Division of Local Government
Department of Premier and Cabinet

REVIEW OF 2012 COUNCIL RUN ELECTIONS

JUNE 2013
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1. EXECUTIVE SUMMARY

As a result of amendments to the *Local Government Act 1993* (the Act) to allow councils to conduct their own elections, 14 councils successfully conducted their own 2012 elections. The councils were: Botany Bay, Cessnock, Coffs Harbour, Fairfield, Gunnedah, Kempsey, Lake Macquarie, Lane Cove, Maitland, Newcastle, Penrith, Port Stephens, Shoalhaven and Sutherland.

Of these 14 councils, 13 engaged the services of a private contractor, the Australian Election Company (the AEC). The services provided by the AEC varied between councils depending on the contract negotiated. One council, Gunnedah, conducted its election wholly in-house.

The cost of the 2012 elections for the majority of the 14 Councils came in under their projected cost, based on their 2008 election costs. The councils made a combined estimated saving of approximately $1million.

The first results for the council run elections were declared on 12 September 2012. The last result was declared on 24 September 2012. This was one week after the last declaration of a NSW Electoral Commission (NSWEC) run election. The councils that conducted their own counts, on average, declared their results faster than those that outsourced their counts to the AEC.

The majority of the councils reported positive feedback from their stakeholders. A number of councils reported that they received large numbers of complaints but these tended to relate to the conduct of candidates, electoral material and electoral signage rather than the conduct of the election by the council. The negative feedback reported by a minority of the councils tended to relate to the actions of the returning officer.

Not all councils that initially resolved to conduct their elections were able to do so successfully. Narrabri Shire Council initially resolved to conduct its own election but subsequently experienced significant difficulties in making the necessary arrangements to conduct the election, including finding a suitably qualified returning officer. This required the Regulation to be amended to allow the NSWEC to conduct Narrabri’s election.

A number of the councils raised concerns about the timeframe in section 296, which required councils to make a decision whether to engage the NSWEC to conduct its next election within 12 months of the election, (ie 3 years before the actual election). This issue has been addressed by the Local Government Amendment (Conduct of Elections) Bill 2013, which was passed by Parliament on 20 June 2013.

While the conduct by councils of their own elections has largely been a successful exercise, the Division has identified the following key lessons for possible improvement of council run elections in 2016:

1. In light of the experience of Narrabri Shire Council, 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.
2. Experienced returning officers are essential to the conduct of successful elections.
3. As far as practicable, any possible regulation amendments that may affect the conduct of the elections should be made as soon as possible prior to an election.
4. Councils deciding to conduct their own elections in the future should be encouraged to develop an election complaints management policy.
5. The Division could do more to facilitate communication between councils and the NSWEC.
6. The pre-nomination candidate information sessions should focus more on the role of councillors.
7. The Election Process document prepared by the Division should be issued as early as possible.
8. The Division should consider conducting its survey of candidates electronically.

In addition to the above lessons, suggestions for legislative amendments made by councils will be considered along with any recommendations made by the Joint Standing Committee on Electoral Matters in response to its inquiry into the 2012 local government elections.
2. BACKGROUND

2.1 Legislative Context

Up until 1987 all local councils in NSW conducted their own elections with their Town or Shire Clerks as returning officers. This arrangement had been in place since 1867.

In 1987, the *Local Government (Elections) Amendment Act 1987* transferred this responsibility from Town and Shire Clerks to the Electoral Commissioner. Since then, the NSW Electoral Commissioner had conducted all local government elections and referendums.

In 2005, the Council for the Cost and Quality of Government, which was set up to advise the Government on improving value for money and quality in public services, reviewed the operations of the NSWEC. As a result of that review, the NSWEC conducted the September 2008 ordinary elections on a full cost recovery basis for the first time. This resulted in a sudden increase in costs paid by councils to the NSWEC (as some costs were no longer absorbed by the councils) and caused a large number of complaints from councils.

As a result, in its publication titled “NSW Election Priorities 2011”, the former Local Government and Shires Associations (LGSA) argued 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.”

The LGSA also expressed the view that returning the conduct of elections to councils would see council revenue better spent on community infrastructure and services, restore community involvement in the local government election process and provide speedier results for candidates and communities.

