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JOINT COMMITTEE ON ELECTORAL MATTERS

**Reference: Conduct of the 1998 federal election and matters related
thereto**

TUESDAY, 23 MARCH 1999

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JOINT COMMITTEE ON ELECTORAL MATTERS

Tuesday, 23 March 1999

Members: Mr Nairn (*Chair*), Mr Laurie Ferguson (*Deputy Chair*), Senators Bartlett, Faulkner, Lightfoot, Murray and Synon and Mr Danby, Mr Forrest and Mr Somlyay

Senators and members in attendance: Senators Bartlett, Faulkner, Murray and Synon and Mr Danby, Mr Laurie Ferguson, Mr Forrest and Mr Nairn

Terms of reference for the inquiry:

To inquire into and report on all aspects of the conduct of the 1998 federal election and matters related thereto.

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Committee met at 12.39 p.m.

CHAIR—I declare open this hearing of the Joint Standing Committee on Electoral Matters inquiry into the 1998 federal election and matters related thereto. The Joint Standing Committee on Electoral Matters and its predecessor, the Joint Select Committee on Electoral Reform, have been reviewing the conduct of federal elections since 1983. These committees have a long and successful history of recommending improvements to Australia's electoral processes, and have played a central role in developing an electoral system that is the envy of the world.

The current inquiry into the 1998 federal election was referred by the Special Minister of State on 10 December 1998, and should be completed during the spring sittings. It is usually the practice at the first hearing of an inquiry to make a general statement as to the focus of the inquiry. In this instance, I propose to postpone that statement until the hearing on 1 April, at which the committee will hear the Australian Electoral Commission, by which time we will have had an opportunity to identify the major themes arising from the substantial number of submissions we have received thus far.

Today we will be hearing from two members of parliament, Mr Barry Wakelin, member for Grey, and Mr Robert McClelland, member for Barton. Parliamentarians have a keen interest in the welfare of the electoral system and have historically been significant contributors to federal election inquiries. This inquiry is no exception, with a number of parliamentarians already having provided submissions to the inquiry.

The issues we expect to canvass today include the arrangements for voting in remote communities; the potential disadvantage suffered by independent candidates—we may not canvass that so much today, because Peter Andren was to be a witness today but now can't be here; and truth in political advertising. I anticipate that this hearing will provide some productive suggestions for dealing with these and other issues.

[12.42 p.m.]

WAKELIN, Mr Barry, MP, Member for Grey

CHAIR—Welcome. The evidence you give at the public hearing today is considered to be part of the proceedings of parliament and therefore the normal rules and regulations related thereto with respect to contempt of parliament et cetera still apply.

The committee has received your submission No. 22 and it has been authorised for publication. Are there any corrections or amendments you would like to make to your submission?

Mr Wakelin—No.

CHAIR—I note that you have provided some additional information today, which has been distributed to committee members. It will become submission No. 160, to give you some idea of how many submissions we have. Would you like to make a brief opening statement before I invite members to proceed with questions.

Mr Wakelin—Certainly, Mr Chairman. The themes to my submission are, firstly, competence in the administration of electoral process, then consistency of treatment across the community and impressions of possible corruption of the electoral process.

Under those headings, you will see things like declaration voting, and in there I mention the work conditions which are precluding polling on election day. The most obvious example in my electorate was at Roxby Downs, where there is a lack of pre-poll facilities. Of course, when you have a 12-hour shift situation, effectively excepting the other options that are available, people are disenfranchised for a range of reasons. The nearest pre-poll is at Port Augusta at the divisional office—a distance of almost 300 kilometres. On the issue of remote polling, it is interesting to note that there is remote polling conducted at Davenport Reserve, which is a suburb of Port Augusta.

The other concern which has been freely expressed by my constituents is the lack of accountability associated with remote polling. We had one instance in this last election where established timetables for polling were overturned and a remote polling team returned to ensure that every vote at a single community was individually pursued. This intensive treatment contrasts with that accorded to the vast majority of electors in Grey and further highlights anecdotal concerns about voting and enrolment in those communities.

On the issue of a very low informal vote, you can see by that chart that it is noteworthy that there has been a dramatic reduction of informality rates for remote polling, to the point where such polling produces informality rates far lower than the average.

