



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON ELECTORAL MATTERS

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

FRIDAY, 14 MAY 1999

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JOINT COMMITTEE ON ELECTORAL MATTERS
Friday, 14 May 1999

Members: Mr Nairn (*Chair*), Mr Laurie Ferguson (*Deputy Chair*), Senators Bartlett, Faulkner, Lightfoot, Murray and Synon, and Mr Darby, Mr Forrest, and Mr Sothman
Senators and members in attendance: Senators Lightfoot and Synon and 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 9.34 a.m.

CHAIR—I declare open this fourth hearing of the Joint Standing Committee on Electoral Matters inquiry into the 1998 federal election and matters related thereto. Appearing today are a number of witnesses, two of whom have been regular participants in federal election inquiries. Dr Amy McGrath has been a longstanding critic of the security of the electoral process and has been an active participant in previous inquiries. In doing so, she has prompted a healthy debate about ballot security by adding greatly to the committee's understanding of security issues. Also appearing will be Mr Brian Cox, an ex-Australian Electoral Commissioner, and a man widely respected for his knowledge of electoral issues. He has been invited to appear today in order for the committee to seek his eminent advice on a range of issues.

Our first witness today is Mr Neil Gillespie. The committee hopes to discuss the potential disadvantage suffered by ATSIC regional councillors who wish to stand for federal parliament, along with Mr Gillespie's proposal to set aside seats specifically for indigenous Australians.

[9.35 a.m.]

GILLESPIE, Mr Neil Eric (private capacity)

LEFTWICH, Mr Fred (private capacity)

CHAIR—Welcome to today's public hearing. The evidence that you give at the public hearing today is considered to be part of the proceedings of parliament. Accordingly, I advise you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. Do you have any comments to make on the capacity in which you appear?

Mr Gillespie—I am a community member who is concerned about the inconsistencies within the Constitution and the eligibility of indigenous elected officials to be treated the same as both members of parliament and public servants.

Mr Leftwich—I am here as a community person too. Mr Gillespie has referred to a document submitted to the committee. I am here today to answer any questions that any committee members might have on that document.

CHAIR—The committee has received your submission. It has been numbered 73 and it has been authorised for publication. Are there any corrections or amendments you would like to make to your submission?

Mr Gillespie—No.

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

Mr Gillespie—Yes. I have got certain ideals, and one is that there is a need for indigenous representation in the national parliament. This committee has an opportunity to encourage indigenous participation in the national parliament by assisting indigenous peoples to help in contributing to the national agenda. I think that is the best way of describing it. We need to reverse the current negativity that has crept into the national agenda on indigenous affairs. I think we also need to restore some dignity in indigenous Australians which has been taken away from them for the last 200 years. I think we also need to educate all Australians about the real history in Australia—the blood massacres, the genocide and the reduction of a once rich and fruitful culture within this nation.

Why I am pushing that is that a book such as *Blood on the Wattle* by Bruce Elder clearly highlights some of the history that is in Australia. By having indigenous participation in the national parliament, these types of issues such as restoration of dignity and the telling of the real history should be a good avenue for the benefit of all Australians, including indigenous Australians. That is about all I would like to say at this point in time.

Mr FORREST—Please do not misunderstand—I have got some empathy with your position—but the reality is that this particular provision in the Constitution is a problem for all elected officials. I know in my own state of Victoria—

CHAIR—This is in relation to the ATSIC Act?

Mr FORREST—Yes, the first point made in the submission. In my own case, when I was elected in 1993, I had to resign from local government council and run the risk that, if I was not elected, I had cost councillors a by-election. It puts a fair bit of pressure on you. But I understand that these things can be tested through the Court of Disputed Returns. I think that needs to be tested because the issue that you have raised prevents a lot of good, potential members of parliament from having a go—they will not pay that cost. So, why would you like to test that process?

Mr Gillespie—First of all, I did not consider it. John, let me ask you one question. When you contested the last election, were you being paid—once parliament was dissolved, until the election was over?

Mr FORREST—Yes.

Mr Gillespie—That is what I mean about the inconsistency under my recommendation No. 1. I do not see any difference with, for argument's sake Flo Grant—whom I have referred to in my submission—contesting the national parliament. Why should she have to resign and lose her pay, which is her only form of income, to contest the national parliament? You are being paid and you are contesting the same—

CHAIR—Let us clarify this.

Mr FORREST—Let us make it clear. I was elected in 1993. I was then a local government councillor. My pay was coming from my own resources—my own business. You would be referring to the subsequent two elections I have succeeded in, in which case it is true; but the Constitution makes that bridge if you are already an elected member and you are recontesting. This is not just an issue for indigenous people. Your submission seeks to say this is only a problem for people who have been elected to ATSIC.

CHAIR—It covers a broad category of people.

Mr Gillespie—I understand that. I was attempting a double-barrelled approach if I was unsuccessful in that recommendation. I think your points are valid, but I have a different interpretation on it. The second inconsistency is with the public service, for argument's sake, and their right of resignation and reinstatement. So if I fail on that recommendation, hopefully you guys will support us on the second recommendation. Again, there seems to be a degree of inconsistency. I would like to see the Public Service Act provisions maybe mirrored, in some way, in the ATSIC Act. I think that is an appropriate area.