As part of its pre-election commitments, the NSW Liberals and Nationals announced that they would “…amend the relevant legislation to permit council general managers to be responsible for the administration of Local Government elections, whilst maintaining the option of sub-contracting the administration to Elections NSW. Their responsibilities will include the appointment of suitably qualified independent returning officers and managing the relevant election costs. An independent returning officer could be sourced from a neighbouring council. Not only will this substantially reduce the costs of council elections but will also result in more prompt reporting of the results of the elections.”

The NSW Parliament subsequently passed the *Local Government Amendment (Elections) Act 2011* which commenced on 27 June 2011. This Act amended section 296 of the Act to provide that council elections are to be administered by the general manager of the council concerned. It also gave councils the option to resolve to enter into a contract or arrangement with the NSWEC to conduct its elections within 12 months of an ordinary election.

The NSWEC retained all of its functions relating to electoral rolls (other than non-residential rolls which, apart from Sydney City Council, remained the responsibility of general managers).
Under transitional arrangements contained in clause 102 of Schedule 8 of the Act, councils had the option of resolving to engage the NSWEC to conduct their 2012 elections. Any 2012 election conducted by the NSWEC for a council was to be conducted on a cost recovery basis (see clause 102(4) of Sch 8 of the Act).

The 2016 elections will be the first conducted by the NSWEC on a contractual basis. This means that councils will, for the first time, be able to negotiate with the NSWEC on commercial terms how their elections will be administered.

Section 55(3) of the Act provides that a council need not invite tenders before entering into a contract with the Electoral Commissioner for the administration of the council’s elections.

2.2 The councils that conducted their own elections

15 councils initially chose to conduct their own elections in 2012. These were Narrabri, Botany Bay, Cessnock, Coffs Harbour, Fairfield, Gunnedah, Kempsey, Lake Macquarie, Lane Cove, Maitland, Newcastle, Penrith, Port Stephens, Shoalhaven and Sutherland.

As described in more detail below, Narrabri was not able to continue to conduct its own election and was subsequently required to engage the NSWEC to conduct its election. This was facilitated by a Regulation amendment.

2.3 Support provided by the Division of Local Government

The Division supported those councils that chose to run their elections by:

- Issuing Guidelines to assist councils in making the decision on whether to conduct their own elections;
- Providing the 15 councils that chose to run their own elections with the NSWEC’s functional requirements and specifications for its vote counting software;
- Issuing a comprehensive guide to the Election Process. This described the procedures that must be followed in the lead up to, and in the conduct of local government elections, made better practice suggestions and included approved forms and checklists for those exercising election functions;
- Holding an information session at Sutherland for the 15 councils that chose to run their own elections in March 2012, in collaboration with the NSWEC;
- Issuing a circular notifying the councils of amendments to the Regulation;
- Amending the Regulation to allow Narrabri Shire Council to engage the NSWEC after the cut-off date when that Council indicated that it was not in a position to conduct its own election (see below);
- Maintaining regular contact with the remaining 14 councils in the lead up to the elections. Staff from the Division contacted the nominated council representative (usually the person coordinating the election or the General Manager) every few weeks to discuss the council’s progress. The Division also asked whether there were any election-related issues that the council
was facing at the time of the call. The monitoring contacts were documented, with any major concerns reported on and/or addressed;

- Responding to a number of enquiries made by the 14 councils, their contractor, the AEC, and their Returning Officers by way of telephone calls, emails and letters.

The Division acknowledges the support provided by the NSWEC during the election, in particular, through an officer who was seconded from the NSWEC to the Division.

The NSWEC also assisted by making the functional requirements and specifications for its vote counting software available to those councils conducting their elections and supported the Regulation amendment which allowed Narrabri Shire Council to engage the NSWEC to conduct its election.

### 2.4 Information gathering

**Reporting requirements**

Under clause 393A of the *Local Government (General) Regulation 2005* (the Regulation), the general manager of each council that conducted its own election must provide the Minister with a detailed written report within 6 months of the declaration of the poll setting out details of the election, including:

- costs
- operational details of the election
- an overall evaluation of the conduct of the election, including feedback from stakeholders.