Moving on to the specific issue of a Grey polling booth in Salisbury, this issue arose because of the apparent belief by the AEC that there would be a sporting carnival in Salisbury which would generate demand equivalent to about 2,000 electors for such a facility. A grand total of 36 electors cast their votes on that day. I just highlight that to contrast the way resources were used, say, at Roxby Downs with the way they were used at

Salisbury. Special hospital polling is self-explanatory. The Grey divisional office operations have some slackness in that operation, and the shifting of the office from Port Pirie to Port Augusta is mentioned. The location of polling facilities on election day I think is self-explanatory.

Suggestions of impropriety I think come to the core of many people's concerns. The impression is important. As with justice, so with our electoral system: not only must it be fair but it must be seen to be fair.

In my conclusion, I say that these are the questions that my constituents are asking. What proportion of the votes cast at remote polling stations in the division of Grey were completed by polling officials on the direction of voters? Which AEC staff assisted with the remote polling places? Were those staff full-time employees of the AEC? What role did education officers have in the remote polling process? Was an education officer sent from Kadina or elsewhere to assist in the process and what was the officer's directed role? I think that sums up the overall concerns.

I will finish by saying that, as you said in your opening statement, we have a wonderful electoral system, and this is just testing to make sure that it remains so.

CHAIR—Thank you. How many people would have probably voted at Roxby Downs if there had been a poll there?

Mr Wakelin—About 1,200 to 1,400. In a pre-poll, probably a couple of hundred.

CHAIR—But the nearest pre-poll was three hours away and there was no mobile polling in the week prior to the election in that region.

Mr Wakelin—No. Obviously they had access to postal voting and the range of other things. It just strikes some of us that the contrast between the effort that went into the Salisbury booth and the Roxby Downs booth highlighted the difference in the treatment of voters in Grey.

CHAIR—With some of the questions you have asked, as with all of the submissions, the AEC will comment at some time in relation to matters raised by most people who put in submissions. I guess there is a rhetorical question in there in some sense. From some of the other things you have said, I think you are saying that the low informal vote is directly related to the level of assisted vote.

Mr Wakelin—I am not able to say that. All I am pointing out is the fact that we had an informal vote in 1987 of 15 per cent and it has gone to 1.4 per cent, which I think everyone would agree is quite low even by national standards or by South Australian standards. Therefore, consistent with the evidence given to me by people who I visited just one month after the election, their concerns were, I will not say confirmed—we respect the confidentiality of the ballot box—but there is some informal evidence to suggest, if I can put it that way, that this arrangement may not have been kosher all the time. But, more importantly, what accountability is there of the remote polling process?

Senator FAULKNER—What do you mean by ‘informal evidence’?

Mr Wakelin—The formal evidence is the actual number of 1.4 per cent informal vote, in terms of those booths. The informal evidence is constituents unsolicitedly saying to me that when they were at the polling booth they overheard these sorts of things.

Senator FAULKNER—Has anyone put any of these concerns to you in writing at all, Mr Wakelin?

Mr Wakelin—No, they have not. I will explain that in this way: when people live in small Aboriginal communities, they have to be very careful because they have rather delicate relationships between the people in the community, and they need to protect their relationships very carefully. They are not inclined to speak publicly on these sorts of things.

Senator FAULKNER—So this is hearsay?

Mr Wakelin—It is hearsay, I suppose, in the purest form. But the people I am dealing with are quite reputable people; they are school principals, they are people of integrity whom I would trust. I have not pressed them to put it in writing, because I do not want to jeopardise or compromise their positions in those communities.

Senator FAULKNER—Yes, but what you are saying is under the heading of ‘suggestions of impropriety’. I think all of us would treat—I certainly do, and I accept that you do—any allegations of impropriety seriously. In a committee like this, and more broadly in the parliament, most of us would treat such allegations seriously—and I think you would expect us to, wouldn’t you?

Mr Wakelin—Absolutely, yes.

Senator FAULKNER—Have you made any formal approaches to the AEC? I appreciate you have made this submission available to the committee, but have you taken these concerns up with the divisional returning officer?

Mr Wakelin—No, I have not; for the deliberate reason that I wanted to bring it to this committee first. I did not want to give the AEC the opportunity to prepare their case before I brought it to this committee.

Senator FAULKNER—Obviously you have taken up some concerns.

Mr Wakelin—Yes, there is one letter.