CHAIR—This is certainly an area that we have taken evidence on before; this aspect of people having to resign their position. You are right with respect to the public service, there are automatic reappointments subsequent to the election. But I take John's point about local government councillors and other elected people probably falling into the same category. It is something that ought to be looked at.

Mr LAURIE FERGUSON—Chair, was the point that in local government they resign if unsuccessful?

CHAIR—If unsuccessful they would have to contest a by-election.

Mr FORREST—It would have to cause a local government by-election.

CHAIR—I presume the same thing would occur with an ATSIC councillor if they resign.

Mr Gillespie—I am uncertain about that. I think there is a mechanism whereby the next person, who was unsuccessful in the election, is then appointed. If, for argument's sake, Flo is—

CHAIR—I am not sure about that.

Mr Gillespie—Neither am I, but I do not have the resources to check those type of things. I am not a lawyer.

CHAIR—It is easy to check.

Mr LAURIE FERGUSON—To get the flavour of comparisons, we are talking about local government at one stage and public service jobs at another. What does the ATSIC person get paid?

Mr Gillespie—In remuneration?

Mr LAURIE FERGUSON—Yes.

Mr Gillespie—I understand they get sitting fees.

CHAIR—Very similar to local government.

Mr LAURIE FERGUSON—No. They get allowances now.

CHAIR—They are effectively sitting fees though now, aren't they.

Mr LAURIE FERGUSON—Our council is different. Ours give just a yearly fee.

CHAIR—Okay.

Mr FORREST—We are conducting an inquiry with fairly limited terms of reference as to the conduct of the October 1998 federal election. I am not quite sure, Mr Chairman, how we could go making broader inquiries. If we do have the scope—

CHAIR—We can go a lot broader than that. It does actually say that the terms of reference are 'and matters related thereto'. The Electoral Act and all aspects of it then become the domain. Certainly, we have had plenty of submissions in the past in relation to this aspect, and section 44 with relation to nationality, and those sorts of things.

Mr FORREST—In that case, Mr Gillespie's submission could help us make some recommendations to resolve it for a much broader group of people than just ATSIC.

CHAIR—That is true.

Mr FORREST—I have no other questions at this stage.

CHAIR—In relation to your submission, it is not really the domain of this committee, but perhaps I could comment on allocated parliamentary seats for indigenous Australians. You make a couple of comments in relation to Senator Herron and his office. Can I assure you that Helen McLaughlin, his senior adviser, is an indigenous person. You say that you do not think that he has any advisers and certainly Helen would be most concerned if—

Mr Gillespie—I did make inquiries at the time but I was misinformed.

CHAIR—Helen is his senior adviser and he also has a departmental liaison officer on his staff specifically for ATSIC. I make those comments for your own information in that respect.

Mr Gillespie—The reality is that there is not much communication between ATSIC and the minister. But I do not think it is appropriate for me to comment on that matter further.

CHAIR—No. It is not for this committee, I only raised it for your own information.

Mr Gillespie—I became aware of it after my submission. That is why I put the exclusion in the back-up statement, that it was something I could not say for certain but which I understood to be true at that time, when I did make some inquiries; I was just misinformed.

Senator SYNON—I apologise for coming late; I had a Senate meeting. I want to ask two things, one is also a point of clarification. In your paper you refer to the late Senator Neville Bonner and you say, 'I have been informed that the Senate ticket position was the result of a decision by the current minister for Aboriginal affairs.' It was actually the result of a preselection convention. I have personally discussed this issue with Senator Herron, and he was in fact strongly supporting Neville Bonner. So I do not think that is a very fair criticism to make in a document that is going to be publicly circulated. It was an open and fair preselection convention. My second question goes more to the substance of your recommendation of guaranteed indigenous representatives. How would you envisage implementing such a quota or such a representation mechanism?

Mr Gillespie—Could I pass that to my colleague?

Senator SYNON—Certainly.

Mr Leftwich—The Council for Aboriginal Reconciliation made recommendations on the issue of reserved seats in their 1995 social justice report. They suggested that if we were to investigate that issue, we should hold an inquiry and a community education process. I think the council was of the belief that the community should be involved in the process of determining whether we should have a reserved seat in the federal parliament or not. Working off their recommendation, they suggested that we should hold an inquiry and undertake a community consultation process. We should then put the decision to a referendum so the whole Australian community could decide upon that issue—that is, if you wanted to progress the issue of a reserved seat.

Senator SYNON—Given Australia's electoral system of representatives in the Senate, from where would you draw the mandate? Would you say that the electorate of Mallee has to return an indigenous representative? Would you say that each Senate must return one? I am curious about how you could possibly implement this so that it was fair to all parties and all people.

Mr Leftwich—That would be the challenge of doing something like this. That is why I think the council suggested we undertake an education process to look at examples from overseas—to see what works overseas and what is appropriate for Australia and also work out what the Australian people would be happy with if we went down that road. It is a good question and I think we would have to go through that process to find something that we would be happy with, whether it was based on Senate boundaries, ATSIC boundaries or a different boundary grouping altogether. It is a very complicated question and something that, probably as a community, we would have to work our way through. I wish I could give you an answer.

Mr FORREST—The paper is very strong on the New Zealand model, but it is a lot easier in New Zealand. They do not have states.

CHAIR—They have only a one-house parliament.

Senator SYNON—It is a very different electoral system.