All the Councils concerned have provided their reports and these have been reviewed by the Division. A number of the Councils attached correspondence from their contractor and their returning officer to their reports. The last report was received on 3 May 2013.

**Other feedback**

In addition to this, the Division has also sought feedback on the conduct of the election by a number of other means. Firstly, the Division wrote to the General Managers of the 14 councils conducting their own elections inviting them to identify any issues that impacted on the conduct of their elections and to seek comment on how the Division could improve support for councils conducting their own elections in future elections.

Secondly, the Division participated in an elections debrief convened by the LGSA on 14 November 2012 for the 14 Councils that successfully conducted their own elections.
2.5 Joint Standing Committee Inquiry into Electoral Matters

Inquiry

The Joint Standing Committee on Electoral Matters (JSCEM) is currently conducting an inquiry into the 2012 Local Government Elections, which includes the experiences of those councils that conducted their own elections.

The JSCEM is to have particular reference to:

(a) the costs 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; and
(e) the impact of requirements under the *Election Funding, Expenditure and Disclosures Act 1981* on participation by candidates in Local Government elections and possible legislative changes to remove any barriers to participation; and
(f) any other related matter.

The Division is aware that nine of the 15 councils that initially resolved to conduct their own election have made a submission to the JSCEM. It is also proposed that this report be provided to the JSCEM for its information.

3. REVIEW OF 2012 COUNCIL RUN ELECTIONS

3.1 Arrangements for the conduct of elections

The 14 councils that conducted their own elections did so under a range of different arrangements.

Of the 14 Councils, only one council, Gunnedah, conducted its election entirely in-house.

Botany Bay and Sutherland purchased resources such as manuals from the AEC but otherwise conducted their elections entirely in-house, including the count.

Lane Cove Council conducted its own count but also used some of the services of the AEC.

The remaining 10 Councils outsourced the conduct of their elections, including the count, to the AEC. One of these, Port Stephens, retained responsibility for all electoral advertising. Some level of support was also provided to the returning officers by the staff of a number of these Councils.
3.2 The Narrabri experience

Prior to 30 November 2011, Narrabri Shire Council resolved to conduct its 2012 ordinary election.

The Council subsequently experienced significant difficulties in making the necessary arrangements to conduct the election, including being unable to find a suitably qualified returning officer to conduct its election. It expressed concern in May 2012 that it may be unable to have any suitable arrangements in place in time for the election in September 2012.

Following discussions with the Electoral Commissioner, the Regulation was amended to allow the Council to resolve to engage the NSWEC to conduct its election. The NSWEC subsequently conducted the election for Narrabri.

The experience of Narrabri Shire Council highlights the significant risks involved in councils deciding to conduct their own elections. Councils need to be mindful of these when making decisions on the conduct of 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.

In particular, prior to deciding to conduct their own elections, councils need to be confident that they have a suitably skilled Returning Officer and substitute in place. Not all councils, particularly those in remote and rural areas are going to be able to have access to such persons. As mentioned below a number of the councils that ran their own elections formed the view that an experienced returning officer was essential to the success of the elections.

3.3 Costs of elections

The main argument by councils for returning the conduct of elections to them was their concern about the rising costs of elections conducted by the NSWEC and a belief that they could do it cheaper.

Under the transitional provision, the NSWEC was required to conduct the 2012 local government elections on a cost recovery basis (see clause 102(4) of Sch 8 of the LGA). To allow councils to budget for the 2012 elections, the NSWEC wrote to all NSW councils in 2011 and advised:

*Councils wishing to estimate the 2012 invoice (assuming the same number of polling places and services) should consider four mark ups to the 2008 charge:*

1. *Wage costs increasing in the Public sector of 4 years x 4% cumulative (i.e. 17.0%)*;

2. *Other operational costs increasing by 4 years CPI (estimated at 12.8% cumulative)*;

3. *Number of electors being serviced, e.g. a 2% increase in roll numbers will deliver a similar cost increase; and*
Some “economy of scale” loss may be inevitable with a reduced number of councils electing to use NSWEC services for the 2012 Local Government Elections. At this stage it is not possible to quantify any impact.

