endorsement from within Government itself. In its Report to the Minister for Local Government entitled '*A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*', the Local Government Acts Taskforce commented that:

¹⁶³ Everyone Counts, Submission 41, at p3

¹⁶⁴ South East Regional Organisation of Councils, Submission 35, at p2

¹⁶⁵ Greens NSW, Submission 63, at p17

¹⁶⁶ Australian Labor Party (NSW Branch), Inquiry into the Administration of the 2011 NSW Election and Related Matters, at p3

¹⁶⁷ NSW Nationals, Submission 11, Inquiry into the Administration of the 2011 NSW Election and Related Matters, at p4

There was strong interest by those who made submissions for the early adoption of technology assisted voting, or iVoting, as an alternative to attendance voting. Local Government could be used as a pilot project for early introduction of early electronic voting to reduce costs and potentially improve voter convenience and accessibility.¹⁶⁸

- 5.72 In its report on the *Inquiry into the Administration of the 2011 NSW Election and Related Matters*, this Committee declined to comment on whether iVote should be extended for the 2012 Local Government Elections as it did not fall within the terms of that Inquiry. The Committee did, however, reserve the right to comment at a later stage on any proposal to extend the iVote option.

Committee Comment

- 5.73 This Committee has recommended a number of ways of maximising voter participation and elector accessibility in local government elections. This has included retaining the current two week pre-poll period, and extending the postal voting to one of universal franchise should councils resolve to do so.
- 5.74 In line with these recommendations, the Committee considers it sensible, appropriate and timely that the Government enable all electors the ability to cast a technology-assisted ballot, through an iVote, for the 2016 Local Government Elections.
- 5.75 At present, iVote is only provided for eligible electors for State elections and State by-elections. To ensure consistency across the different methods of voting, the Committee considers it appropriate that changes are made to bring the provisions for casting an iVote ballot in the local government elections in line with the recommended provisions for casting a postal vote without restrictions.
- 5.76 Allowing for universal iVote to work in tandem with postal voting will give many electors an alternative to vote by using their preferred method. In enabling these options, voter participation in the electoral process is likely to increase through greater accessibility to voting.
- 5.77 While the Committee acknowledges that, at present, this only extends to discrete classes of electors, the Committee would welcome an extension of the iVote franchise to include all electors.

RECOMMENDATION 13

The Committee recommends that the Government extend technology-assisted voting (or iVote) to be available to all electors ahead of the 2016 Local Government elections and subsequent State Elections. The Committee recommends that there is an independent software review and report on the integrity of iVote systems prior to implementation.

¹⁶⁸ Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*, October 2013 at p34

Chapter Six – Non-residential Voting

- 6.1 An aspect of the 2012 local government elections was the participation of non-residential voters. This chapter considers the experience of non-residential voters in the City of Sydney and other councils across the State. It will examine current options available to non-residential voters, and the experience of councils and electors in this area in the 2012 local government elections.

The Non-residential Roll of Electors

- 6.2 The roll of electors for each council or ward is a composite roll comprising two key segments – the residential roll and the non-residential roll.
- 6.3 Electors include residents, as well as ratepayers who may reside outside the local government area. The *Local Government Act 1993* sets out the provisions for non-residential voting for all councils other than Council of the City of Sydney. Non-residential voting in the City of Sydney is provided for under separate legislation. The situation in the Council of the City of Sydney is discussed later in this chapter.
- 6.4 Under sections 299 and 300 of the *Local Government Act 1993*, the general manager of a council is required to prepare a roll of non-resident owners of rateable land, and a roll of occupiers and ratepaying lessees who are eligible to vote in local government elections (the ‘non-residential roll’). These lists are then confirmed by the Electoral Commissioner, or the general manager, depending on who is managing the election. This gives electors who pay rates to the council on property they own but do not occupy, and those who occupy or lease property in a council area, the opportunity to participate in local government elections.
- 6.5 The main rationale for this is that the rates from non-residential owners or ratepayer lessees generally constitute a substantial proportion of council revenue. As such, those ratepayers should be granted a say in how that revenue is to be spent on the services in which they help fund.
- 6.6 There are two key differences between the residential roll and the non-residential voter rolls. The first is that the non-residential voter rolls lapse after the election for which they are prepared. The second is that the non-residential roll consists only of the names of those voters who have applied for their inclusion on those rolls prior to an election.
- 6.7 These enrolled voters have the option of casting a vote in the elections. It is important to note that voting is not compulsory for those enrolled on the non-residential roll or the roll of occupiers and ratepaying lessees, except for the City of Sydney where voting is mandatory once enrolled.¹⁶⁹
- 6.8 The roll of electors for an area is created through a combination of the residential roll and the non-residential voter rolls and there are provisions in place to ensure that a person may not, in respect of the same ward, be enrolled more than once

¹⁶⁹ *Local Government Act 1993*, s286

in a roll of electors.¹⁷⁰ As noted by the Electoral Commission though, ‘an individual can vote once in one council as a resident and vote again in another council area as a rate payer’.¹⁷¹

Non-residential Voting in the 2012 Local Government Elections

- 6.9 Aside from the City of Sydney, the participation of non-residential voting was limited or non-existent in the majority of council areas. 32 councils reported as not having any enrolments on their non-residential roll and many others, particularly in rural and regional areas, reported only one or two enrolments.¹⁷²
- 6.10 During one of its public hearings, the Committee canvassed the limited extent of non-residential enrolment uptake. Albury City Council advised that ‘It was a very low take-up’.¹⁷³ Similarly, Bankstown City Council stated that they ‘have, traditionally, a very small non-residential roll’.¹⁷⁴ When precise numbers were sought as to how many individual were on the non-residential roll, the answers were generally in single digits.
- 6.11 This low uptake had been a concern of some stakeholders, including the NSW Business Chamber which submitted that:
- ... the process currently involved in enrolling for local elections means that many businesses are effectively shut out from voting. The Chambers are very concerned that the number of businesses participating in local government elections has dropped sharply over recent years and believes this trend must be reversed as a matter of priority.¹⁷⁵
- 6.12 The Greens argued that non-residential business owners, landlords and corporations ‘already have sufficient capacity to influence local affairs without distorting the council voting system by granting them additional votes’.¹⁷⁶ As such they recommended that only residents of a local government area be eligible to vote and stand as candidates.

Committee Comment

- 6.13 The Committee is of the opinion that the non-residential roll should remain open to all non-residential ratepayers and ratepaying lessees. As a significant contributor to council revenue, it is important that all ratepayers are afforded some level of participation in local government elections.
- 6.14 The Committee also notes that given the low numbers of non-residential enrolment, the cost of maintaining and updating the roll should be minimal at most.

¹⁷⁰ *Local Government Act 1993*, s301, s304

¹⁷¹ Electoral Commission NSW, *Report on the Local Government Elections 2012*, at p59

¹⁷² Electoral Commission NSW, *Report on the Local Government Elections 2012*, at p60 and Appendix H

¹⁷³ Judy Charlton, Director, Corporate Services, Albury City Council, *Transcript of Evidence*, 19 August 2013, at p39

¹⁷⁴ Rachel Symons, Team Leader Executive Services, Bankstown City Council, *Transcript of Evidence*, 19 August 2013, at p39

¹⁷⁵ NSW Business Chamber, Submission No 73, at p2

¹⁷⁶ The Greens NSW, Submission 63, at p8

- 6.15 In the absence of further material concerning the abolition of the non-residential roll, the Committee is satisfied with the current arrangements. However, to address the issues raised, the focus should be on increasing non-residential voter participation, rather than abolishing the franchise. These issues are canvassed below.

Barriers for Non-residential Voters

- 6.16 The Committee noted that there were two key factors that were suppressing the non-residential vote. The first factor is a relative lack of awareness about the ability for non-residential voters to be able to cast a ballot. The second factor relates to various issues around the process of non-residential enrolment, which has been described as cumbersome and unnecessarily complex.