CHAIR—What other countries have a two-house parliament?

Mr Leftwich—I think Norway has. I have given a few examples in my paper. Some countries have multi-ethnic communities and a number of countries make provision for each community. Canada and New Zealand are the most similar.

Mr LAURIE FERGUSON—While it might not be seen to be for that reason, a number of European countries have drawn boundaries. Italy is an example: the boundaries of Val D'Aosta and South Tyrol were such that they ensured the German and French speaking minorities could have a selection. I could be wrong, but I think Bulgaria makes sure that the system provides for representation of Turkish minorities. There are a number of European systems that have ensured not indigenous but ethnic minorities of some kind of selection.

Mr Leftwich—I think that is why the council made that recommendation. Even at the Australian Reconciliation Convention, that the council held in 1997, they recommended that we should pursue something like this. They did not actually define it or give boundaries as to how we should do it for the clear reason that this was an issue we needed to work through and determine for ourselves. It may be that, in some parts of the country, a certain ratio is appropriate and, in other parts, it may not be. The council and ATSIC have suggested that is something we should pursue as part of the reconciliation process.

The New South Wales parliament have held their own inquiry into the issue—they completed their inquiry earlier this year—and recommended that an Aboriginal assembly be established in the interim until a referendum on reserved seats is put to the New South Wales people. There is a move in Australia to look at that issue because of indigenous disadvantage. It is not a clear-cut issue. Together, we need to go through it, examine it and work it through. This type of issue also highlights Mr Gillespie's point about accessibility of indigenous people to parliament. The reserved seat issue is similar to Mr Gillespie's proposals to look at ways in which we can create greater access for indigenous people to parliament.

Mr Gillespie—In response, could I say how I would look at this. I understand the contents of Fred's fairly lengthy paper. My approach would be along the lines of a percentage on population—the indigenous population compared to the general community population.

Indigenous people would vote generally in the election and then for a specific Senate allocated seat or House of Representatives seat or both—how this would work would need some fine-tuning.

I would like to see a sunset clause. I do not have many supporters in this, but I see that as a way in the short term of trying to correct the imbalance of the opportunities in Australia for people to get into parliament but, more importantly, to correct the social imbalance in the usual things, such as education, justice, employment and so forth. That is why I am emphasising a sunset clause until that inequality or imbalance is rectified. Once we have achieved that equality—and Fred will most probably talk to me about this later and tell me where I have gone wrong—I do not think that we really need to have specifically allocated indigenous seats in this country. I think that is a way that it would work in the short term, provided we can convince the parliaments and the people of Australia that, yes, it is another form of affirmative action, but it needs to run its course. Once things are in equilibrium, then we can remove that need to have allocated specific seats for indigenous Australians.

Mr Leftwich—New Zealand has separate seats for Maori people. They are now actually considering getting rid of the reserve seats in New Zealand because Maori representation in parliament is up to an equitable level. They have seen that that has served a purpose of bringing the Maori people up to an equitable level.

CHAIR—Would a constitutional change be needed, or would it be a parliamentary change?

Mr Leftwich—I am not quite sure, but I understand they are considering it at the moment.

Mr LAURIE FERGUSON—I have a question on a comment made a minute ago by Mr Gillespie about New Zealand. Do the Maoris in New Zealand have votes in both the Maori electorates and the general election? Do they have two votes or one vote?

Mr Leftwich—I think they have two, but I am not totally sure about that.

Mr Gillespie—I think it would make sense to have two.

Mr LAURIE FERGUSON—It might make more sense to have one, too.

Senator SYNON—I would like two, too.

Mr Gillespie—Again I emphasise that it should be for the short term. How long a short term is I do not know—it might be 50 years.

Mr Leftwich—The allocation of reserve seats raises questions about our democratic system of government and stuff like that. But issues such as the long-term disadvantage of indigenous people are not seen to be addressed by the way things are. The example in New Zealand, where that reserve seat process has actually helped them get to an equitable level and now they are thinking of getting rid of it, shows that we could use these things as effective tools to address specific indigenous disadvantage.

Mr LAURIE FERGUSON—I am not whether it is in their current constitution, but I am pretty sure that at one stage Fiji had an option of interracial seats and racial seats and that you could basically register for one or the other—that type of system.

Mr Gillespie—That could be a good option.

Mr Leftwich—If I could just add some information, when I put this submission to the ACT committee, there was a lot of debate in the community. It was reported in the press that MLA Michael Moore came forth and suggested that we have a seat in the ACT for, say, six years with specific goals for that seat to address indigenous disadvantage or whatever. When I went to the ACT select committee on governance, we discussed issues like whether it should be a full-time or part-time position and whether they should make special provision within the assembly standing orders to create access for indigenous people to come into the assembly to talk on specific issues.

There are many variations and different ways you can have a reserve seat. It does not necessarily have to be a full position. But I think this is the challenge. We have to get through that initial reaction to the concept of a reserve seat and start talking about the detail and see what positives it can actually bring. As you said, Mr Ferguson, there are lots of examples overseas that we could possibly draw on. Once we starting talking through those examples, I think a lot of people will see that the intent is good and that it is not as threatening as a lot of people may think.

CHAIR—Are there any other questions? Is there anything else you would like to add?