The following table shows:

- the actual costs councils incurred conducting their own 2012 elections
- the indicative costs of the NSWEC conducting the 2012 elections for each of the councils that conducted their own elections as calculated by the councils using the above formula
- the percentage difference between the councils’ estimate and their actual costs
- the actual costs of the 2008 elections conducted by the NSWEC, and
- the percentage increase in actual costs between 2008 and 2012.

<table>
<thead>
<tr>
<th>Council</th>
<th>2012 Actual Costs</th>
<th>Council estimate of 2012 costs</th>
<th>% difference between 2012 estimates and actuals</th>
<th>NSWEC 2008 actual costs (ex GST)#</th>
<th>% Increase from 2008-2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botany</td>
<td>$157,039*</td>
<td>$213,000</td>
<td>-26%</td>
<td>$45,100 (uncontested elections)</td>
<td>248%</td>
</tr>
<tr>
<td>Cessnock</td>
<td>$289,971**</td>
<td>$253,000***</td>
<td>15%</td>
<td>$239,200</td>
<td>21%</td>
</tr>
<tr>
<td>Coffs Harbour</td>
<td>$289,290</td>
<td>$315,000</td>
<td>-8%</td>
<td>$275,600</td>
<td>5%</td>
</tr>
<tr>
<td>Fairfield</td>
<td>$820,024</td>
<td>$925,314</td>
<td>-11%</td>
<td>$684,100</td>
<td>20%</td>
</tr>
<tr>
<td>Gunnedah</td>
<td>$45,795</td>
<td>$66,000***</td>
<td>-31%</td>
<td>$47,300</td>
<td>-3%</td>
</tr>
<tr>
<td>Kempsey</td>
<td>$182,987</td>
<td>$165,000</td>
<td>11%</td>
<td>$124,300</td>
<td>47%</td>
</tr>
<tr>
<td>Lake Macquarie</td>
<td>$685,416</td>
<td>$878,880</td>
<td>-22%</td>
<td>$750,000</td>
<td>-9%</td>
</tr>
<tr>
<td>Lane Cove</td>
<td>$145,992</td>
<td>$200,184</td>
<td>-27%</td>
<td>$152,200</td>
<td>-4%</td>
</tr>
<tr>
<td>Maitland</td>
<td>$314,258</td>
<td>$350,000</td>
<td>-10%</td>
<td>$287,500</td>
<td>9%</td>
</tr>
<tr>
<td>Newcastle</td>
<td>$681,023</td>
<td>$700,128</td>
<td>-3%</td>
<td>$598,400</td>
<td>14%</td>
</tr>
<tr>
<td>Penrith</td>
<td>$567,000</td>
<td>$713,000</td>
<td>-20%</td>
<td>$627,000</td>
<td>-10%</td>
</tr>
<tr>
<td>Port Stephens</td>
<td>$308,191</td>
<td>$362,921</td>
<td>-15%</td>
<td>$308,200</td>
<td>0%</td>
</tr>
<tr>
<td>Shoalhaven</td>
<td>$375,173</td>
<td>$460,000</td>
<td>-18%</td>
<td>$397,700</td>
<td>-6%</td>
</tr>
<tr>
<td>Sutherland</td>
<td>$607,540</td>
<td>$880,000</td>
<td>-31%</td>
<td>$770,000</td>
<td>-21%</td>
</tr>
<tr>
<td><strong>Combined total</strong></td>
<td><strong>$5,469,699</strong></td>
<td><strong>$6,468,627</strong></td>
<td><strong>-15%</strong></td>
<td><strong>$5,306,600</strong></td>
<td><strong>3%</strong></td>
</tr>
</tbody>
</table>

* Did not account for all staff costs.
** Some costs are estimates and approximations.
*** This amount was not calculated by using the formula suggested by the NSWEC.
**** Gunnedah also obtained a quote from the Australian Election Company for $141,900.
# These figures are from the NSWECs reports for each council’s 2008 election.

This indicates that most councils were able to conduct their elections at a cost that was less than their estimated costs of engaging the NSWEC to conduct the election.

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Six councils were even able to conduct the 2012 elections at a lower actual cost than the cost they incurred for the 2008 NSWEC conducted elections.