Enrolment Awareness

- 6.17 Turning to the first issue of non-residential voter awareness, the Electoral Commission advised that it employs various strategies to boost non-residential enrolment.
- 6.18 This included the scheduling of general press advertising regarding the non-residential roll, information on the Electoral Commission's website including provisions for enrolment qualification, and an application form template for council use.
- 6.19 These strategies were adopted following the previous Committee's recommendation in its report on the *2008 Local Government Elections* that the Electoral Commissioner 'provides information to councils on strategies to improve enrolment levels in relation to non-residential electors'.¹⁷⁷ The Committee further recommended that the Electoral Commission 'continue to provide support for publication of information relating to the non-residential roll via the Electoral Commission's website'.¹⁷⁸

Committee Comment

- 6.20 The Committee recognises the efforts of the Electoral Commission in promoting awareness of the non-residential roll. While more can always be done, the Committee is mindful that the Electoral Commission must spend finite funds and resources responsibly, and with reference to other priorities. As such, the Committee is satisfied with the current strategies adopted by the Electoral Commission in this regard.

Enrolment Application Process

Application Form

- 6.21 Councils submitted that non-residential voting would be more popular should the process be made simpler. If this did not occur, there was a risk the barriers to voting would deter non-residential ratepayers from enrolling.

¹⁷⁷ Joint Standing Committee on Electoral Matters, *2008 Local Government Elections*, June 2010, at p57

¹⁷⁸ Joint Standing Committee on Electoral Matters, *2008 Local Government Elections*, June 2010, at p57

6.22 Randwick City Council stated that, ‘the current enrolment process is inefficient and ad-hoc and is severely restricting the participation of local businesses in the democratic process’.¹⁷⁹

6.23 The Liberal Party of NSW commented about inconsistent practices with respect to the non-residential roll, noting that:

The complex and unstandardised nature of reenrolment procedures has effectively disenfranchised an important voting community.¹⁸⁰

6.24 The NSW Business Chamber expressed similar sentiments, commenting that:

The Chambers are concerned that the inefficient and ad-hoc enrolment process is severely restricting the participation of local businesses in the democratic process.¹⁸¹

6.25 The Electoral Commission advises that, as part of its consultation process with councils, there is a non-residential application form template that councils were encouraged to customise and display prominently on its websites for use by potential applicants.¹⁸²

Committee Comment

6.26 The Committee is of the view that this process should be reviewed to be made simpler so that those entitled to be on the non-residential roll could gain access.

Lapsing of the Roll

6.27 A significant irritant for many stakeholders was the automatic lapsing of the non-residential rolls following each election. Under sections 299 and 300 of the *Local Government Act 1993*, both the non-residential roll and roll of occupiers and ratepaying lessees lapses for the election for which it was just prepared. This means that potential electors are required to reapply ahead of every election.

6.28 The requirement to re-enrol ahead of each election has been seen as an impediment to elector numbers on the roll, and therefore a suppresser of eventual voter turnout.

6.29 The NSW Business Chamber advised the Committee that:

... the requirement for non-residential and rate-paying lessee electors having to re-enrol at each and every local government election in which they participate has been regularly identified as a source of major frustration with members of the Chamber.¹⁸³

6.30 This view was shared by the Liberal Party of NSW which recommended to the Committee that:

¹⁷⁹ Randwick Shire Council, Submission 76, at p3

¹⁸⁰ Liberal Party of Australia – NSW Division, Submission 74, at p2

¹⁸¹ NSW Business Chamber, Submission 73, at p2

¹⁸² Electoral Commission NSW, *Report on the Local Government Elections 2012*, at p59

¹⁸³ NSW Business Chamber, Submission 73, at p3

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... [there] is an overhaul of the non-resident voter enrolment system to require compulsory enrolment and ongoing maintenance of the rolls across the State, pursuant to strict standardised guidelines.¹⁸⁴

- 6.31 Councillor Mandla from the City of Sydney also reported difficulties for non-residents caused by the lapsing of the roll:

First of all, there is no electoral roll as it gets wiped after every election so there are no reminders. A business has to figure out that it is not a business but a non-residential ratepayer. A non-residential ratepayer has a small window of between two weeks and three months before the council election in which to enrol. You cannot enrol prior to this period and if you are not enrolled more than two weeks out from the election then you will miss out.¹⁸⁵

- 6.32 To improve the situation, he recommended ‘a permanent roll where eligible non-residential voters ... are automatically enrolled’ and that the introduction of a permanent roll would ‘have to apply across the State’.¹⁸⁶

- 6.33 The Committee heard that this is the case in the City of Melbourne, where non-residential voter turnout is much higher. According to the Lord Mayor of Melbourne the non-residential roll is updated:

... continuously. People are coming on and going off ... If the State electoral roll changes, that changes the roll too because that is the first thing we take in.¹⁸⁷

- 6.34 Although comment on this issue was limited from the stakeholders, it should be noted that there was not universal agreement that the process of enrolment on the non-residential roll requires amendment. After seeking proposals from stakeholders, the Local Government Acts Taskforce concluded that there was ‘no strong case to change’ to the present enrolment processes, with the notable exception of the City of Sydney.¹⁸⁸

Committee Comment

- 6.35 The Committee notes the concerns raised by various stakeholders with respect to various aspects of the non-residential roll process. Particular mention has been made of the enrolment application form and the lapsing of the non-residential roll following each election.
- 6.36 The Committee notes that these issues should not be significant impediments for businesses and other non-residential ratepayers to participate in the elections, if they wish to do so.
- 6.37 However, the Committee agrees that the lack of a uniform process means that there are potentially 152 different application forms unique to each council.

¹⁸⁴ Liberal Party of Australia – NSW Division, Submission 74, at p2

¹⁸⁵ Cllr Edward Mandla, City of Sydney, *Transcript of evidence*, 16 September 2013, at p13.

¹⁸⁶ Cllr Edward Mandla, City of Sydney, *Transcript of evidence*, 16 September 2013, at p13 and 14.

¹⁸⁷ Rt Hon Robert Doyle, Lord Mayor of Melbourne, *Transcript of evidence*, 28 February 2014, at p14.

¹⁸⁸ Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*, October 2013, at p35

- 6.38 To ameliorate this possible issue, the Committee refers to the template devised by the Electoral Commission as a model that all councils should customise and adopt, in the interests of uniformity across the State.
- 6.39 Lastly, the Committee believes that this roll should not be wiped following each election and should be made permanent in the same manner as the residential roll.
- 6.40 In any case, given that for most councils, the numbers of non-residential electors on the roll was in single digits, it does not appear to be a challenge for councils to maintain this document in between elections.

RECOMMENDATION 14

That the Government amend the Local Government Act to provide for permanency of the non-residential roll across all NSW Councils so that electors are not required to re-apply for inclusion prior to each election.

City of Sydney

- 6.41 The provisions for enrolments for the City of Sydney are found under section 15 of the *City of Sydney Act 1988*. As with equivalent provisions under the *Local Government Act 1993*, a person is entitled to be enrolled as an elector for the City of Sydney if the person is an owner of rateable land within the City of Sydney, is a ratepaying lessee or occupier of rateable land, or is a resident. Only individuals entitled to vote at State or Federal elections are eligible for enrolment.
- 6.42 Further criteria that a person must meet before being eligible to enrol include being an occupier or rate paying lessee for a continuous period of three months prior to enrolment, and pay at least \$5,000 of rates per annum.¹⁸⁹
- 6.43 An elector cannot be on both the City of Sydney's residential roll and non-residential roll simultaneously, and an individual can only be on the non-residential roll once.¹⁹⁰
- 6.44 The Electoral Commission is responsible for preparing and certifying the non-residential rolls in accordance with provisions under section 18A of the *City of Sydney Act 1988*. This requirement is unique to the City of Sydney, as responsibility for the non-residential roll lies with the general manager of all other councils. As part of its requirements, the Electoral Commission must, at least 90 days before the closing date of an election, send an enrolment letter addressed to each elector on, or nominated by a company to be on, the non-residential roll for the previous election.¹⁹¹
- 6.45 The City of Sydney is the council with the largest non-residential roll. It included 1,709 electors at the close of the rolls before the last election.¹⁹² This constituted 53.8% of the entire non-residential roll of 3,178 in NSW.

