

LOCAL GOVERNMENT — ELECTORAL OFFENCES

1506. Hon Dr Brian Walker to the parliamentary secretary to the Minister for Electoral Affairs:

- (1) How many electoral offenses has the Western Australia Electoral Commission (WAEC) or WAEC contracted returning officers prosecuted since the 2019 local government elections?
- (2) Which electoral offence in (1), was/were at issue and what was/were the outcomes?
- (3) What changes has the WAEC made in its local government election practices having regard to the *Report of the Inquiry into the City of Perth 30 June 2020* by Tony Power SC page 19; which findings about the WAEC where it is contracted to conduct local government elections, included that whether the action taken by ... the WAEC, in circumstances that suggested misconduct that occurred in relation to an election, was adequate: at page 62; ... the collection of ballot papers could potentially constitute a breach of the *Local Government Act 1995* and should be addressed to ensure it does not occur: page 89, para.166; finding 2.2.2 (iii) ... actions taken by ... the WAEC, to ensure the integrity of the ... elections were inadequate. In particular ...the WAEC ... did not sufficiently investigate or take action in relation to the complaints of fraud...; ... the WAEC consider and review the adequacy of its practices and procedures regarding to the handling and investigation of electoral complaints: page 75 para. 146; ... the City [of Perth] and the WAEC establish a clear division of responsibilities in the conduct of ... elections, including the handling of complaints: 3.4 recommendation 150, page 76; ... the City engage the WAEC to provide adequate training to persons assisting in ... elections: Vol.3 .4, recommendation 153, page 76?
- (4) How does the WAEC mitigate the chain of custody of ballot paper risks in postal elections having regard to the outcomes in Shire of Serpentine Jarrahdale (1st Complainant) Shaye Luke Mack (2nd Complainant) and Electoral Commissioner of Western Australia (WAEC) (Intervener) Gurdeep Singh (1st Interested Party) Robert Coales (2nd Interested Party) GCLM/1354/2021 & GCLM/1297/2021?
- (5) Who are the current pollsters/polling organisations other than the WAEC, including the AEC, available to WA local governments who the WAEC could/would approve and/or has approved for local government returning officers for in-person elections under its *Local Government Act 1995* s.4.20(2) powers?
- (6) What engagement has/does/will the WAEC have with WALGA and/or LG Pro in establishing its practices and procedures for local government elections?
- (7) What were the outcomes of that engagement?
- (8) By how much have local government election voting numbers changed at each ordinary election since the introduction of postal voting in 1995?
- (9) What is the estimated percentage rise in local government postal election costs since the last local government election in 2021?
- (10) Why have postal election costs risen so much since the last local government election in 2021?
- (11) What should local government best practice be in relation to minimising this risk or the fraudulent or misuse of local government posted out ballot papers?
- (12) Are postal ballots for Local Government elections posted to property managers and not owners of leased and rented properties, or posted in such a way that they could be unlawfully intercepted by property managers?
- (13) Should the delivery of the completed ballot paper to local government offices be seen to be placed in a secure ballot box and not received by a front counter employee to be later be placed in an unseen ballot box?
- (14) When do WAEC appointed returning officer contracts end?
- (15) To whom can an electoral offence complaint be made once a WAEC appointed Returning Officer contract has ended?

Hon Matthew Swinbourn replied:

- (1) How many electoral offenses has the Western Australia Electoral Commission (WAEC) or WAEC contracted returning officers prosecuted since the 2019 local government elections?
Three.
- (2) Which electoral offence in (1), was/were at issue and what was/were the outcomes?
Candidate handling electoral postal packages. This is an offence under section 4.92 of the Local Government Act. This person was convicted of that offence.
Publishing falsely authorised electoral material which is an offence under section 4.87 of the Act. Matter is currently before the courts.

Person fraudulently filling out ballot papers, which is an offence under section 4.91 of the Act. Matter is currently before the courts.