Senator FAULKNER—There are indications that a bit of tick-tacking has gone on about a number of issues with the divisional returning officer, prior to the election at least, or during the election.

Mr Wakelin—During, but going back some time. There is that one letter that is part of that submission which indicates my concern with the Salisbury booth, yes. I did not think it was required.

Senator FAULKNER—Are relations between yourself and the divisional returning officer for Grey at a pretty ordinary sort of level, would you say?

Mr Wakelin—No, they are excellent, actually. They are very good and they have been very good. We have an excellent relationship with the returning officer. It does not mean we always agree, but I hope—as in this place—our relationships are most of the time professional.

Senator FAULKNER—So you would describe it as a good relationship between yourself and the divisional—

Mr Wakelin—Yes, I would.

Senator FAULKNER—What about the divisional returning officer's staff?

Mr Wakelin—Yes, I think they were always courteous. I did not deal with them personally very much but my staff members did, and they were always of a sound nature.

Mr LAURIE FERGUSON—I think that some of the concerns you raise about the efficiency of the local electorate office would be worrying to the members of the committee, but you seem to be putting up a relativity argument with regard to the degree of resources devoted to remote polling vis-a-vis some of these other problems. Is this a strong thrust of yours, that you want to see remote polling go? What actually is the accent of it?

Mr Wakelin—Not at all. I am just pointing out that I think there are points of principle in that 1.4 per cent. Most reasonable people, I think, would agree that is an interesting figure. The issue at Roxby Downs has been a long running issue for both Commonwealth and state. As you would understand, these agencies, I think, work together reasonably well. But when we said, 'These are miners, working people, flat out, long shifts et cetera: could we do something to help them?' that issue was there. Then all of a sudden they said, 'There are going to be 2,000 people down at Salisbury,' which, as you would probably appreciate—

Mr LAURIE FERGUSON—I am not arguing with those two points; I think you have made—

Mr Wakelin—That is a thousand kilometres away, and they put those resources in there.

Mr LAURIE FERGUSON—How many people voted by remote polling in your electorate?

Mr Wakelin—It is a good question. I think it would be in the order of a couple of thousand—1,500 to 2,000.

Mr LAURIE FERGUSON—You have obviously done an analysis here of the informal vote comparing the actual overall division and remote polling.

Mr Wakelin—Sure.

Mr LAURIE FERGUSON—Have you done an analysis of highly concentrated Aboriginal polling booths that did not have remote polling, and the degree to which they might have equally been assisted by people on the polling booth, and might have recourse to that more than the general population?

Mr Wakelin—I suppose what you are asking there is, at Port Augusta and Ceduna—where you have a number of Aboriginal people—does it vary? I have not got them here, but I think it would be around the average, say, at a place like Port Augusta or Ceduna.

Mr LAURIE FERGUSON—It does not answer the point you are making about division vis-a-vis remote polling. But the other point you make with regard to comparison with other electorates in South Australia—how many candidates are in your electorate?

Mr Wakelin—Good question. It was 11 the first time, four the next time. I would think we had about seven candidates, but I would have to check that, Mr Chairman. I should remember that.

Mr LAURIE FERGUSON—Have you had a look at the number of candidates in those other seats?

Mr Wakelin—It would vary. I think Wakefield had something like 10 or 11. I do not think I have mentioned Wakefield here, but I think Boothby and Sturt had similar numbers to me, or perhaps less.

Mr LAURIE FERGUSON—Do you accept that, regardless of things overheard, innuendo et cetera, it is a fact of life that if a proportion of people—even in my own electorate—with non-English background have more recourse to help than other parts of the electorate, then there is going to be a high probability that the informal vote will indeed be lower, regardless of whether there is any conspiracy by electoral officials?

Mr Wakelin—I am not aware of the broader implications. I suppose all I am trying to say is that it does seem unusual. In fact, I think I should welcome it—the lower the informal rate, the better—as a sort of victory for our system. My issue is, what scrutiny and what reporting back is there of our AEC staff on this sort of issue? What is the actual process? I do not know. Do they ask? Are they recording how many they actually fill in? I would like to know what the process is, so that we are sure that—

Senator FAULKNER—But you can have scrutineers there yourself.

Mr Wakelin—No, Senator Faulkner, it is one of those issues where it is so remote that we just basically—I do not know that there were scrutineers there from either party.