¹⁸⁹ City of Sydney, Submission 77, at p2

¹⁹⁰ *City of Sydney Act 1988*, s16(4)

¹⁹¹ *City of Sydney Act 1988*, s18B(1)

¹⁹² Electoral Commission NSW, *Report on the Local Government Elections 2012*, at p60

6.46 The reason that the City of Sydney constitutes such a high proportion of the non-residential roll can be attributed to a couple of key factors. First, the economic dominance of the CBD, with a substantial number of businesses, provides a correspondingly large number of ratepayers. A second reason is that, unlike arrangements for other councils, voting is compulsory for electors on the roll, and failure to vote may attract a fine.¹⁹³

Electoral Enrolment

6.47 In order to raise awareness of the ability to enrol on the non-residential and encourage participation in the elections, the City of Sydney requested that the Electoral Commission develop and undertake an advertising campaign.

6.48 This campaign included: mail outs to over 80,000 individuals and business entities that may be eligible to enrol; contacting 125 property managing agents and requests that they email their clients with information about the ability to enrol; a dedicated call centre to field enquiries from prospective electors; and advertising in major metropolitan and commuter press. The cost of the campaign totalled \$243,242.00 and was borne solely by the City of Sydney.

6.49 Enrolment numbers had fluctuated considerably over the past few electoral cycles. While there were 2,059 enrolments on the non-residential roll ahead of the 2004 elections, this had decreased substantially to 396 for the 2008 elections. Following efforts to boost enrolment numbers, 1,709 people enrolled to vote at the 2012 elections, representing an increase of 331.6%. Although it is difficult to determine what proportion of total eligible electors this figure constitutes, it is apparent that the proportion remains extremely low.

6.50 At the Committee's hearing with the Lord Mayor and councillors of the City of Sydney, the issue of lack of enrolment relative to total eligible electors was canvassed in some detail. In particular, Councillor Mandla stated:

... 77 per cent of rate revenues came from business and yet they were effectively denied a vote, denied a voice and denied representation.¹⁹⁴

6.51 Councillor Forster concurred that a problem existed, advising the Committee that:

These businesses can and should have a significant voice in the democratic process of determining who is elected as Lord Mayor and councillors in Australia's biggest commercial and only truly global city. Yet the numbers of non-residential voters have plunged over recent electoral cycles to levels at which the sector is virtually disenfranchised.¹⁹⁵

6.52 Councillor Forster continued:

Many business owners and ratepayers even in the so-called big end of town are simply unaware that they have the right to vote. The process of enrolling is time consuming, complex and needs to be repeated after every election. In addition, the

¹⁹³ *City of Sydney Act 1988*, s22(1)

¹⁹⁴ Clr Edward Mandla, Transcript of Evidence, 16 September 2013 at p12

¹⁹⁵ Clr Christine Forster, Transcript of Evidence, 16 September 2013 at p14

voting process is onerous for business owners who live outside the local government area due to the lack of a postal option.¹⁹⁶

- 6.53 It should be noted that there was disagreement amongst the councillors that the lack of non-residential enrolment was an issue. In her submission, the Lord Mayor of Sydney, Clover Moore, commented that:

The non-residential voting franchise for the City of Sydney is broader than for other councils in NSW. The current arrangements provide an appropriate balance with a significant opportunity for people conducting business in the City to be on the roll. Despite this, many eligible voters have chosen not to take up their right.¹⁹⁷

- 6.54 The issue is given added weight when considering that a total of \$243,242.00 was spent on an awareness and enrolment campaign that ultimately yielded only 1,709 enrolments. Otherwise put, this represents about \$142.00 per enrolment. Given that 211 people on the non-residential roll then failed to vote, then there were only 1,498 votes from the non-residential roll who voted, and the cost per vote cast is therefore even higher.
- 6.55 Questions arise as to whether this spend is value-for-money, and whether or not there are more appropriate and financially prudent methods of increasing the number of non-residential electors on the roll.
- 6.56 In determining the various possibilities, the Committee turned its attention to the City of Melbourne which has similar enrolment entitlements for non-resident landowners, occupiers and corporations, but entirely different processes for actual enrolment.
- 6.57 The significant difference between the City of Sydney and the City of Melbourne is with respect to the franchise provisions. In particular, in the City of Sydney, only those individuals who have actively enrolled by the closing date are entitled to vote. This is in contrast with the City of Melbourne in which those who do not apply to enrol voluntarily will nonetheless still be deemed to have voting rights.
- 6.58 These deeming provisions are a complex administrative exercise in which the City of Melbourne actively identify and determine eligible electors, and deem them onto the non-residential roll.
- 6.59 As explained by the Victorian Electoral Commission:

They do get a deeming provision where, as the company does not nominate a voting representative, they work with ASIC to identify directors and company secretaries from that data and put them onto it...

The councillors do a lot of work to bring people onto the roll if they have an entitlement. They write to properties where they are aware people are not enrolled and people are able to be enrolled at that property. As well as that they have their

¹⁹⁶ Clr Christine Forster, City of Sydney, *Transcript of Evidence*, 16 September 2013 at pp14-15

¹⁹⁷ City of Sydney, Submission 77, at p6

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
NON-RESIDENTIAL VOTING

own election information inquiry line that they operate in terms of people's eligibility.¹⁹⁸

- 6.60 The City of Melbourne accumulates information on eligible electors from a range of sources. For non-residential owners, this information is ascertained by reference to land and property information retained by Council. For corporations, the company secretaries and directors are determined from information sourced from ASIC records.¹⁹⁹ As representatives from the Victorian Electoral Commission further explained:

The city of Melbourne municipal voters roll is administered by the city of Melbourne itself, the Melbourne City Council. I understand that their process is very comprehensive for enrolling voters onto the municipal voters roll. They do get a deeming provision whereas the company does not nominate a voting representative they work with ASIC to identify directors and company secretaries from that data and put them onto it.²⁰⁰

- 6.61 Lastly, for occupiers of rateable land, the City of Melbourne canvasses all businesses six months before an election to determine the occupier's ability to vote. Key criteria include that the occupier is not a resident of the City of Melbourne, and has occupied the rateable land for one month or more.
- 6.62 The City of Melbourne also conducts a census of land use and employment every two years. This information gives Council a comprehensive statistical profile of various economic indicators – including land use and employment trends – in the City. Information gathered from this census is used to get the non-residential roll as close to accurate as possible.²⁰¹
- 6.63 To further canvass the viability and operability of establishing a similar deeming scheme in the City of Sydney, the Committee sought evidence from the Lord Mayor of Melbourne, the Rt Hon Robert Doyle at a hearing in Sydney on 28 February 2014.
- 6.64 One of the many issues the Committee explored were safeguards against misuse of the non-residential roll, in particular where non-eligible electors are erroneously or deliberately included. The Lord Mayor advised:

Where there have been questions about the validity of the roll, or the authenticity of the vote, particularly during election periods... the first hurdle, if you like, is the City of Melbourne itself and the professionalism of the integrity of the roll. Second, we do contract the election and its operations to the Victorian Electoral Commission. So there is that second hurdle. Third, there is in Victoria, I do not know if you have an equivalent, a local government inspectorate that sits in the Ministry of Local Government. It is essentially the policeman of local government. Anyone can make a

¹⁹⁸ Keegan Bartlett, Senior Contract Manager, Victorian Electoral Commission, *Transcript of evidence*, 28 February 2014, at pp7-8

¹⁹⁹ Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*, October 2013, at p53

²⁰⁰ Keegan Bartlett, Senior Contract Manager, Victorian Electoral Commission, *Transcript of evidence*, 28 February 2014, at p7

²⁰¹ Rt Hon Robert Doyle, Lord Mayor of Melbourne, *Transcript of Evidence*, 28 February 2014, at p11

complaint to that inspectorate about any electoral matter, including eligibility of a voter to be on the roll.²⁰²

6.65 In further evidence to the Committee, the Lord Mayor expressed overall satisfaction that the deeming provisions work in the City of Melbourne, and that there is little reason for concern.