- (3) What changes has the WAEC made in its local government election practices having regard to the Report of the Inquiry into the City of Perth 30 June 2020 by Tony Power SC page 19; which findings about the WAEC where it is contracted to conduct local government elections, included that whether the action taken by ... the WAEC, in circumstances that suggested misconduct that occurred in relation to an election, was adequate: at page 62; ... the collection of ballot papers could potentially constitute a breach of the Local Government Act 1995 and should be addressed to ensure it does not occur: page 89, para.166; finding 2.2.2 (iii) ... actions taken by ... the WAEC, to ensure the integrity of the ... elections were inadequate. In particularthe WAEC ... did not sufficiently investigate or take action in relation to the complaints of fraud...; ... the WAEC consider and review the adequacy of its practices and procedures regarding to the handling and investigation of electoral complaints: page 75 para. 146; ... the City [of Perth] and the WAEC establish a clear division of responsibilities in the conduct of ... elections, including the handling of complaints: 3.4 recommendation 150, page 76; ... the City engage the WAEC to provide adequate training to persons assisting in ... elections: Vol.3 .4, recommendation 153, page 76?

This part of the City of Perth inquiry that focused on electoral offences related to sham leases, misuse of the owners and occupiers electoral roll, eligibility relating to corporate nominees being on the owner and occupiers roll and the non-disclosure of gifts by candidates. The owners and occupiers roll and its accuracy is the responsibility of the CEO of each local government.

The Local Government Amendment Act 2023, which was passed on 11 May 2023, introduced amendments to reform the owners and occupiers roll to prevent the use of sham leases. These provisions are not yet in effect as the detail of the new requirements will be set out in regulations. It is understood that the Department of Local Government, Sport and Cultural Industries is progressing amendments to the *Local Government (Elections) Regulations 1997* to deal with some of these matters.

- (4) How does the WAEC mitigate the chain of custody of ballot paper risks in postal elections having regard to the outcomes in Shire of Serpentine Jarrahdale (1st Complainant) Shaye Luke Mack (2nd Complainant) and Electoral Commissioner of Western Australia (WAEC) (Intervener) Gurdeep Singh (1st Interested Party) Robert Coales (2nd Interested Party) GCLM/1354/2021 & GCLM/1297/2021?

While the WAEC fulfils its statutory duties in relation to the Local Government Act and has robust processes in place for the safeguard of postal packages in its custody, it cannot police the behaviour of candidates and their supporters, or electors more generally. With some 1.7 million postal packages being sent to electors for the October 2023 local government elections, the WAEC follows the processes specified in the Local Government Act and relies on the community, candidates, and their supporters to act appropriately.

- (5) Who are the current pollsters/polling organisations other than the WAEC, including the AEC, available to WA local governments who the WAEC could/would approve and/or has approved for local government returning officers for in-person elections under its Local Government Act 1995 s.4.20(2) powers?

The WAEC has not been requested to approve any other person to conduct a local government election.

- (6) What engagement has/does/will the WAEC have with WALGA and/or LG Pro in establishing its practices and procedures for local government elections?

The WAEC has established working groups with the Department of Local Government, Sport and Cultural Industries (DLGSC) and WALGA to cover communications and training and awareness. The Local Government Act and subsidiary legislation underpins all local government election processes and procedures. Processes are outlined in the training materials provided by the WAEC to its appointed Returning Officers which is further supplemented by information also available on the WAEC and the DLGSC websites.

- (7) What were the outcomes of that engagement?

The joint Working Groups aim to ensure consistency in communications and training across WAEC, DLGSC and WALGA, which includes the recent webinar provided by the WAEC, DLGSC and WALGA regarding information for prospective local government candidates about the election process, the roles and responsibilities of local government, elected members and the council, together with the role of the DLGSC as the regulator of local government in Western Australia.

- (8) By how much have local government election voting numbers changed at each ordinary election since the introduction of postal voting in 1995?