Senator FAULKNER—No, but you could—

Mr Wakelin—At a great cost, we could have.

Senator FAULKNER—Yes, but you accept you could have had scrutineers.

Mr Wakelin—And that sometimes there have been scrutineers there, but in this case—

Senator FAULKNER—But on this occasion you did not have scrutineers, which is useful for us to know, obviously.

Mr Wakelin—Yes, sure.

Mr LAURIE FERGUSON—And you are telling us that a few thousand votes are involved in this?

Mr Wakelin—In terms of the total.

Mr LAURIE FERGUSON—The number of people voting at remote polling would run into thousands.

Mr Wakelin—Yes, 1,500 to 2,000. It would be easy enough to check, but it would be around that sort of number.

Mr LAURIE FERGUSON—Could you just go into this point that you make about following up every individual or whatever? What is all that about?

Mr Wakelin—Sorry, which case?

Mr LAURIE FERGUSON—The submission states:

We had one instance in this past election where established timetables for polling were overturned, and a remote polling team returned to ensure that every voter at a single community was individually pursued.

What is that all about?

Mr Wakelin—Do you understand the remote polling system? You have a sort of a timetable and away you go. On this occasion, there must have been some mistake or misunderstanding and they said, ‘Hang on, they are not about.’ They had to recall the officials to allow people to vote, which seemed—I had never heard of it before—just unusual. Normally, you stick to the system. You are in or you are out, and away you go.

Senator FAULKNER—For clarity, it is important that you explain to us what you mean by ‘recall the officials’. I think I know what you mean.

Mr Wakelin—There was a request to the AEC people responsible for running the booth on that day to set aside the actual time and bring them back from where they were. Whether they were resting or in transit or whatever, I do not know.

CHAIR—So the polling booth was open from, say, 10 to 12. That time elapsed and they went off to somewhere else to have lunch or whatever else, and then somebody said, ‘Hey, come back and take some more votes.’ They actually voted after the published time of the mobile poll. Is that it?

Mr Wakelin—That is right.

Mr LAURIE FERGUSON—You prefaced that by saying there had been a stuff-up, didn't you?

Mr Wakelin—Did I use those terms?

Mr LAURIE FERGUSON—No, you didn't use that expression, but that there had been a mix-up or a mistake.

Mr Wakelin—I am unclear about the scheduling. Someone in the community may not have passed the message on or whatever.

Mr LAURIE FERGUSON—If they had not returned, what was the situation of those people? How remote are they from the rest of the electorate? What are their options?

Mr Wakelin—In the Pitjantjatjara lands you are talking distances of 500 kilometres from one side to the other and 100 kilometres between communities. They rely on aircraft to hop from one community to another. Does that give you the picture?

Mr LAURIE FERGUSON—Yes. How long before election day was this event?

Mr Wakelin—It is usually the fortnight before, leading up to the election.

Senator FAULKNER—In relation to the section of your submission with the subheading 'Location of polling facilities on election day', you say in the last paragraph of that section that the anguish of elderly residents was pretty clear. You go on to say:

What was not understandable was the defensive reaction of the Divisional Returning Officer in the press who blamed the Prime Minister, the Government and the long weekend for the disaster, without directing his attention to the fundamental mismanagement of the AEC . . .

For the benefit of the committee, would you be able to provide us with those press clippings?

Mr Wakelin—Yes. You have one copy. I should have provided the lot. I think it is there.

Senator FAULKNER—Thank you. Mr Chairman, if we have copies, could we have a quick look at that?

CHAIR—We will get some copies.

Senator BARTLETT—I am interested in getting your view on one question. I do not know if you saw the submission from Mr Syd Stirling, who is a Northern Territory member.

Mr Wakelin—No.

Senator BARTLETT—It was attached to yours because it was related with a similar sort of topic. He expressed concern about the inadequate level of assistance for indigenous voters with English as a second or third language. I assume there would be similar issues in parts of your electorate with indigenous people.

Mr Wakelin—Yes, there would be.

Senator BARTLETT—In your extra submission you have given us today you might be talking more specifically about remote polling rather than at a polling booth, but you are expressing concerns about voters possibly being led as to how to vote. Do you have a view about whether there is an adequate level of assistance provided at polling booths for people with literacy problems or English as a second language, or sight impaired people?