6.66 The Committee notes the report of the Local Government Acts Taskforce which has stated that:

Similar deeming principles should be adopted for the voting entitlements of non-resident land holders, occupiers and corporations holding property or operating business in the City of Sydney area who have no voluntarily, before the due date, enrolled to vote.²⁰³

6.67 In particular, the Taskforce recommended that:

The Sydney City Council determines, from all available Council information and records as well as information provided by ASIC, the person deemed to be entitled to vote on behalf of non-resident owners and corporations.²⁰⁴

6.68 The Taskforce further recommended that in determining those occupiers that are entitled to vote, Council should canvas the businesses within Council boundaries six months before the elections to determine entitlement.²⁰⁵ This recommendation essentially mirrors existing practices in the City of Melbourne. The Taskforce also recommended that voting be compulsory for all people enrolled or deemed to be enrolled as non-residential enrolees.

Committee Comment

6.69 The Committee supports the proposition that the deeming provisions be established for the City of Sydney's non-residential roll. Given that other evidence received by the Committee is that 78.5% of ratepayer revenue is derived from the business community and other non-residents, it is imperative that the appropriate architecture is put in place to maximise business participation in City of Sydney elections. Deeming provisions achieve this by making non-residential enrolment the default position, distinct from current arrangements in which the onus is put on non-residential ratepayers to actively enrol.

6.70 The Committee also considers it financially more prudent that the money currently set aside for an awareness campaign promoting non-residents to enrol be used instead to prepare the roll by canvassing material from ASIC, land and property information retained by council, and through the periodic surveys of businesses.

²⁰² Rt Hon Robert Doyle, Transcript of Evidence, 28 February 2014, at p13

²⁰³ Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*, October 2013, at p53

²⁰⁴ Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*, October 2013, at p54

²⁰⁵ Local Government Acts Taskforce, *A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*, October 2013, at p54

- 6.71 The Committee notes that the Victorian experience has largely been successful, and considers it timely and appropriate that NSW adopt and adapt the Victorian model for use in City of Sydney elections.
- 6.72 At present, section 22(1) of the *City of Sydney Act* provides that it is compulsory for all electors on the non-residential roll or the roll of occupiers and ratepaying lessees to vote. However, the onus is on the eligible elector to enrol.
- 6.73 Similarly, there is a provision under the *City of Melbourne Act 2001* which provides that all electors on the voters' roll in the City of Melbourne must vote at any local government election in that city. There is a defence for deemed representatives on the roll if they did not receive proper notice of their enrolment.²⁰⁶

RECOMMENDATION 15

The Committee recommends that the Government introduce the model used by the City of Melbourne for the City of Sydney in all its respects including the deeming provisions and the compulsory voting aspect for electors on the non-residential roll.

Furthermore, the Government consider applying this model in City Council areas with significant economic centres such as Newcastle, Wollongong and Parramatta.

²⁰⁶ *City of Melbourne Act 2001*, s.19(5)

Appendix One – List of Submissions

1	Mrs Debby Dewbery
2	Mr Doug Darlington
3	The Hills Shire Council
4	Ballina Shire Council
5	Randwick City Council
6	Homelessness NSW
7	Bland Shire Council
8	Wentworth Shire Council
9	Nambucca Shire Council
10	Murray Shire Council
11	Partially Confidential
12	Mr Ken Clarke
13	Broken Hill City Council
14	Port Stephens Council
15	Mr Keith Woodley
16	Mr Ian Uebergang
17	Confidential
18	Glen Innes Severn Council
19	Lake Macquarie City Council
20	Weddin Shire Council
21	Blue Mountains City Council
22	Christian Democratic Party
23	Lismore City Council
24	Clr Ian Scandrett
25	Lane Cove Council
26	Bogan Shire Council
27	Narrabri Shire Council
28	Confidential
29	Gosford City Council
30	Hurstville City Council

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
LIST OF SUBMISSIONS

31	Wingecarribee Shire Council
32	Waverley Council
33	City of Sydney
34	Holroyd City Council
35	South East Regional Organisation of Councils
36	Computing Research and Education Association of Australasia
37	Tumut Shire Council
38	Bega Valley Shire Council
39	Narrandera Shire Council
40	Port Macquarie Hastings Council
41	Everyone Counts
42	Strathfield Municipal Council
43	Clr Clinton Mead
44	Temora Shire Council
45	Penrith City Council
46	Tamworth Shire Council
47	Confidential
48	Camden Council
49	Canterbury City Council
50	Upper Lachlan Shire Council
51	Shoalhaven City Council
52	Gwydir Shire Council
53	Cowra Shire Council
54	Tweed Shire Council
55	Mr Peter Quirk
56	Great Lakes Council
57	Wollondilly Shire Council
58	Sutherland Shire Council
59	Mid-Western Regional Council
60	Vision Australia
61	Ms Anne Stanley
62	Albury Council

2012 LOCAL GOVERNMENT ELECTIONS
LIST OF SUBMISSIONS

63	The Greens NSW
64	Local Government Association of NSW and Shires Association of NSW
65	Fairfield City Council
66	City of Botany Bay
67	Division of Local Government
68	Ku-ring-gai Council
69	Moree Plains Shire
70	Bankstown City Council
71	Clr Mark Hanna
72	Australian Election Company
73	NSW Business Chamber
74	Liberal Party of Australia - NSW Division
75	Mr Greg Briscoe-Hough
76	Randwick City Council
77	City of Sydney

Appendix Two – List of Witnesses

19 August 2013, Jubilee Room

Witness	Organisation
Mr Tony Wickham <i>Executive Officer</i>	Port Stephens Council
Mr Peter Gesling <i>General Manager</i>	Port Stephens Council
Mr Craig Wrightson <i>General Manager</i>	Lane Cove Council
Mr John Rayner <i>General Manager</i>	Sutherland Shire Council
Mr Trevor Rowling <i>Manager – Administration and Governance</i>	Sutherland Shire Council
Ms Petra Tinker <i>Group Manager, Information Management and Services</i>	Fairfield City Council
Ms Sonja Drca <i>Manager – Governance and Legal</i>	Fairfield City Council
Mr Greg Roberts <i>Executive Support Manager</i>	Shoalhaven Shire Council
Mr John Patterson <i>Manager, Special Projects</i>	Botany Bay Council
Mr John Sproule <i>Manager, Administration Services</i>	Wollondilly Shire Council
Mr Dave Walker <i>General Manager</i>	The Hills Shire Council
Mr Peter Doyle <i>Manager, Executive Services</i>	The Hills Hire Council
Ms Judy Charlton <i>Director, Corporate Services</i>	Albury City Council
Mr Glen Schuil <i>Senior Governance Officer</i>	Penrith City Council
Mr Stephen Britten <i>Chief Governance Officer</i>	Penrith City Council
Ms Rachel Symons <i>Team Leader Executive Services</i>	Bankstown City Council

26 August 2013, Jubilee Room

Witness	Organisation
Mr Richard Kidd <i>Director/Principal</i>	Australian Election Company
Mr Colin Barry <i>Commissioner</i>	NSW Electoral Commission
Mr Paul Beeren Director, Enrolment	NSW Electoral Commission
Mr Brian De Celis <i>Director, Funding and Disclosure</i>	NSW Electoral Commission
Mr Trevor Follett <i>Director, Finance</i>	NSW Electoral Commission

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
LIST OF WITNESSES

16 September 2013, Macquarie Room

Witness	Organisation
Mr Luke Aitken <i>Senior Manager, Policy</i>	NSW Business Chamber
Mr Ash Salardini <i>Policy Advisor, Sydney</i>	NSW Business Chamber
Ms Clover Moore <i>Lord Mayor</i>	City of Sydney
Ms Robyn Kemmis <i>Deputy Lord Mayor</i>	City of Sydney
Ms Christine Forster <i>Councillor</i>	City of Sydney
Mr Edward Mandla <i>Councillor</i>	City of Sydney
Mr James Zanotto <i>Chief of Staff, Office of the Lord Mayor</i>	City of Sydney
Mr Larry Galbraith <i>Policy Officer, Office of the Lord Mayor</i>	City of Sydney
Mr John Mant <i>Councillor</i>	City of Sydney
Ms Angela Vithoukias <i>Councillor</i>	City of Sydney
Ms Jenny Green <i>Councillor</i>	City of Sydney
Mr Peter Coulton <i>Director, Corporate Services</i>	Local Government

Appendix Three – Extracts from Minutes

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no. 19)

1:00 pm, Wednesday, 21 November 2012
Room 1153, Parliament House

Members present

Mr Rowell (Chair), Mr Borsak (Deputy Chair), Ms Fazio, Mr Fraser, Mr Khan, Mr Lynch, Mr Maguire, Dr Phelps, Mr Primrose and Mr Ward.