The WAEC conducted postal voting for the restructure of the City of Perth in 1995. This involved amending the *Local Government Act 1960* and the *City of Perth Restructuring Act 1993*. These elections were for

the new City of Perth and the Towns of Cambridge, Victoria Park and Vincent. The participation rate in these 4 local governments was 49.98%. The WAEC will conduct 115 postal elections and 9 in person elections for 2023. The participation rate for postal elections conducted by the WAEC since 1995 is set out below but it should be noted that the early figures 1995–2005 are based on smaller numbers of local governments participating in postal elections when compared to more recent years. Thus the overall number of potential electors participating in postal elections has grown progressively over the period 1995 to 2021. More detailed information is available from the Commission's website www.elections.wa.gov.au:

Election Year	Postal Participation Rate %
2021	30.20%
2019	29.10%
2017	34.50%
2015	27.50%
2013	27.76%
2011	30.94%
2009	33.37%
2007	34.34%
2005	37.34%
2003	34.95%
2001	38.00%
1999	42.00%
1997	46.50%
1995	49.98%

- (9) What is the estimated percentage rise in local government postal election costs since the last local government election in 2021?

128 local governments were provided with a cost estimate in 2023 compared to the 92 local governments the WAEC conducted postal elections for in 2021, making a comparison difficult. The WAEC advised all local governments that requested a cost estimate in 2023 that costs had increased since 2021 due to the normal inflationary pressures that all suppliers have been experiencing recently as well as improvements made to the WAEC's processing procedures and education, training, complaints management, investigation and legal resources. More specific detail is provided in answer to question 10. The 2021 ordinary elections continued a growing trend of aggressively contested elections resulting in many complaints and legal action by the WAEC. It became apparent that the WAEC needed to improve processing procedures and education, training and complaints/legal resources to address this trend.

- (10) Why have postal election costs risen so much since the last local government election in 2021?

Cost increases are attributed to the following factors:

An increase for some local governments in the number of elections being conducted due to the introduction of direct election provisions for Mayoral/Presidential elections (37 in 2023 compared to 12 in 2021).

An estimated increase in the number of electors of over 100,000 since 2021.

Australia Post has increased its postage fee by 11%.

A 14% increase in the cost of printing and procurement of election packages (including envelope and paper costs).

Public Service wages have increased over 6%.

Additional staffing costs arising from improved processing procedures and education, training, complaints management, investigation and legal resources identified following the 2021 ordinary elections as requiring improvement to our service delivery levels.

- (11) What should local government best practice be in relation to minimising this risk or the fraudulent or misuse of local government posted out ballot papers?

Local governments should actively inform electors using their normal communication channels when postal packages are being distributed by Australia Post. Further, they should remind electors to follow

the instructions in the information brochure supplied with their postal packages. Local governments should remind electors there are serious offences related to mishandling postal packages. This year the WAEC will also be informing electors when their postal packages are to be mailed-out to them. Candidates are also being reminded of the proper procedures in relation to the handling of postal voting packages and encouraged to pass this message onto any volunteers they may utilise as part of their campaign.

- (12) Are postal ballots for Local Government elections posted to property managers and not owners of leased and rented properties, or posted in such a way that they could be unlawfully intercepted by property managers?

In accordance with legislative provisions electors on the Owner/Occupiers roll receive their election package via the post at the postal address that the elector supplied on the Enrolment Eligibility Claim Form that was processed by the relevant local government.

- (13) Should the delivery of the completed ballot paper to local government offices be seen to be placed in a secure ballot box and not received by a front counter employee to be later be placed in an unseen ballot box?

The WAEC recommends that the ballot box should be in a location visible to the public but also in a secure location.

- (14) When do WAEC appointed returning officer contracts end?

The Returning Officers are appointed until 20 November 2023. This period includes the period allowed for any Court of Disputed Return matters.

- (15) To whom can an electoral offence complaint be made once a WAEC appointed Returning Officer contract has ended?

Any member of the community may make a complaint to a Returning Officer while they are appointed or at any time directly to the Commission via our website www.elections.wa.gov.au.