Mr Gillespie—I think it is a great opportunity for this committee to do something positive and constructive in relation to indigenous affairs in Australia, whether it be by the changing of the ATSIC Act or by the allocation of seats. The formula would be sorted out with far greater minds than I could ever come up with, but there is an opportunity. All we can do is to encourage members of this committee to think seriously about the way we have presented these—albeit it may not be as articulated as you would expect—but to bear in mind that we are genuine community members who do not have the resources of government to carry out in-depth research of legal issues and to look at options. We are only a small group of people who think that there are inconsistencies and that there better ways of achieving outcomes for the betterment of indigenous Australians.

If we encourage all the major parties to develop a strategy that encourages indigenous people to join their particular ranks, then maybe we will have a future indigenous Democrat, Labor or Liberal minister for Aboriginal affairs, which is a great idea. Again, this is something that could happen in the future. All we have done today is to present some options. Hopefully, you will take up the challenge and support one or more of these opportunities to reconcile all Australians.

Mr FORREST—I very much appreciated reading Mr Leftwich's paper. I would not have put it down in the way you described. I think he has gone to an enormous amount of effort.

Mr Leftwich—I am quite happy to go through the submission at any time with anyone who would like to. As I said earlier, there is a lot more to it than people initially think, so if anyone wants to talk through it at a later date, I could do that.

Mr Gillespie—We have provided telephone numbers and so forth.

CHAIR—We will take Mr Leftwich's paper as additional material to the submission and incorporate it as an exhibit for this inquiry. There being no objection, it is so ordered.

Proceedings suspended from 10.02 a.m. to 10.15 a.m.

[10.15 a.m.]

CHAIR—Welcome. The evidence you give at the public hearing today is considered to be part of the proceedings of parliament. I accordingly advise that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. The committee has received your submissions, numbered 161 and 164, and they have been authorised for publication. Are there any corrections or amendments you would like to make to those submissions?

Dr McGrath—No.

CHAIR—Would you like to make a brief opening statement, and then I will open it up for questions.

Dr McGrath—Yes, I would. I am concerned about persistent attacks on my reputation—the latest in an academic journal by ex-Australian Electoral Commissioner, Dr Colin Hughes. This was not my experience in the UK, where leading political and electoral figures participated in our Forum 6 in the Royal Commonwealth Society in October last year—leading to the formation of an H.S. Chapman Society UK—and interviews for part one of our video, *Voting fraud*. Those who took part in one or both of those events include the retiring legal and organising officer of the Conservative Party; the Executive Director of the Electoral Reform Society; the *Times* political analyst, Dr Pinto-Duschinsky; the ex-President of the Association of Electoral Administrators, Keith Hathaway; and the chief electoral officer of North Ireland responsible for the cross-party House of Commons Committee on electoral malpractice in North Ireland, Pat Bradley, CBE.

The organising secretary of the British Labour Party, David Gardiner, wrote in support of our forum and has since had dialogue with the new chairman of our UK twin. The Vice-President of the Liberal Democratic Party has joined its committee, and the editor of *Arena*, the journal of the Association of Electoral Administrators, has published a lengthy account.

This high level of interest and respect from political and electoral leaders—based on the common link of H.S. Chapman, whose secret ballot system, which originated here, is still practised in the UK—has not been reflected here in Australia. Neither of the major opposition leaders bothered to answer our chairman's invitation to watch our video last year. These interviews remind us how far the core principle of Chapman's world's first secret ballot—that the ballot paper and the ballot box in which that vote is put suffer no intrusion from any source—has been degraded in our electoral system. I am sorry for the length of this but I think, in view of the attacks that I have persistently suffered, it is important.

CHAIR—Thank you.

Mr LAURIE FERGUSON—You have described the breadth of your British sister organisation. Would you like to give us some indication of the breadth of your organisation in Australia and who it might encompass as representative of a broad spectrum?

Dr McGrath—We have Labor members—I am ex-Labor, as you know. How do you mean?

Mr LAURIE FERGUSON—You gave a very good oversight of practice in the UK.

Dr McGrath—I am saying that leaders have been involved there across the broad spectrum. The chief electoral officer of North Ireland flew across to speak at our forum at my invitation. I am saying that we have had a higher level of interest—and you can get a copy of this—and respect at that level.

Mr LAURIE FERGUSON—Dr Hughes has apparently made some attack upon you; might that not be reasonable academic debate?

Dr McGrath—I am not prepared to discuss that; I have not come here to discuss that.

Mr LAURIE FERGUSON—I just raised it.

Dr McGrath—I have already submitted a paper on my view of that, of which you are aware.

Mr LAURIE FERGUSON—When you say 'abuse', I have not read the document in which he said—

Dr McGrath—Abuse?

Mr LAURIE FERGUSON—He said, 'What about you?' Isn't it possible that you just have a disagreement about these issues?

Dr McGrath—That I have what?

Mr LAURIE FERGUSON—You have a disagreement about these issues?

Dr McGrath—I have not disagreed with him, I am sorry, Mr Ferguson. I have just written a comment to the parliament to ensure that my comments would be under privilege.

CHAIR—I think what Mr Ferguson is getting at is: in the paper by Dr Hughes that you referred to, what was the thrust of the attack on you, or was it just a disagreement in views?