Staff in attendance: Ms Rachel Simpson, Mr Jason Ardit, Mr Jonathan Elliott and Mr Rohan Tyler.

The Chair opened the meeting at 1:08 pm.

1. Apologies

None received.

2. Confirmation of minutes

Resolved, on the motion of Mr Fraser, that the minutes of the deliberative meeting No. 18 be confirmed.

3. ***

4. ***

5. 2012 Local Government elections

The Committee noted correspondence that it had received from the Hon Don Page MP, Minister for Local Government, dated 13 November 2012, referring matters relating to the 2012 Local Government elections to the Committee for its inquiry.

Resolved, on the motion of Mr Primrose:

1. That the Committee accept the referral to conduct an inquiry into matters relating to the 2012 Local Government elections.
2. That the Committee:
 - write to the Minister for Local Government informing him of the Committee's decision;

- issue a call for submissions, including advertising; and
 - write to interested parties to seek their views.
3. That the Committee direct committee staff to make the administrative arrangements in relation to the inquiry, including setting dates for public hearings.

The Committee adjourned at 1:55 p.m., sine die.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no. 22)

1:30 pm, Wednesday, 27 March 2013
Room 1153, Parliament House

Members present

Mr Rowell (Chair), Mr Borsak (Deputy Chair), Ms Fazio, Mr Khan, Mr Maguire, Dr Phelps and Mr Primrose.

Staff in attendance: Ms Rachel Simpson, Mr Jason Arditi, Mr Jonathan Elliott, Mr Rohan Tyler and Ms Meike Bowyer.

The Chair opened the meeting at 1:34 pm.

1. Apologies

Apologies were received from Mr Fraser, Mr Lynch and Mr Ward.

2. Confirmation of minutes

Resolved, on the motion of Mr Primrose, seconded by Mr Borsak:

‘That the minutes of the deliberative meeting No. 21 be confirmed.’

3. ***

4. Inquiry into the 2012 Local Government Elections

Resolved on the motion of Mr Primrose:

‘That the Committee agrees to accept and publish those submissions, or parts of submissions, that are not confidential in the table, on its website; and treats as confidential any submissions listed as such in the table.’

5. ***

The Committee adjourned at 1:42 pm sine die.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no. 24)

1:30 pm, Tuesday, 25 June 2013
Room 1254, Parliament House

Members present

Mr Rowell (Chair), Mr Borsak (Deputy Chair), Mr Fraser, Mr Maguire and Mr Primrose

Staff in attendance: Ms Rachel Simpson and Mr Jason Arditi

The Chair opened the meeting at 1:32 pm

1. Apologies

None received

2. Minutes

Resolved, on the motion of Mr Fraser, seconded Mr Maguire: 'That the minutes of the deliberative meeting No. 23 be confirmed'

3. Inquiry into the 2012 Local Government Elections

3.1 Acceptance of Submissions

Resolved, on the motion of Mr Fraser, seconded Mr Maguire: 'That the Committee accepts submissions numbered 71 to 75, and publishes them on the Committee's webpage'

3.2 Reporting Deadline

Resolved, on the motion of Mr Maguire, seconded Mr Fraser: 'That the Committee resolves to write to the Minister of Local Government to advise that the Report will be drafted and tabled by the last sitting day of November'

3.3 Hearing and Roundtable Forum

Resolved, on the motion of Mr Maguire, seconded Mr Fraser: 'That the Committee invites selected stakeholders to appear at a hearing, invite selected Local Government authorities to appear at a roundtable forum, and that an indicative list of stakeholders and Local Government authorities is circulated to Members by Committee staff following this meeting'

4. ***

The Committee adjourned at 1:36 pm *sine die*.

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 25)

1:00pm, Monday, 19 August 2013
Jubilee Room, Parliament House

MEMBERS PRESENT

Mr Ward (Chair), Mr Borsak (Deputy Chair), Ms Fazio, Mr Fraser, Mr Maguire, Mr Khan, Mr Phelps, Mr Primrose and Mr Rowell

Staff in attendance: Ms Rachel Simpson, Mr Jason Arditi and Mr Leon Last

The Chair opened the meeting at 1:00 pm

1. Apologies

Apologies were received from Mr Fraser, Mr Lynch and Mr Ward.

2. ***

3. Minutes

Resolved, on the motion of Mr Fraser, seconded Mr Rowell: 'That the minutes of the deliberative meeting No. 24 be confirmed'

4. Inquiry into the 2012 Local Government Elections

4.1 *Consideration of Stakeholders*

Resolved, on the motion of Mr Fraser, seconded Mr Maguire: 'That the Committee accepts the indicative list of witnesses, as previously circulated, to participate in the hearing'

4.2 *Media*

Resolved, on the motion of Ms Fazio, seconded Mr Rowell: 'That the Committee authorises the media and general public to attend the hearing'

4.3 *Local Government Roundtables*

Committee Members discussed conduct of the roundtables.

Roundtable participants and members of the public then entered the room and the Chair commenced the hearing.

5. Public Hearing

The invited witnesses for the first roundtable, together with the press and public, were admitted at 1:00pm.

1:01pm, the chair opened the hearing and gave a brief opening address.

Trevor Rowling, Manager Administration, Sutherland Shire Council,

Craig Wrightson, General Manager, Lane Cove Council,

Peter Gesling, General Manager, Port Stephens council,

Tony Wickham, Executive Officer, Port Stephens council,

John Patterson, Manager Special Projects, Botany Bay Council,

Greg Roberts, Executive Support Manager, Shoalhaven Shire Council, and

Sonja Drca, Manager, Governance and Legal, Fairfield City Council, sworn and examined:

Petra Tinker, Group Manager, Information Management and Services, Fairfield City Council affirmed and examined.

The witnesses made brief opening statements, followed by questions from Committee members.

The evidence concluded at 2:45pm, the chair thanked the witnesses for their attendance, the witnesses withdrew.

The Committee took a short adjournment at 2:47pm, and resumed the public hearing at 3:15pm.

John Sproule, Manager, Administration Services, Wollondilly shire council, affirmed and examined:

Judy Charlton, Director, Corporate Services, Albury City Council,

Peter Doyle, Manager, executive services, the hills shire city council,

Glenn Schuil, Senior Governance Officer, Penrith City Council,

Stephen Britten, Chief Governance Officer, Penrith City Council,

Rachel Symons, Team Leader Executive Services, Bankstown City Council, sworn and examined.

The witnesses made brief opening statements, followed by questions from Committee members.

The evidence concluded at 4:30pm, the chair thanked the witnesses for their attendance, the witnesses withdrew.

6. Inquiry into the 2012 Local Government Elections: Post-Hearing Items

6.1 Publication of Transcript

Resolved, on the motion of Mr Rowell, seconded Mr Phelps: 'That the Committee publishes the transcript of the day's proceedings and posts it on the Committee's webpage.