3.4 Declaration of polls

Another issue raised by councils in support of returning the conduct of elections to them related to perceived delays in finalising the counts and the use of a centralised vote counting centre by the NSWEC for the 2008 elections.

It should be noted however that the contractor used by most councils that conducted their own elections, the AEC, also used a centralised vote counting centre for the 2012 elections.

The first election results for council run contested elections were declared on 12 September 2012 and the last one to be finalised was declared on 24 September 2012. The following table indicates the declaration dates for each council run contested election:

<table>
<thead>
<tr>
<th>Council</th>
<th>Date of declaration of polls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botany</td>
<td>12 September 2012 (Mayor and wards)</td>
</tr>
<tr>
<td>Cessnock</td>
<td>14 September 2012 (Mayor and wards)</td>
</tr>
<tr>
<td>Coffs Harbour</td>
<td>12 September 2012 (Mayor), 21 September 2012 (wards)</td>
</tr>
<tr>
<td>Fairfield</td>
<td>14 September 2012 (Mayor), 22 September 2012 (wards)</td>
</tr>
<tr>
<td>Gunnedah</td>
<td>14 September 2012 (councillors)</td>
</tr>
<tr>
<td>Kempsey</td>
<td>17 September 2012 (Mayor and councillors)</td>
</tr>
<tr>
<td>Lake Macquarie</td>
<td>17 September 2012 (Mayor), 20 September 2012 (wards)</td>
</tr>
<tr>
<td>Lane Cove</td>
<td>13 September 2012 (councillors)</td>
</tr>
<tr>
<td>Maitland</td>
<td>20 September 2012 (Mayor and wards)</td>
</tr>
<tr>
<td>Newcastle</td>
<td>17 September 2012 (Mayor election), 24 September 2012 (wards)</td>
</tr>
<tr>
<td>Penrith</td>
<td>18 September 2012 (wards)</td>
</tr>
<tr>
<td>Port Stephens</td>
<td>14 September 2012 (Mayor), 19 September 2012 (wards)</td>
</tr>
<tr>
<td>Shoalhaven</td>
<td>21 September 2012 (Mayor and wards)</td>
</tr>
<tr>
<td>Sutherland</td>
<td>18 September 2012 (wards)</td>
</tr>
</tbody>
</table>

The 14 councils that conducted their own elections had a diverse range of electoral structures. This impacts on the complexity of the count. For example Gunnedah, which is undivided and does not have a popularly elected Mayor was only required to conduct a single election for its councillors. Botany Bay, which is divided into six wards and has a popularly elected Mayor had four contested councillor elections, two uncontested councillor elections and a contested mayoral election.

The first contested election results for elections conducted by the NSWEC were declared on 12 September 2012 and the last were declared on 24 September 2012.
Three AEC client councils, Sutherland, Botany and Lane Cove conducted their own counts to reduce the time taken to obtain a result. As noted above, Gunnedah conducted its own election including the count itself. The four councils that conducted their own counts declared their elections between 12 and 18 September 2012 (three of which were declared by 14 September 2012).

The finalisation of the counts conducted at the AEC centralised vote counting centre appears to have been affected by the scanning of the ballot papers, which was not finalised until 19 September 2012.

The delays occurring as a result of the use of a centralised vote counting centre appears, in part, to result from the fact that the centre is conducting the counts for multiple elections. The time taken to finalise the count for a particular council depends on when it is scheduled to commence.

3.5 Issues raised by Councils

Councils identified a number of issues in their clause 393A reports that impacted on the conduct of the elections. These are listed below.

**Refusal by the NSWEC to provide a quote**
A number of the councils suggested that the NSWEC should be required to submit fixed price quotes or tenders and raised concern about the NSWEC’s refusal to do so. In raising this concern however, it would appear the councils failed to recognise that the NSWEC was required under the transitional provisions to conduct the 2012 elections for councils on a full cost recovery basis. This meant that the NSWEC was not in a position to provide fixed price quotes for the 2012 elections. It should be noted that future elections, starting from the 2016 elections, will be conducted by the NSWEC on a contractual basis. This means that councils will be able to negotiate on commercial terms how their elections will be administered and that it will be necessary for the NSWEC to negotiate service level agreements with prospective client councils and provide cost estimates based on those service levels.