Dr McGrath—No, it was not just a disagreement in views. If you read my paper again, you will see that he called us 'Witch hunters', and said that we were linked with 'American fundamentalists'—quoting Oakes. I rang Laurie Oakes over that and said that that article had been revived in Colin Hughes's article about electoral officials saying that they thought people—it implied it was me, but the people he was talking about I was not involved with at that time—were linked with some fundamentalists, not just one, in America. I find this does not add to my reputation, if people do not read it carefully.

Mr LAURIE FERGUSON—I understand your point now, thank you.

Dr McGrath—I mean, 'Witch hunting,' for God's sake!

CHAIR—One of the thrusts of your submission is in relation to provisional voting. Have you had a look at the break-up of provisional voting from this last federal election, and have you any particular comments that you would like to make?

Dr McGrath—I think the point I have made—and I have taken it up with the Director Investigations of the Commonwealth Ombudsman—is that there are no statistics published, and there have not been statistics published, about provisional voters and absent, pre-poll or postal so how could I look at the statistics if they are not available? I had correspondence with the Electoral Commissioner in order to establish the fact that there were provisional votes in all categories, not on polling day pure and simple, because it was not possible anywhere to read any information that told me that. In fact, nobody I spoke to, neither politicians nor candidates, knew that provisional votes were issued other than on polling day. So it would not be possible to investigate it.

CHAIR—So they were issued at pre-poll. You are talking about the provisional votes issued at pre-polling?

Dr McGrath—They were issued absent, pre-poll and postal, and they were not merely section votes on the day. I wrote about Dickson in order to elicit the fact that they did exist, because there was nothing written anywhere for me to offer and I try to verify everything that I assert. I have documentation from the Electoral Commissioner, Mr Gray, giving figures of provisional votes in all four categories in Dickson, so they do exist and lists are kept.

CHAIR—So what are the four categories?

Dr McGrath—Postal, pre-poll, absent and section.

CHAIR—So provisional votes in all of those—

Dr McGrath—In all of those—and Mr Gray has admitted that. But he says that nobody is entitled to look at them and he invokes the privacy law. I have had an opinion from the Director of Investigations, Mr Maywald, on that, and he does not agree that privacy law can be invoked in this context.

CHAIR—Privacy to what degree?

Dr McGrath—If you were a candidate and wanted to find out what provisional votes were in postal, pre-poll and absent.

CHAIR—Just the numbers?

Dr McGrath—Yes. It would not be possible, because they are merged with the total.

CHAIR—You just get a total vote, the total number of provisional votes.

Dr McGrath—That is right, and you are not even entitled to look at those unless you look at them in fresh scrutiny and unless you are a scrutineer. They are the only ones according to Mr Gray who are entitled to look at them. Certainly, any request that would come from me is just out of court. I do not agree that any documents relating to figures or statistics in an election should be considered matters for privacy information.

CHAIR—In seeking to break that up, let us say that that is possible, where would you be taking that investigation and the reasons?

Dr McGrath—My reason was that the general principle of scrutiny has been diminished throughout the election. That was my personal reason to pursue the matter and verify that scrutiny was not possible in this area. My question is whether candidates who are going to mount a challenge to an election should not be entitled to know the statistics on all provisional votes. Because, after all, the votes are issued to people who should have enrolled and have not enrolled. If I did not enrol, I would be exposed to a fine.

Of all the statistics in an election, they are the ones that should be the most available. They did not abolish subdivisional voting, they merely stopped printing the rolls in 1984. But before then the number of provisional votes was very small. They did not really matter. Now they have risen to thousands and Jim Lloyd has given evidence that they rose to something like 1,600 in his electorate alone. They are significant.

CHAIR—That was the point that has been taken up with the AEC during this inquiry. In fact I raised it myself personally, because in most states, other than New South Wales, the number of provisional votes in the 1998 election were not dissimilar to the number of provisional votes in the 1996 election, except for New South Wales.

Dr McGrath—Those are only section votes you are talking about on the day?

CHAIR—No, the total provisional votes for each of the divisions.

Dr McGrath—Are those records kept? Because when they get to the divisional returning officers the question needs to be asked: are they keeping a separate statistic? I do not think they are.

CHAIR—The AEC's submission to this inquiry provided the total number of provisional votes lodged and the total number actually accepted and counted.

Dr McGrath—In all categories?

CHAIR—No, the total number of provisional votes for each division in each electorate and the totals in most states were not dissimilar to the 1996 election, except for New South Wales.

Dr McGrath—I find it impossible to discuss this unless I ask the question: did they include those for absent, pre-poll and postal? Because the statistic is normally only the one on the day. I do not think we could carry that any further.

CHAIR—Are you saying that any provisional votes that were cast at a pre-poll were then put in as a standard vote?

Dr McGrath—That is what I am saying.

CHAIR—And are not included in the total of provisional votes for that electorate?

Dr McGrath—They may not be. I would need to ask that question.

CHAIR—I would be surprised if that is the case, but we will make sure that we ask that question.

Dr McGrath—I will check my correspondence with Mr Gray, but I understand they are merged.

CHAIR—I understood you to mean that they merged into a total of provisional votes.

Dr McGrath—No, that is not what I am saying.

CHAIR—I now understand what you are saying.

Dr McGrath—We are at odds, that is what I am saying. They were merged as they came in.

Mr LAURIE FERGUSON—The absentee category, for instance?

Dr McGrath—I understand from Mr Gray they are, and I understand from the divisional returning officers.