6.2 Consideration of Questions of Notice and Supplementary Questions

Resolved, on the motion of Mr Rowell, seconded Mr Phelps: 'That the Committee invite the return of questions taken on notice for fourteen days following the hearing'

Resolved, on the motion of Mr Maguire, that supplementary questions concerning the cost per vote, or per enrolled voter, be sent to all councils that participated in the roundtables

7. ***

8. ***

The Committee adjourned at 4:36pm

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no. 26)

10:30am, Monday, 26 August 2013
Jubilee Room, Parliament House

MEMBERS PRESENT

Mr Ward (Chair), Mr Borsak (Deputy Chair), Mr Fraser, Mr Maguire, Mr Lynch, Mr Phelps, Mr Primrose and Mr Rowell

Staff in attendance: Ms Rachel Simpson, Mr Jason Arditi and Mr Leon Last

The Chair opened the meeting at 10:31am

1. Apologies

Apologies were received from Ms Fazio and Mr Khan.

2. Minutes

Resolved, on the motion of Mr Fraser, seconded Mr Rowell: 'That the minutes of the deliberative meeting No. 25 be confirmed'

3. Inquiry into the 2012 Local Government Elections: Pre-Hearing Items

3.1 Consideration of Stakeholders

Resolved, on the motion of Mr Borsak, seconded Mr Phelps: 'That the Committee accepts the indicative list of witnesses, as previously circulated, to attend the hearing'

3.2 Media

Resolved, on the motion of Mr Rowell, seconded Mr Maguire: 'That the Committee authorises the media and general public to observe the hearing'

4. Inquiry into the 2012 Local Government Elections: Public Hearing

The invited witnesses, together with the press and public, were admitted at 10:41am.

10:41am, the chair opened the hearing and gave a brief opening address.

Richard Kidd, principal, Australian Election Company, sworn and examined,

The witness made an opening statement, followed by questions from committee members.

The evidence concluded at 11:30am, the chair thanked the witness for his attendance, and the witness withdrew.

The committee took a short adjournment at 11:32am, and resumed the public hearing at 11:45am.

Colin Barry, commission, NSW Electoral Commission,

Paul Beeren, director, enrolment, NSW Electoral Commission, and

Trevor Follett, director, finance, NSW Electoral Commission, affirmed and examined

Brian de Celis, Director, funding and disclosure, NSW Electoral Commission, sworn and examined,

The witnesses made brief opening statements, followed by questions from committee members.

The evidence concluded at 12:43pm, the chair thanked the witnesses for their attendance, the witnesses withdrew.

5. Inquiry into the 2012 Local Government Elections: Post-Hearing Items

5.1 Publication of Transcript

Resolved, on the motion of Mr Rowell, seconded Mr Phelps: 'That the Committee publishes the transcript of the day's proceedings and posts it on the Committee's webpage.'

5.2 Consideration of Questions on Notice and Supplementary Questions

Resolved, on the motion of Mr Phelps, seconded Mr Rowell: 'That the Committee invite the return of questions taken on notice for fourteen days following the hearing'

6. ***

7. ***

The Committee adjourned at 12:48pm

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no. 27)

9:41am, Monday, 16 September 2013
Macquarie Room, Parliament House

Members present

Mr Ward (Chair), Mr Fraser, Mr Maguire, Mr Khan and Dr Phelps

Staff in attendance: Ms Rachel Simpson, Mr Jason Arditi and Mr Leon Last

The Chair opened the meeting at 9:31am

1. Apologies

Mr Borsak, Ms Fazio, Mr Lynch, Mr Primrose, Mr Rowell

2. Minutes

Resolved, on the motion of Mr Fraser: 'That the minutes of the deliberative meeting No. 26 be confirmed'

3. Inquiry into the 2012 Local Government Elections: Pre-Hearing Items

3.1 *Consideration of Stakeholders*

Resolved, on the motion of Mr Khan, seconded Mr Phelps: 'That the Committee accepts the indicative list of witnesses, as previously circulated, to attend the hearing'

3.2 *Media*

Resolved, on the motion of Mr Maguire: 'That the Committee authorises the media and general public to observe the hearing'

4. Inquiry into the 2012 Local Government Elections: Public Hearing

The invited witnesses, together with the press and public, were admitted at 9:45am.

9:46am, the Chair opened the hearing and gave a brief opening address.

Luke Aitken, Senior Manager, Policy, New South Wales Business Chamber, and

Ash Salardini, Policy Adviser, New South Wales Business Chamber, affirmed and examined.

The witnesses made an opening statement, followed by questions from Committee Members.

The evidence concluded at 10:30am, the Chair thanked the witnesses for their attendance, and the witnesses withdrew.

The Committee took a short adjournment at 10:32am, and resumed the public hearing at 10:45am.

Edward Henry Mandla, Councillor, City of Sydney,

Clover Moore, Lord Mayor, City of Sydney,

Christine Forster, Councillor, City of Sydney, and

Angela Vithoukias, Councillor, City of Sydney, sworn and examined, and

John Heywood Mant, Councillor, City of Sydney, affirmed and examined:

The witnesses made brief opening statements, followed by questions from Committee Members.

Following an objection by Mr Khan that a question asked was outside the terms reference for the Inquiry, the question was then withdrawn.

The evidence concluded at 11:52am, the Chair thanked the witnesses for their attendance, the witnesses withdrew.

Maria Jane Woods, Councillor, Shires Association, and

Peter James Coulton, Director of Corporate Services, Local Government NSW, affirmed and examined:

Kevin William Schreiber, Treasurer, Local Government Association, sworn and examined:

The witnesses made brief opening statements, followed by questions from Committee Members.

The evidence concluded at 12:20pm, the Chair thanked the witnesses for their attendance, the witnesses withdrew.

5. Inquiry into the 2012 Local Government Elections: Post-Hearing Items

5.1 *Publication of Transcript*

Resolved, on the motion of Mr Khan: 'That the Committee publishes the transcript of the day's proceedings and posts it on the Committee's webpage'

5.2 *Acceptance of Submission*

Resolved, on the motion of Dr Phelps: 'That the documents tendered by the Lord Mayor be accepted as a submission from the City of Sydney'

6. ***

7. ***

The Committee adjourned *sine die*

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no. 28)

9:30am, Thursday, 14 November 2013
Room 1153, Parliament House

Members Present

Mr Ward (Chair), Mr Borsak, Mr Fraser, Mr Maguire, Mr Rowell and Mr Primrose

Staff in attendance: Ms Rachel Simpson, Mr Jason Arditi and Mr Leon Last

The Chair opened the meeting at 9:33am

1. Apologies

Apologies were received from Ms Fazio, Mr Khan, Mr Lynch, Mr Phelps

2. Minutes

Resolved, on the motion of Mr Fraser, seconded Mr Rowell: 'That the minutes of the deliberative meeting No. 26 be confirmed'

3. Inquiry into the 2012 Local Government Elections

3.1 *Consideration of Stakeholders*

Resolved, on the motion of Mr Maguire, seconded Mr Rowell that: 'the Committee accepts the item of correspondence received from the Electoral Commissioner, Mr Colin

Barry, re clarification of his evidence the hearing, and that his letter be appended to the hearing transcript'

3.2 Submission 76

Resolved, on the motion of Mr Maguire, seconded Mr Fraser that: 'the Committee accepts the submission from Randwick City Council'

3.3 Inquiry Hearing

Resolved in the motion of Mr Fraser, seconded Mr Rowell that: 'the Committee invites the following witnesses to attend a hearing at Parliament House:

- Rt Hon. Robert Doyle, Lord Mayor of Melbourne, and senior staff;
- Warwick Gately AM, Victorian Electoral Commission, and senior staff.'

3.4 Reporting Deadline

Resolved, on the motion of Mr Maguire that: 'the Committee extends its reporting deadline until the last sitting day in March 2014. Further to this, that the Chair write to the Minister of Local Government and the Clerks of both Houses to advise them of the changed timeframe.'