**Refusal by NSWEC to support councils that conducted their own elections**
Concern was raised about the NSWEC’s refusal to enter into a hybrid option where some aspects of the election would be under the control of the NSWEC and others under the control of the Council. It was said that the NSWEC adopted the attitude that he was either all in or all out. In raising this concern, however, councils appeared not to recognise that that this was not an available option under the transitional provisions. The NSWEC’s position was consistent with the statutory requirements that applied to the conduct of the 2012 election. Under the provisions that will apply to the conduct of the 2016 and future elections, there may be some scope for councils and the NSWEC to negotiate variable service levels as part of contract negotiations.

**The provision of electoral rolls**
A number of concerns were raised about the actions of the NSWEC relating to the provision of electoral rolls. In particular, concern was raised about the NSWEC’s refusal to provide a soft copy of the electoral roll. Under the legislation, the NSWEC retained responsibility for all electoral roll related functions (other than non-residential rolls for councils other than Sydney City Council) and as such this was a matter for
the NSWEC’s discretion. This was said to impact on the processing of postal and declaration votes.

**The provision of declaration voting forms and envelopes**
Concern was also raised about a delay in providing declaration voting (ie enrol and vote) forms and envelopes. This was referred to by a number of the councils. However it appears to relate to a single instance where an employee of the NSWEC informed an employee of the councils’ contractor that all of the forms had been sent to the NSWEC client councils. This issue appears to have been resolved quickly when the Principal of the councils’ contractor contacted the NSWEC directly.

**The need for experienced Returning Officers**
A number of the councils observed that an experienced returning officer is essential for the successful conduct of elections. Many of the issues/problems experienced by councils in the conduct of the elections (see Part 3.6 below) resulted from the conduct of the returning officer (eg acceptance of a nomination without the prescribed fee at one council and the conduct of the ballot paper draw at another described below).

**The impact of late amendments to the Regulation**
A number of Regulation amendments were made in the lead up to the election. The amendments, (which commenced on 22 June 2012), affected the prescribed forms and came into effect after the contractor had already had the forms printed. This resulted in new forms having to be printed by the contractor. Given the affect the amendments had on the preparations for the election, it is suggested that as far as practicable, any possible regulation amendments that may affect printing should be made as soon as possible prior to an election.

**The management of election related complaints**
Two councils thought there was lack of direction on who was responsible for dealing with election related complaints (ie the returning officer, the General Manager as election manager, the NSWEC or the Division of Local Government). Ultimately, the General Manager as election manager is responsible for administering a council run election. In future, it may be appropriate to encourage councils to develop an election complaints management policy.

**Increased postal voting and pre-poll voting**
A number of councils advised that they experienced an increase in the numbers of electors making postal votes and attending pre-poll voting.

The increase in the number of electors making postal votes and attending pre-poll voting was cited in support of the suggestion made by some of the councils that consideration be given to the introduction of an option for councils to conduct their elections by way of universal postal voting.

### 3.6 Incidents reported by councils during the election

During the course of the elections the Division was contacted by a number of the councils about incidents that had occurred in connection with the conduct of their elections.
Council 1
A council advised that there was an issue with the Returning Officer accepting a nomination but refusing the deposit, telling the candidate they would accept the payment of the deposit later and then forgetting to collect it at the close of nominations. This rendered the nomination invalid. The Council sought its own legal advice on this and collected statutory declarations. It would appear that the view may be that there are extenuating circumstances that may validate the nomination.

Council 2
Concerns were raised that a Returning Officer did not conduct the close of nominations and candidate draw in a professional manner. His services were terminated and a new Returning Officer was appointed. Representatives from the Council’s contractor conducted an audit. This confirmed that despite the issues with the way the close of nominations and the draw were conducted, nominations had been correctly processed.

Other issues in this council election included one of the Groups that had sought to be registered used an NSWEC form instead of the contractor’s form and therefore had not been included in the draw as a group. The Division was advised that this was addressed through a second draw. Another Group was not registered but this was due to the failure to submit the form registering the Group. One candidate was incorrectly identified as a party candidate where they should have been an independent. Again, this was because they had incorrectly identified this in the form.