Mr LAURIE FERGUSON—Let us take one example of those.

Dr McGrath—I would prefer not to discuss it any further. I find I am at a disadvantage unless those questions are asked.

CHAIR—This is to help us in our questions of the AEC.

Mr LAURIE FERGUSON—Let us say that you are correct, for the sake of argument. I could understand some concerns about, for instance, a high prevalence of absentee provisional. But if people are voting postal and being given provisional votes, why are they any more lacking in scrutiny than provisionals cast on the day?

Dr McGrath—I need to refer you back to my submission. You used the words, 'I am correct'. In that submission you will note that I have only quoted divisional returning officers. I have not quoted myself because, as you know, I do not have the resources. It is divisional returning officers who are saying this, not me.

Mr LAURIE FERGUSON—I will rephrase it. If we as a committee found that provisional votes cast in a postal vote manner were included in the postal vote category, rather than the provisional category, would that be very important, because, surely, they would be subject to the same level of scrutiny as provisional votes cast on the same day?

Dr McGrath—Are provisional votes submitted to scrutiny so that people who are not on the roll—

Mr LAURIE FERGUSON—I am accepting a broad view that people question whether they are under enough scrutiny, but I am making the point that, if they were included as postal votes, does it really matter them being distinguished from provisionals cast on the day? I do not think they are subject in any manner to less scrutiny than provisionals cast at the election day.

Dr McGrath—I would remind you that the purpose of the H.S. Chapman Society is to look at the potential for fraud. It is the AEC's job to prove whether that potential can lead to fraud.

CHAIR—The point I would probably make in this regard is that, from an ongoing assessment of what is happening in voting patterns, to actually fully understand the types of votes that have been cast is important. I would be concerned if there were a whole heap of provisional votes going into absentee votes or postal votes and just being absentee or postal votes, and you did not know the break-up. This is not to raise any particular conspiracy theory, but purely and simply so that from election to election you can see what is happening in the way in which people are voting. I think that is important.

Dr McGrath—There used to be about six divisional returning officers per division. Sixteen hundred is the increase in Jim Lloyd's electorate where he really has done his homework. We are getting to the fringes of this argument. What is at issue is that they should be issued at all. That was what the six or seven said whom I quoted from your submissions in my paper. They said that they should be abolished.

What is at issue is the principle of issuing them at all, considering you cannot check them because their names are not on the roll. They are just saying they ought to be. The policy of the Electoral Commission or maybe the parliament—and I am not sure which—has been to say that, unless the divisional returning officers, and they will tell you this if you talk to them, can prove that those people do not exist, they have to admit them. So, you have the same problem as a candidate who wants to challenge an election and who goes to the High Court—as Alistair Webster did—and is required to prove that the people who he said were ghost voters with false names did not exist. This is an anomaly in the act in both areas.

CHAIR—The onus is on the wrong side.

Dr McGrath—How can you prove that a person does not exist? The law does not provide for it.

CHAIR—It certainly does not. That is another issue and next week we as a committee are being given a demonstration from the AEC as to their processes of assessing provisional votes. I personally will be very interested, because in my electorate I had an increase of 169 per cent in provisional votes from the 1996 election. I do have an interest.

Dr McGrath—May I add also that, apart from a gateway for fraud, there is no penalty in the act for putting a name of a person who does not exist on the roll. Were you aware of that?

CHAIR—Surely there would be an aspect of false statement somewhere that would pick that up.

Dr McGrath—You would still get the problem that you have to prove it is false because the person does not exist. This comes back to the need for identification of people in the first place.

CHAIR—Which was a recommendation of your previous report.

Mr LAURIE FERGUSON—Let's concede that there should be a penalty for it—no argument. Am I wrong in thinking that the AEC just simply takes forms and does not check the existence of people?

Dr McGrath—It does in normal circumstances but a question which arises is: who is controlling the roll now? Another question concerns the pressure at election time. You have

casual staff who are untrained. You would know; you have been at polling booths. Everyone knows that they cannot possibly scrutinise anything, particularly when they have the hounds of the press baying in the background for results, and politicians, everybody. How much checking is done with all the votes being counted after the election date? That is why the British count all the votes, every vote, on election day.

CHAIR—On the point that you raise—I probably should not say too much at this public hearing—I am hoping that somebody might put in a submission in relation to somebody getting on the roll who did not exist. It was done deliberately by somebody.

Mr LAURIE FERGUSON—It might happen. For instance, we had a debate in the last parliament about citizens in Brisbane, Vietnamese people who claimed to be citizens. I hope I am not naive on this, but even now—I know the government wants tougher provisions—they do check out the existence of people on birth date and—

CHAIR—In the example that I am talking about, they clearly did not and when we get the information, it is an interesting result.

Dr McGrath—What are they checking? People re-enrol when they move their holiday houses. I have been producing a video and have taken evidence on people being moved for six weeks into marginal electorates and then out again. That is a legitimate re-enrolment.

Mr LAURIE FERGUSON—We might be at cross-purposes on terminology. I am not disputing that in Australia people falsify addresses, et cetera. There are obviously instances of that. I thought you spoke about non-existent people, people who do not physically exist.