4. ***

5. ***

The Committee adjourned at 9:45am *sine die*

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (no. 29)

9:45am, Friday, 28 February 2014
Mitchel Room, State Library

Members Present

Mr Ward (Chair), Mr Borsak, Mr Fraser, Mr Khan, Mr Lynch, Mr Maguire, Mr Rowell, Dr Phelps and Mr Primrose

Staff in attendance: Mr Jason Arditi, Mr Leon Last and Ms Meike Bowyer

The Chair opened the meeting at 9:47am

1. Apologies

An apology was received from Ms Fazio

2. Minutes

Resolved, on the motion of Mr Maguire, seconded Dr Phelps: 'That the minutes of the deliberative meeting No. 26 be confirmed'

3. ***

4. Inquiry into the 2012 Local Government Elections: Pre-hearing Items

4.1 Media

Resolved, on the motion of Dr Phelps, seconded Mr Maguire: 'That the Committee authorises the media and general public to observe the hearing'

5. Inquiry into the 2012 Local Government Elections: Public Hearing

The invited witnesses, together with the press and public, were admitted at 10.02am.

10.02am, the Chair opened the hearing and gave a brief opening address.

Warwick Gately, Electoral Commissioner, Victorian Electoral Commission, sworn and examined;

Elizabeth Williams, Electoral Commissioner, Victorian Electoral Commission; and

Keegan Bartlett, Senior Contract Manager, Victorian Electoral Commission, affirmed And examined.

The witnesses made an opening statement, followed by questions from Committee members.

The evidence concluded at 10:45am, the Chair thanked the witnesses for their attendance, and the witnesses withdrew.

The committee took a short adjournment at 10:45am, and resumed the public hearing at 11:01am.

Robert Doyle, Lord Mayor of Melbourne, sworn and examined.

The evidence concluded at 11:41am, the Chair thanked the witness for their attendance, and the witness withdrew.

6. Inquiry into the 2012 Local Government Elections: Post-Hearing Items

6.1 Consideration of Questions on Notice and Supplementary Questions

Resolved, on the motion of Mr Khan: 'That three days be given for Committee Members to provided supplementary questions to Committee staff, and a return date of two weeks for responses to Questions on Notice'

6.2 Publication of Transcript

Resolved, on the motion of Dr Phelps, seconded Mr Fraser: 'That the Committee publishes the transcript of the day's proceedings and places it on the Committee's webpage'

7. ***

8. ***

The Committee adjourned at 11:55am sine die

**UNCONFIRMED MINUTES OF PROCEEDINGS OF THE JOINT
STANDING COMMITTEE ON ELECTORAL MATTERS (NO. 30)**

8:30, Thursday 27 March 2014
Waratah Room, Parliament House

MEMBERS PRESENT

Mr Ward (Chair), Mr Borsak, Ms Fazio, Mr Fraser, Mr Khan, Mr Maguire, Mr Rowell, Dr Phelps and Mr Primrose

Staff in attendance: Mr Jason Arditi, Mr Leon Last, Ms Carly Maxwell and Ms Meike Bowyer

The Chair opened the meeting at 8:32am

1. Apologies

An apology was received from Mr Lynch

2. Minutes

Resolved, on the motion of Mr Phelps, seconded Mr Rowell: 'That the minutes of the deliberative meeting No. 29 be confirmed'

**3. Inquiry into the 2012 Local Government Elections: Responses to
Questions on Notice**

Resolved, on the motion of Mr Maguire, seconded Mr Fraser: 'That the Committee accept the responses to questions of notice from the Victorian Electoral Commission, and the Office of the Lord Mayor of Melbourne, and place them on the Committee's webpage'

4. Inquiry into the 2012 Local Government Elections: Report Consideration

Mr Primrose moved that:

- ‘1. This Committee notes that the terms of reference for the Inquiry into the 2012 Local Government Elections was referred for inquiry on 13 November 2012 and that during the course of the Inquiry:
 - a) Hearings were held on 19 August 2013, 26 August 2013, 16 September 2013 and 28 February 2014 at which evidence was taken from 33 witnesses and which generated 117 pages of transcript.
 - b) Submissions were received from 77 individuals and organisations.
 - c) A 915 page report was received from the State Electoral Commission on the Conduct of the 2012 Local Government.
2. This Committee further notes that the deliberative meeting to be held on Thursday 27 March 2014 was notified to members on Tuesday 25 March 2014 at 4.07pm and that attached to the email notice was a 95 page draft report containing 15 Recommendations;
3. This Committee considers that the time frame for the consideration of the report was inadequate.
4. Given that inadequate time was provided to members to fully consider the report and recommendations, that the deliberative meeting be deferred until Monday, 5 May 2014’.

Discussion ensued. Question put.

The Committee divided

Ayes: Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Maguire and Mr Rowell

Question resolved in the negative.

Resolved, on the motion of Mr Rowell, seconded Mr Fraser: ‘That the Committee consider the draft report on the *Inquiry into the 2012 Local Government Elections* chapter by chapter

Dr Phelps moved, seconded Mr Maguire: ‘That Chapter One be agreed to’.

Question put.

The Committee divided.

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Maguire, Mr Rowell and Dr Phelps

Noes: Mr Primrose

Question resolved in the affirmative

Ms Fazio and Mr Khan entered the meeting

Resolved, on the motion of Dr Phelps, seconded Mr Fraser: 'That Chapter Two be agreed to'.

Question put.

The Committee divided.

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Maguire, Dr Phelps and Mr Rowell

Noes: Ms Fazio, Mr Primrose

Question resolved in the affirmative

Resolved on the motion of Ms Fazio: 'That Paragraph 3.15 be amended by omitting the word 'deepen' and inserting the word 'enhance''.

Resolved on the motion of Ms Fazio: 'That Recommendation 4 be amended by inserting the words 'or that are not conducting their elections in-house' after the words '... utilising the services of the Electoral Commission'.'

Resolved, on the motion of the Chair: 'That Paragraphs 3.116 and 3.117 be amended by replacing the words

'The Committee supports the concept of returning to Councils the fine revenue for those that failed to vote in their elections. Just as the NSW Government funds the operation of the NSW Electoral Commission for the purposes of conducting State Elections and receives fine revenue accordingly, Councils should be no different.

Indeed, Councils currently utilise the State Debt Recovery Office for fines issued by Councils for breaches of local by-laws and receive the corresponding revenue. Given that Councils are paying for the conduct of their elections, they should receive any corresponding fine revenue that accrues from this exercise.'

With

'The Committee supports the concept of returning fine revenue to councils for electors that fail to vote in elections. Councils currently use the State Debt Recovery Office for fines issued by Councils for breaches of local by-laws and receive the corresponding revenue. Given that councils are paying for the conduct of their elections, they should similarly receive any corresponding fine revenue that accrues from this exercise.'

Dr Phelps moved, Mr Fraser seconded: 'That Chapter Three as amended be agreed to'.

Question put.

The Committee divided.

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Maguire, Mr Rowell and Dr Phelps

Noes: Ms Fazio and Mr Primrose

Question resolved in the affirmative

Mr Rowell left the meeting

Ms Fazio moved: 'That Paragraphs 4.37 and 4.38 be deleted'. Discussion ensued.

Question put.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
EXTRACTS FROM MINUTES

The Committee divided.

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Maguire and Dr Phelps

Question resolved in the negative

Resolved, on the motion of Mr Primrose: 'That Paragraph 4.38 be amended by inserting footnotes that refer to the evidence in Paragraphs 4.21 and 4.26'

Ms Fazio moved: 'That Paragraphs 4.56, 4.57, 4.58, 4.59 and Recommendation 8 be deleted'. Discussion ensued.

Question put.

The Committee divided.

Ayes: Ms Fazio, Mr Fraser, Mr Khan and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Maguire and Dr Phelps

Question resolved in the negative on the casting vote of the Chair

Ms Fazio moved: 'That Paragraphs 4.70, 4.71, 4.72, 4.73, 4.74, 4.75 be deleted'. Discussion ensued.

Question put.

The Committee divided.

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Maguire, Mr Rowell and Dr Phelps

Question resolved in the negative

Ms Fazio moved: 'That Paragraphs 4.88 and Recommendation 9 be amended by replacing the words '18 months' with '12 months' wherever appearing'. Discussion ensued.

Question put.