Council 3
A council advised that after the close of nominations, it received a complaint that the candidate information sheet for one of the candidates had been witnessed by a person who was not authorised to do so.

As the nomination had been accepted and the candidate draw had been conducted by the Returning Officer at the time the complaint was made, the nomination could not then be rejected. This raised concern about the validity of the nomination. Ultimately, the candidate in question was unsuccessful and the validity of their nomination was not challenged.

Council 4
A Council advised that it became aware part way through its count that it had miscalculated its “quota”. To be elected under the proportional representation system a candidate needs a required number or ‘quota’ of the formal votes cast. The quota is calculated by dividing the total number of formal votes by one more than the number of vacancies (disregarding any fractions) and then adding one.

The error occurred when rather than disregarding the fraction, the figure was rounded up. This resulted in the quota being one more than it should have been.

Following discussions with the Division, the Council suspended the count and started again using the correct quota.

Comment
All of these issues appear to be attributable to human error. The errors were either made by an election official or a candidate. As noted above by some of the councils, an experienced returning officer is essential to the successful conduct of an election.
In relation to errors by candidates, ultimately it is the responsibility of the candidates to ensure that all forms are completed correctly. However, it is noted that the councils’ contractor preferred to conduct post nomination candidate information sessions. It is arguable that a number of issues flowing from candidate errors may have been avoided if the nomination process was explained to the candidates at a pre-nomination information session.

3.7 Council suggestions for regulatory changes

In their reports, councils made a number of suggestions for regulatory changes. These are listed below:

**The timing of the decision on the conduct of future elections**
The timeframe in section 296 for deciding who will conduct elections has been described as unrealistic. Under section 296, councils are required to make a decision whether to engage the NSWEC to conduct its next election within 12 months of the election, (ie 3 years before the actual election). Councils are in effect required to make a decision on the conduct of their next election at a time when they are not in a position to make an informed decision.

This issue has been addressed following the passing of the Local Government Amendment (Conduct of Elections) Bill 2013 by Parliament on 20 June 2013. This Bill will commence on assent. The Bill makes the following changes:

- Councils can decide up to 18 months prior to an ordinary election to enter into a contract with the NSWEC to conduct all of their elections, referenda and polls and to enter into any such contract up to 15 months before the election. The contract may be terminated by either party at any time following the ordinary election and will expire 18 months prior to the next ordinary election unless terminated earlier.
- Councils may also enter into a contract with the NSWEC to conduct their individual elections (other than ordinary elections), referenda and polls at any time.
- To address the risks described above in relation to Narrabri, in exceptional circumstances the NSWEC may agree to conduct an ordinary election at any time.
- Councils that have already resolved to engage the NSWEC to conduct a by-election under section 296 within 12 months of the 2012 ordinary election will not be obliged to use the NSWEC to conduct other elections, referenda or polls.
- The NSWEC will conduct all first elections following the establishment of a new council.

**Abolition of the tendering exemption**

It was suggested that the exemption from the need for a council to tender if they wish to engage the NSWEC should be abolished to create a level playing field. The relevant provision relieves those councils wishing to engage the NSWEC from the obligation to undertake a costly tender process. Many smaller councils (whose elections cost less than an estimated expenditure of $150,000) will be exempt from tendering regardless of the specific exemption for the NSWEC. The exemption is
analogous to other existing exemptions for contracts with other councils and contracts with the Crown and statutory bodies representing the Crown. Given that 2016 will be the first election where a contractual relationship will exist between the NSWEC and councils, the concerns about the NSWEC not providing fixed price quotes are unlikely to recur. It should also be noted that the existence of this exemption does not prevent any council from calling for tenders if it chooses to do so.

**Duration of the pre-poll voting period**

It was suggested that the pre-poll voting period was too long and should be reduced to one week. It was suggested that the two week pre-poll period added unnecessary costs to the councils in staffing the pre-poll polling place and it was difficult for candidates to attend or have their volunteers attend the pre-polling during the entire pre-poll voting period. While these concerns have some merit, it must be noted that the majority of the councils reported an increase in the number of electors voting during the pre-poll voting period.