Mr Wakelin—I can answer in a couple of ways. There is a huge issue around literacy and numeracy in those communities, and we have got a long way to go before we could be satisfied with the standard. There is a debate, as you would be well aware, on the issue of how you do it culturally appropriately and all those sorts of things. That is one issue.

In terms of the specific electoral process, certainly the level of effort that has gone in in recent years has significantly increased. I welcome that. In saying that, I am not sure—this is part of that last question of mine—how best you assist in improving the literacy issue or the awareness of our electoral system.

Senator BARTLETT—One of the things behind my question is that we were dealing with this issue in electoral amendment legislation in the Senate a month or so back, in terms of what is the appropriate way of ensuring that people who do not speak English well, as an example, get adequate advice whilst balancing that against the issue of privacy of the vote. From memory, there were amendments so that, instead of enabling the person to take a friend in there, they had to take an electoral official and then you could have a scrutineer standing behind them to make sure it was all done properly. That obviously addresses your concerns about impropriety but has some other problems in terms of privacy of the vote and the person not being able to take someone they trust along. Do you have any view about that?

Mr Wakelin—I think it is something that perhaps could be looked at in terms of people being encouraged to take a trusted friend along. The issue here is not so much Grey, it is not so much the Pitjantjatjara lands or elsewhere—it is this issue of the integrity of the system. I would have thought that, for the protection of Australian Electoral Commission itself, they would want to be accountable at arm's length in the process, to be assured that a free and fair choice was made. So I would prefer the option, as much as possible, to use a mentor, if I could put it that way. Perhaps that is one way. On the earlier question about scrutineering, that process—once again respecting the arm's length nature of it—perhaps is something that in your deliberations you might consider.

But can I put to you that the booths themselves are fairly interesting places. I am not sure whether you have ever visited one of these remote booths. They are pretty interesting in terms of how you actually access them and who is there and who joins in the general voting issues. It probably has a little way to go in the sense that you are talking about. But the

basic issue is the integrity of the AEC and that they do not leave themselves open to not my charges but my constituents' charges.

Senator SYNON—You talk about time delays and state:

. . . incidences of error, delay and mismanagement reported to me suggest that a review of the system for processing applications is required.

I know that you would have had a particularly busy time during the election, but did your office make any attempt to quantify the number of reports that you had in terms of time delays or error? I ask just to give us a better picture of what numbers of people we are talking about. Is it two or three, or is it 50?

Mr Wakelin—Thank you for the question. I think we were talking in terms of a score or less—in terms that I recollect—through the office. It does remind me, however, of another issue which I meant to research this morning and I did not; it only came to my notice last night. Six months after the general mail-out you have with an election, we have just received some hundreds of letters in return—we think from perhaps the Alice Springs post office. We are wondering where these letters have been sitting for six months. You have just reminded me of that. I suppose it is a separate issue but, if you talk about delays, that is another issue that perhaps I will take up if I am still here at the next election.

Senator SYNON—You talk about problems with the hospital polling as well and the change of times at the last minute.

Mr Wakelin—Yes, there were changes of time. I think it is to do with corporate knowledge. Basically, we had an AEC well established in Pirie for many years. The decision was made to take it to Port Augusta. There were changes in personnel. I have mentioned it in there. I do not really think it is helpful for me to go too much into it because there was quite a lot of personal turmoil in it. Essentially, that corporate knowledge was probably lost, with the best intention in the world. There was a new AEC officer. They did a good job. As I said, we have a good working relationship. But you lost the corporate knowledge of those communities, the timing, the names and those sorts of things.

Senator MURRAY—Just to clarify, at not one of the remote polling stations did you have scrutineers?

Mr Wakelin—I will stand corrected: I think I may have had one in the far west, but certainly not in the Pitjantjatjara lands.

Senator MURRAY—For us to deal with these sorts of problems it would be useful for us to be able to compare results—not just in your constituency but in all the constituencies which have remote stations—where scrutineers were present versus where they were not to see if there is any identifiable difference in voting performance and voting behaviour. That would be indicative of whether the presence of scrutineers actually affects the outcome and improves the probity of the process.

Mr Wakelin—Yes. I reiterate that it is some thousands of dollars of resources to use an aircraft. It is usually getting pretty warm at that time of the year, and to get a volunteer to do it, plus the significant resources, is usually beyond us. It was at this stage.