The Committee divided

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Maguire and Dr Phelps

Question resolved in the negative

Dr Phelps moved, Mr Maguire seconded: 'That Chapter Four as amended be agreed to'.

Question put.

The Committee divided

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Maguire and Dr Phelps

Noes: Ms Fazio and Mr Primrose

Question resolved in the affirmative

Moved, on the motion of Ms Fazio: 'That Paragraphs 5.50 and Recommendation 11 be deleted'. Discussion ensued.

Question put.

The Committee divided

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Maguire, Mr Khan and Dr Phelps

Question resolved in the negative

Resolved, on the motion of Mr Borsak: 'That Recommendation 13 be amended by inserting the words 'The Committee recommends that there is an independent software review and report on the integrity of iVote systems prior to implementation' after the first sentence.

Dr Phelps moved, Mr Maguire seconded: 'That Chapter Five as amended be agreed to'. Discussion ensued.

Question put.

The Committee divided.

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Maguire and Dr Phelps

Noes: Ms Fazio and Mr Primrose

Question resolved in the affirmative

Ms Fazio moved: 'That Paragraphs 6.11 and 6.12 be deleted'. Discussion ensued.

Question put.

The Committee divided

Ayes: Ms Fazio, Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan and Dr Phelps

Question resolved in the negative

Ms Fazio moved: 'That Paragraph 6.15 be amended by deleting the words 'However, to address the issues raised, the focus should be on increasing non-residential voter participation, rather than abolishing the franchise'. Discussion ensued.

Question put.

The Committee divided

Ayes: Ms Fazio, Mr Khan and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Maguire and Dr Phelps

Question resolved in the negative

Ms Fazio moved: 'That Paragraphs 6.23 and 6.24 be deleted.' Discussion ensued.

Question put.

The Committee divided

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Maguire and Dr Phelps

Question resolved in the negative

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
EXTRACTS FROM MINUTES

Ms Fazio moved: 'That Paragraphs 6.28, 6.29 and 6.30 be deleted.' Discussion ensued.

Question put.

The Committee divided

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Maguire and Dr Phelps

Question resolved in the negative

Resolved, on the motion of Ms Fazio: 'That Paragraph 6.34 be amended by deleting the words: 'This is both unnecessary and there is the likelihood that many of those forms are overly complex and cumbersome, although the Committee has not had the benefit of examining each of them'.

Moved, on the motion of Ms Fazio: 'That Paragraphs 6.36 and 6.37 be deleted'. Discussion ensued.

Question put.

The Committee divided

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Maguire and Dr Phelps

Question resolved in the negative

Ms Fazio moved: 'That Paragraphs 6.47, 6.48 and 6.49 be deleted'. Discussion ensued.

Question put.

The Committee divided

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Maguire and Dr Phelps

Question resolved in the negative

Mr Primrose left the meeting

Resolved, on the motion of Ms Fazio: 'That Paragraph 6.50 be amended by replacing the words 'was not universal agreement' with 'disagreement' in the first sentence'.

5. Next Meeting

The Committee adjourned at 9:30am to reconvene at 1:00pm

UNCONFIRMED MINUTES OF PROCEEDINGS OF THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS (NO. 31)

1:00pm, Thursday 27 March 2014
Room 1153, Parliament House

MEMBERS PRESENT

Mr Ward (Chair), Mr Borsak, Ms Fazio, Mr Fraser, Mr Khan, Mr Maguire, Mr Rowell, Dr Phelps and Mr Primrose

Staff in attendance: Mr Jason Arditi, Mr Leon Last, Ms Carly Maxwell and Ms Meike Bowyer

The Chair opened the meeting at 1:30pm

1. Apologies

An apology was received from Mr Lynch

2. Inquiry into the 2012 Local Government Elections: Report Consideration

Dr Phelps moved, Mr Fraser seconded: 'That new paragraphs be inserted following Paragraph 6.30 to read as follows

'6.31 Councillor Mandla from the City of Sydney also reported difficulties for non-residents caused by the lapsing of the roll:

First of all, there is no electoral roll as it gets wiped after every election so there are no reminders. A business has to figure out that it is not a business but a non-residential ratepayer. A non-residential ratepayer has a small window of between two weeks and three months before the council election in which to enrol. You cannot enrol prior to this period and if you are not enrolled more than two weeks out from the election then you will miss out.

6.32 To improve the situation, he recommended 'a permanent roll where eligible non-residential voters ... are automatically enrolled' and that the introduction of a permanent roll would 'have to apply across the State'.

6.33 The Committee heard that this is the case in the City of Melbourne, where non-residential voter turnout is much higher. According to the Lord Mayor of Melbourne the non-residential roll is updated:

... continuously. People are coming on and going off ... If the State electoral roll changes, that changes the roll too because that is the first thing we take in.'

Discussion ensued.

Question put

The Committee divided

Ayes: Mr Borsak, Mr Fraser, Mr Rowell and Dr Phelps

Noes: Ms Fazio

Question resolved in the affirmative

Mr Khan and Mr Primrose entered the room

Ms Fazio moved: 'That Paragraph 6.64 be deleted.' Discussion ensued.

Question put.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS
EXTRACTS FROM MINUTES

The Committee divided

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Rowell and Dr Phelps

Question resolved in the negative

Ms Fazio moved: 'That Paragraphs 6.66, 6.67, 6.68, 6.69 and Recommendations 14 and 15 be deleted and the following words be inserted instead 'However, the Committee is concerned that the cost such a system is not justified given the low inclusion on the roll to date'. Discussion ensued.

Question put.

The Committee divided

Ayes: Ms Fazio and Mr Primrose

Noes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Maguire, Mr Rowell and Dr Phelps

Question resolved in the negative

Resolved, on the motion of Mr Khan: 'That Paragraph 6.66 be amended by inserting the words 'other evidence received by the Committee is that' after the words 'Given that' in the second sentence.'

The Chair moved:

'That a new paragraph be inserted following paragraph 6.69, which reads:

'6.70 Similarly, there is a provision under the City of Melbourne Act 2001 which provides that all electors on the voters' roll in the City of Melbourne must vote at any local government election in that city. There is a defence for deemed representatives on the roll if they did not receive proper notice of their enrolment.

Recommendation 14 be amended by the addition of the following words at the end of the first sentence:

... including the deeming provisions and the compulsory voting aspect for electors on the non-residential roll.'

Question put

The Committee divided

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Rowell and Dr Phelps

Noes: Ms Fazio and Mr Primrose

Question resolved in the affirmative

Resolved, on the motion of Mr Fraser: 'That Recommendation 15, found on page 68, which reads:

'That the Government amend the Local Government Act to provide for permanency of the non-residential roll across all NSW Councils so that electors are not required to re-apply for inclusion prior to each election' be moved to follow paragraph 6.37, on page 63, and consequently become Recommendation 14.' Discussion ensued

Question put.

The Committee divided.

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Rowell and Dr Phelps

Noes: Ms Fazio and Mr Primrose

Question resolved in the affirmative

Dr Phelps moved: 'That Chapter Six be adopted as amended' Discussion ensued

Question put.

The Committee divided.

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Rowell and Dr Phelps

Noes: Ms Fazio and Mr Primrose

Question resolved in the affirmative

Mr Rowell moved, seconded Mr Fraser: 'That the Committee adopt the report as amended as the report of the Committee.'

Question put.

The Committee divided.

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Rowell and Dr Phelps

Noes: Ms Fazio and Mr Primrose

Question resolved in the affirmative

Mr Fraser moved, seconded Dr Phelps: 'That the Report be signed by the Chair and presented to the House'.

Question put.

The Committee divided.

Ayes: Mr Ward, Mr Borsak, Mr Fraser, Mr Khan, Mr Rowell and Dr Phelps

Noes: Ms Fazio and Mr Primrose

Question resolved in the affirmative

Resolved on the motion of Mr Fraser, seconded Mr Rowell: 'That the secretariat be permitted to correct stylistic, typographical and grammatical errors; and that, once tabled, the report be published on the Committee's webpage.'