**Above the line voting**

One council suggested that above the line voting should be abolished for local government elections. The council in question had a total of 66 candidates nominate as candidates. The council surmised that only about 20 of these were interested in becoming councillors suggesting that the remainder nominated simply to make up the minimum number necessary to form a group and qualify for an above the line voting square.

**Universal postal voting**

Two councils suggested the introduction of a system of universal postal voting, with one these councils also suggesting that ultimately a system of electronic online voting be introduced.

**Other issues**

A number of councils also made suggestions for minor technical regulation amendments including the design of prescribed forms.

**Conclusions**

As stated above, the section 296 issue has been addressed. The other issues raised will be considered in conjunction with any recommendations arising from the inquiry by the Joint Standing Committee on Electoral Matters into the 2012 Local Government Elections.

**3.8 Feedback on the role of the Division of Local Government**

The Division wrote to the General Managers of the 14 councils that conducted their own elections requesting feedback on:

- the effectiveness of the support provided by the Division to councils, and
- suggestions on how the Division could better support councils conducting their own elections.

Six of the 14 Councils responded to this letter.
**The effectiveness of the Division’s support**
Each of the respondents indicated that they appreciated the level of support provided by the Division. In particular the regular contact from the Division and open lines of communication were appreciated.

The limits to the Division’s ability to resolve some issues were also noted. This was particularly the case in relation to issues the councils had with the NSWEC. It was also acknowledged that some of the issues raised could only be resolved with the NSWEC.

One Council particularly appreciated the provision of the NSWEC’s functional requirements and specifications for the vote counting software and the Division’s Election Process document. It must be noted that these documents could not have been provided without the assistance of the NSWEC.

**Council suggestions for improvements for the future**
1. The Division should facilitate communication between councils and the NSWEC and take on a stronger advocacy and intermediary role on behalf of councils. It should be noted that the NSWEC has already taken steps to improve its communication and relationship with councils.

2. The Division could have supported councils by providing legal advice or the names of lawyers who were experienced in local government elections and that any legal advice obtained by councils could have been collated and made available to other councils to avoid duplication and unnecessary costs.

   While the Division is happy to assist councils and provide guidance by responding to questions about the applicable legislation, it is not in a position to provide legal advice to councils. However, this may be something that Local Government NSW could consider in the future. Any decision by councils to share their legal advice with other councils is a matter for each council. Councils should be mindful that in doing so, they will be waiving any legal privilege that attached to the advice.

3. The pre-nomination candidate information sessions conducted by the Election Funding Authority and the Division should focus more on the role of councillors.

   The Division has undertaken a separate review of the 2012 candidate information sessions and identified a number of areas where the content, style, presentation and timing of the sessions could be improved. It is likely that any candidate information sessions undertaken by the Division prior to future elections will be done differently.

4. The Election Process document issued by the Division could have been issued earlier. The timing of the issue of the Election Process document was impacted by the timing of the changed regulatory environment that applied to the 2012 elections. The Division agrees that ideally the document should be issued earlier and will endeavour to do so at future elections.

5. The survey of candidates should be conducted electronically. The Division agrees that there is merit to this suggestion and will examine options to allow this to occur.
4. CONCLUSIONS

The 14 Councils that administered their 2012 elections did so successfully. The cost of the 2012 elections for the majority of the 14 Councils came in under their projected costs, which were based on their 2008 election costs. While a number of the council run elections were declared within a comparable time to those conducted by the NSWEC, the last council run election was declared 16 days after the election which was one week after the last NSWEC run election was declared. It would appear that by conducting the count themselves, some councils were able to finalise the election results faster.

Perhaps the most important lesson of the 2012 local government elections is that experienced and competent electoral officials are essential for the successful conduct of elections. As the Narrabri experience indicates, not all councils have access to such persons. It therefore seems likely that, notwithstanding the relaxation of the requirement that the NSWEC conduct elections for all councils, some councils will continue to rely on the NSWEC to conduct their elections for them.

It should be noted however, that the new regulatory environment that will apply to the 2016 local government elections will serve to enhance the capacity and flexibility of councils to negotiate tailored packages with the NSWEC for the conduct of their elections that best meet their needs thereby potentially reducing costs.