Senator MURRAY—I understand that. My question to you really is: could you provide, on notice, the polling stations where you had scrutineers, and ask the AEC to do a comparison?

Mr Wakelin—Yes, I will undertake to do that. The only difficulty in that with the remote mobile polling usually they move from one location to another and all of those votes are accumulated. So you cannot then subdivide those votes and say, ‘Well, these were cast at this remote polling booth and these somewhere else.’ They will maybe go for a week at a mobile poll and then you will have the result of mobile poll No. 4 or mobile poll No. 3, and you may have only had a scrutineer at one or a couple of those mobile polls along the way. Nevertheless, I will undertake that. In the case where I think we may have had a scrutineer in one of two booths, I think they might have had a separate mobile to the Pitjantjatjara’s, so there is a possibility that I could do that. I will have a look at it.

Senator MURRAY—Perhaps we could get the secretary to write to all MPs who have remote stations in their constituencies and ask them to let us know which had scrutineers attached to them. We might be able to get a better appraisal from the AEC.

Mr Wakelin—We may be able to get that information.

CHAIR—We could talk about that.

Senator FAULKNER—Could we talk about that? I do not support that proposition. I think that is basically absurd. But I would like to talk about it at a private meeting, because I think I could mount a few strong arguments in support of my case that it is preposterous.

Senator MURRAY—I will not be here later on. I needed to put it down and, if you defeat it, that is fair enough.

Senator FAULKNER—I see. Right.

CHAIR—What the committee does in that respect we will work out at a private meeting. By the same token, there is a variety of submissions and there is a variety of other evidence to be taken which may cross over into some of that sort of information as well.

Mr FORREST—I am on the committee and I am not a witness! I am a bit fascinated by the fact that you have had this change in polling booths. They are fairly well established events—certainly in my part of the world. I am surprised that there are all these changes. Could you add some special wisdom as to why a longstanding booth that everybody has got used to suddenly is changed?

Mr Wakelin—We were mystified. I think the reason given to us was that those facilities were already taken. But I think there was also another response that they were rather late in

booking them. That is the argy-bargy. But we were mystified, because in most cases I think the existing facilities were maintained.

Senator FAULKNER—Is it the Prime Minister's fault, then? I am normally quite comfortable blaming him.

Mr Wakelin—Only in a minuscule way.

Mr FORREST—I have one last question. On the second page of your submission to us here today there are some fairly strong assertions that we ought to explore. In the second last sentence on the second last page, you say:

When concerned local residents tried to put a stop to this practice they were openly criticised by polling officials in a totally inappropriate manner.

Again, I would urge you to provide us with evidence of that very strong assertion there, if you can—or maybe you can here today before us.

Mr Wakelin—No, my memory will not allow me to do that. But there were some what we considered at the time to be inappropriate comments. They were not as civil as we might have expected. But I will take that up.

Mr DANBY—You said that in Roxby Downs there were 1,200 people who voted in the normal polling booth.

Mr Wakelin—Yes, roughly.

Mr DANBY—How do you know that there were 200 people who wanted to pre-poll?

Mr Wakelin—I was going on those who would be underground on that shift. Some might have already done their postal or whatever, but it had been an issue for a while. Some, being more efficient than others, had rung up and said, 'I have to vote and I can't because I am working.' So we have become aware of that, and we wonder whether some sort of service could be provided.

Mr DANBY—The other issue relates to the returning officer on the remote voting. I have a lot of sympathy for you with changed booths and that kind of stuff. I had at least as many in my electorate as yours that changed at the last minute, and it discomforts people a great deal. All of us, I think, have minor differences with the Electoral Commission officials, but, given the fact that you have got a professional relationship with them, instead of wanting to know the process from the committee, wouldn't it have been better to sift that out and, if there was a problem with them, then come to us?

Mr Wakelin—I think I am trying to raise a broader issue about corporate knowledge and about the AEC's management. There was this issue of the transfer from Pirie to Port Augusta, where I think they could have consulted a little better in terms of understanding the local situations. My memory is that they simply made mistakes, and that is probably what you are referring to as well. They left things off, they had wrong polling booths and that sort

of thing, which did upset people, and which was so unusual, given their normal high standard.

Mr DANBY—Port Pirie is in your electorate, though, is it?

Mr Wakelin—Yes, indeed.