Dr McGrath—That is true. But I do want to make the point about checking. The next question is: checking what? I took evidence from a former electoral commissioner of New South Wales on video and he said he had only one visit at the habitation review since 1952 at the same address. I have only had one that I can remember in 40 years. Another person of repute came on and said—I think it was Ralph Hunt, of the National Party; was he the former president?—that he had only had one in 40 years. The parliament requires a habitation review between each election. It does not happen. It does not make the resources available. It wants democracy and claims we have a democracy but does not want to spend the money to ensure that the roll, which is at the heart of democracy, is ever clean.

CHAIR—That is why in the last parliament also we had recommendations in relation to data matching to try to pick up many more of those aspects.

Dr McGrath—There are great limitations on that process, too.

CHAIR—There are, but everything helps.

Senator SYNON—Dr McGrath, in your submission you mention the need for a definition within the act of fraud and irregularities. I am not a lawyer, but I would have thought that the term 'fraud' would have been a criminal term that is defined somewhere. I am not sure that the definition of it would necessarily assist in prosecutions. How do you feel a definition would assist?

Dr McGrath—There is not a definition of 'fraud' in the Crimes Act. There are problems with the word 'fraud' because it has the connotation of bank fraud, although there are correlations. For instance, DROs are worried about the photocopying of votes since watermarks on ballot papers have gone. Bank cheques and passports have been successfully copied—passports in the Philippines and bank cheques in Surfers Paradise.

The problem with fraud is that that word has crept in. Corrupt practices was the definition attached to the British act of 1883 and to all of our original definitions. We have dropped 'corrupt practices', which is a much more appropriate term. Fraud in elections can cover anything from incompetence to irregularities by officials that can contribute to failure of a result, as was shown by an audit in 1989 by the AEC itself. The results in those six inquiries were enough to have overturned the result of the election. They included irregularities by officials.

Irregularities in the conduct of an election can be polling booth procedure, Mexican bank note counting of votes, stacking of votes with the wrong party's vote on top—a whole lot of practices. There is no provision to look at those in the act. They are issues of narrow legal definition at present. There is a definition in the industrial act, as I have pointed out. That is why we want an ombudsman as a watchdog: because the Electoral Commission has a vast task. But it does not see that it has a proactive role in prosecuting. This is particularly noticeable in the New South Wales industrial section, which has been commented on. The reason I do not think an officer with an industrial section should be seconded to do the Senate count and the New South Wales Legislative Council count is that their reputation is not good.

Marshall Cooke QC, as I pointed out, recommended one in Queensland. There is a need for an ongoing official who can focus on the complaints. One of the problems I have had is that everybody tells me about the problems and irregularities in running elections. Everybody complains, all through the public. There is no focus. It is better to have an independent focus rather than a person like me or retirees doing it—I call us Dad's Army because we have the time to look at it. The Electoral Commission itself has not developed any manual whatsoever to look at fraud. Their DROs have no instructions about how to look at it or even to do it. They have manuals on everything else, I believe, but not on the investigation of fraud. So it has no positive encouragement to look at corrupt practices.

We have listed 25 ways of stealing votes. The Electoral Commission listed 10 in 1993 and said it could only identify one in practice, because it is an invisible crime. We have accepted it since parliaments ceased to be courts. Parliaments used to be the Courts of Disputed Returns until well into this century. A lot of people do not know that. That was a speedy method of looking into irregularities. Politicians understood them. They knew the political process and they would quickly resolve the problems. The Speaker was responsible.

In 1928 it was the Labor Party which resisted the parliament abdicating this responsibility in favour of the courts because they said they would be too narrow and legalistic. I think that is reflected in this question of so-called just fraud. I think an ongoing ombudsman could collect complaints as they occurred during elections. They may not be relevant during that election or even assist the candidates in mounting a challenge.

One area that must be changed is the archaic fact that candidates cannot challenge the roll in courts. Going back to Mr Oldham, it is acknowledged that Alistair Webster in Macquarie could not bring any of his evidence into the High Court because it was not admissible. This is crazy. The Labor Party in New South Wales in 1928 resisted that change. I think they were right.

The mechanism of the joint standing committee is, I understand, very valuable to divisional returning officers. What you can contribute in time, as busy politicians, is extremely limited. Every time I come here there is a new committee, whose complements change. You get a bunch of experts and the experts change.

CHAIR—Laurie and I are consistent at least.

Dr McGrath—You are consistent, but Conroy and Ray have gone. They used to bedevil me.

Mr FORREST—I am one of the new members. I have all the stupid questions to ask you.

Dr McGrath—I am sorry, I am running out of time.

Senator SYNON—I want to conclude on that point. Do you feel that having such a definition, which is your first recommendation—

Dr McGrath—Of corrupt practices, yes.

Senator SYNON—would have made a difference in the electorates that you cite in which you feel there were substantial problems? I think they were Dickson, Capricornia, Macquarie and one other.

Dr McGrath—I do not think I could predict it, but I would say that one should listen to Marshall Cooke QC. He did a 2½-year inquiry into unions in Queensland. He said that almost every union election in Australia was corrupt. Billy Hughes said the same thing about elections in 1902.

Senator SYNON—But in terms of talking about the AEC and federal elections.

Dr McGrath—Yes, look at the British act.

Senator SYNON—How would such a definition, presumably mainly qualitative rather than quantitative, make a difference to those outcomes?