Mr DANBY—You are in a better situation than I am. I have got an Electoral Commission office outside my electorate.

Mr Wakelin—It is at Port Augusta. The former office was at Pirie.

Mr LAURIE FERGUSON—This is not going to be one of those world shattering thing we consider during the inquiry, but how many people live in Risdon Park as opposed to this Port Pirie West area?

Mr Wakelin—You have got me, Mr Ferguson.

Mr LAURIE FERGUSON—Rough ballpark figure?

Mr Wakelin—I think Risdon would be in the order of in excess of 1,000. My memory tells me not as many as that voted there, for some reason. Pirie West is declining: I would say maybe 600. I will probably be embarrassed when I actually check the record, but that is my memory.

CHAIR—Thank you, Mr Wakelin.

Mr Wakelin—Thank you, Mr Chairman.

[1.18 p.m.]

McCLELLAND, Mr Robert, MP, Member for Barton

CHAIR—Welcome. The evidence that you give at the public hearing today is considered to be part of the proceedings of parliament, and I probably do not need to remind you that it therefore is subject to the normal rules and regulations, particularly in respect of contempt of parliament.

The committee has received your submission No. 22 and it has been authorised for publication. Do you have any corrections or amendments you would like to make to your submission?

Mr McClelland—No.

CHAIR—Do you wish to make a brief opening statement before I invite members to proceed with questions?

Mr McClelland—Basically, my submission is very brief indeed. My evidence is recommending to the committee that they restate their previous recommendation 47 from the 1996 election. That recommendation read:

That the Electoral Act and the Broadcasting Act be amended to prohibit, during election periods, "misleading statements of fact" in electoral advertisements published by any means.

The reason I am strongly recommending that is that my experience—both at a federal level and at a state level, I must say—is that electioneering is increasingly becoming last minute. This week in New South Wales, I daresay both parties will be ready to get their last minute material out on Wednesday, Thursday or even Friday. If that material contains misleading statements of fact, it is extremely difficult for a candidate to rebut that prior to election day.

My evidence is in the context where increasingly campaigning is being directed to marginal seats, and key marginal seats, and they literally determine governments. For instance, in the last federal election the ALP polled the majority of votes but, because of winning some crucial marginal seats, the government holds government. Now, that is the nature and that will be, I think, the nature of elections for some time to come. So winning marginal seats is crucial to winning government, and we literally could have a situation where marginal seats are won through the occurrence of misleading statements of fact.

It is important because often at a local level in those marginal seats the issue could be a crucial issue. In my electorate of Barton, issues relating to the operation of the airport, whether there will or will not be any further runways and so forth, are crucial issues which can certainly sway the minds of voters. But it is an issue which the Sydney wide media may not find of interest to them in the broader circulation, so the rebuttal may not be possible in the broader media. And, for instance, at a local level, my electorate's one and only local newspaper publishes its last edition of the week on a Thursday. To have something running in that, you would really need to have it in by the Monday. So rebuttal of misleading statements of fact in many marginal seats is impossible, and I am very concerned that you

could have, as I say, crucial marginal seats being won through the advancement of misleading statements of fact and hence you could easily have a situation where government is won through misleading statements of fact. That is why I strongly believe that the committee's report on the 1996 federal election was sound in that recommendation 47.

CHAIR—Thank you for that. Do you have any examples from the last election to demonstrate?

Mr McClelland—In my area, I was actually handing out material on the Thursday for letterboxes, and I found material relating to the airport which was a misstatement of fact. I was able, because of the resources of a federal member and copying machines and so forth, to quickly run off a low quality pamphlet, and we distributed it until 2 o'clock in the morning to rebut that. But, if I had not had the resources of a federal member, or had not chanced to myself be out there letterboxing, I would not have seen that material.

CHAIR—The recommendation in the last report was along the lines, as I recall, of the South Australian legislation.

Mr McClelland—Yes.

CHAIR—Have you done any research on the workability of that legislation in South Australia? I know it had been in place not all that long when we did the report for the 1996 election.

Mr McClelland—I have not done any further research other than reading the actual legislation, which I think is an appropriate model.

Senator BARTLETT—You were specifically concerned about brochures and things like that, rather than television ads or radio ads?

Senator FAULKNER—They will not be on air a couple of days before the election.

Mr McClelland—Even at that level, the television level, you have got the Federation of Commercial Television Stations, FACTS, that exercises some gatekeeper function, but there is nothing at all that applies at a local letterbox distribution level. You can virtually say anything, subject to the laws of defamation, with impunity.

Senator BARTLETT—We are referring to the recommendation and the linkage to the South Australian act. I guess another issue that is raised from time to time—I think it has been raised again in the New South Wales election—is push polling.

Mr McClelland—Yes, that is another version of it. Again, there is an issue that has arisen in New South Wales today, with both sides alleging the others are push polling now. Its occurring on Tuesday gives the opportunity to put out something to rebut it but, if that was occurring on a Thursday or a Friday, that could be devastating in some of those key marginal seats. Again, push polling or last minute telephone canvassing is a good example. Increasingly the parties have used that, and I suggest probably will be using it.

Mr BARTLETT—That would not be covered under this recommendation or under the South Australian legislation, as I understand it.

Mr McClelland—I think that electoral advertisements published by any means should be covered. That is a valid point, whether ‘published’ means published over the telephone. That is maybe something to look at as well.

Mr FORREST—The Commonwealth act already has some fairly strict requirements. I note that you will probably respond by saying that that relates to marking papers and so on. What is misleading is a debatable thing. What you would say is misleading is what for someone else might well be their version of the truth. It would need some kind of arbiter to sit at the side. These things are not clear cut. I had a dreadful thing done to me during my campaign which I put in the same category, but it was distortions of truth. This is what happens with politics. It is a difficult area, to define in legislation what is misleading. How do you overcome that?

Mr McClelland—False is easier, isn’t it? If you have a false statement of fact, it is easier to say there is absolutely no substance to saying that one party was going to construct another runway, for instance. If you have no basis for saying that then that is easier. But how can you say that there is a way of expressing it which is misleading? Nonetheless, I think that is something which the legislature can grapple with. I just can’t recall how the South Australian legislation defined the phrase.

CHAIR—That is why I asked the question if you had any further information on the workability of that, for that very reason, the success of prosecution. In politics you do get into this debate. We could debate all day some of the pamphlets that are around in relation to interpretation of our new tax system, for instance, that was very prominent in the campaign. Things that I would personally say are absolutely false and misleading would probably be debated very strongly on the other side as not at all. You get into that difficult situation of arbitration.

Mr McClelland—Yes. The two important things are, firstly, that it is a statement of fact rather than an opinion. You can have a completely weird and false logic which has led a candidate to form an opinion, and there is nothing you can do about that. To make a false statement—now I am retreating back from ‘misleading’ to a false statement of fact—I think has to be the minimum point. ‘Misleading’ does raise difficult issues for interpretation, but certainly a false statement of fact, such as so and so party is going to construct the fourth runway, or so and so party is going to close the local hospital, when there is absolutely no basis for saying that, is easily identifiable as a false statement of fact.

Senator SYNON—Do you have a copy of the publication about which you are speaking, in order to illustrate your point?

Mr McClelland—I probably do have within my electoral office.

Senator SYNON—Do you feel that that would be covered by the recommendation that you are making, that it would fall under a false statement of fact?

Mr McClelland—Yes, I do.

Senator SYNON—Did you come across that by getting it out of someone's letterbox?

Mr McClelland—No. In units they put them on top of the fence. Fortunately, while I was putting leaflets in the letterboxes of those units, I saw the pile of material there.

Senator SYNON—That would be helpful, because I agree with the sentiments that it is very hard.

Mr McClelland—Yes, 'misleading' is hard to determine. 'False' is easier.

Mr FORREST—You could find an opposition candidate saying, 'The member for Barton is lazy.'

Mr McClelland—That is an expression of opinion.

Mr FORREST—Right. Others who know you personally and know that you are a hard working local member would say that that is a lie. That is why I am pleased to see you take a step back. The reason that I think it has not been done is this whole question of definitions.

Mr McClelland—Yes. Again, that example is an expression of opinion. However, if they said that the member for Barton had been convicted of bank robbery, that is a false statement of fact.

CHAIR—There are no further questions. In closing the public hearing today, I wish to thank both witnesses who have appeared before the committee today.

Resolved (on motion by **Mr Danby**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

CHAIR—We will move briefly to our private meeting.

Committee adjourned at 1.31 p.m.