Dr McGrath—It could make a difference with regard to returning officers. At the moment you have a lot of union officials as returning officials in federal elections and in state elections in New South Wales. I do not think they should be allowed to be polling clerks. At the moment you cannot challenge a returning officer either during the election in the polling booth or afterwards. They are sacrosanct. This is why we have called for an inquiry. Sir John Carrick said to me that he thought an inquiry was desperately needed but that it should have no lawyers on it. I would agree with that; I would put politicians on it. They know the process because they have been there.

Senator SYNON—Most of them are lawyers anyway.

CHAIR—So you would support a move to prevent any individual who might be a member of or affiliated with any political party being a polling clerk?

Dr McGrath—No, I did not say that. Union officials being on polling booths is possibly a problem. I would not even exclude it on the Liberal-National side either. I would say that you might do what they do in Canada—or did—in terms of their remuneration system and what Des O'Shea, a Queensland electoral officer, is doing at the present time. He is using retired accountants, bank managers and people who are basically known to be independent to run polling booths.

Mr LAURIE FERGUSON—Why should we assume that bank officials do not have political affiliations and interests as opposed to trade union officials?

Dr McGrath—I am not talking about political affiliations.

Mr LAURIE FERGUSON—I am quite puzzled by your contention that trade union officials should be treated any differently to anyone else.

Dr McGrath—I am a bit mindful of the fact that trade unions have donor unions allotted to electorates.

Mr LAURIE FERGUSON—You might find a lot of employees and executives of companies who are giving money to the Greenfields Foundation are working in polling booths too.

Dr McGrath—That may be so; that is another argument. What I am saying is that retired people probably, rather than those who are young—

Mr LAURIE FERGUSON—Retired trade union officials?

Dr McGrath—Retired trade union officials are all right; they are out of the fray. We would have those.

Mr FORREST—Even retired people can have some sort of political bias, but I do not want to be drawn into that.

Dr McGrath—They have wisdom, though. Anatole France was a socialist at 20.

Mr FORREST—I am one of the new members, Dr McGrath, and I am going to ask you the silly questions because I am not familiar with your long-standing association with this issue. It is obviously of concern to you. I was wondering about something when I read your submission. It is one thing to assert the risk of some sort of fraud at the ballot box, but it is another thing to actually confirm that it happened. I do not see that you are able to actually demonstrate that. I know Alistair Webster pretty well; he is a good friend of mine. He has been through the Court of Disputed Returns and has been unable to prove, through the umpire that is there for that reason, that fraud occurred.

Dr McGrath—I would like to quote Marshall Cooke QC on this, but first let me say that there is the potential for fraud. It is the AEC's job to look at fraud. They did not really do that in that case. That is a whole mess. Four years later I wrote to the president of *Watchtower* because I had been told that Jehovah's Witnesses had their votes usurped. There were over 200 of those. He lost his seat by 160. The Plymouth Brethren had 50 votes that were usurped. That was nearly 300. He gave me, in writing, a statement that they had investigated Macquarie. In Dickson and

another electorate in Western Australia they were concerned about this use of their votes. He put it in writing. I have the statistics. It was four years later.

Mr FORREST—Yes. But that is still a concern. He had not confirmed that one of those Jehovah's Witnesses or Plymouth Brethren had actually voted. They chose a conscientious objection—

Dr McGrath—No. This is corrupt practices occurring. This is what I am talking about. A corrupt practice had occurred. Their votes had been used.

Mr FORREST—But that is not to prove—

Dr McGrath—No. But this is not my area.

Mr FORREST—That is the problem. The Electoral Act provides for people with a religious conviction not to vote, by conscientious objection.

Dr McGrath—Yes. Then they get a 'please explain'. They get two please explains.

Mr FORREST—Right. Fraud only occurs if one of those people actually voted when they said they would not. That fraud was not proved.

Dr McGrath—This is the whole problem. This is why I say you have got to look at corrupt practices, in an ongoing approach. I am not concerned to get into the Webster situation. It is the overall potential for fraud in the act. The *Watchtower* said they were concerned and if we had any more concerns I was to get in touch with them. It is an ongoing problem of potential corrupt practice. The word is 'potential'. You are demanding that the H.S. Chapman Society, instead of looking at the Electoral Act, go around and look at people's cases. That is not what we are here for.

Mr FORREST—Yes, but there is a distinction between an assertion of potential fraud and actually saying that it then happened. I am saying the Court of Disputed Returns is the umpire if that happens. You are suggesting somebody else, like an ombudsman, but what is wrong with having a court of—

Dr McGrath—Have you read my book and all my previous submissions?

Mr FORREST—I think I need to do that, Mr Chairman. That is why I was saying—

Dr McGrath—I think it puts me in a difficult situation if you have not.

CHAIR—I think what Dr McGrath is saying, John, is that a lot of the work that the H.S. Chapman Society has done is not claiming to say fraud occurred here or there. It is raising—

Senator SYNON—Possibilities.

Mr FORREST—Yes, I understand that. That is why I—

CHAIR—procedures and things where things can occur.

Dr McGrath—You are doing a Colin Hughes. You are dragging it back to the case, when my panorama of—

Mr FORREST—I am not. I am making the point—

Dr McGrath—about 10 submission on the whole vast spectrum of the Electoral Act—

Mr FORREST—I am just making a point. For example, we have a law that says you are not allowed to drive more than 100 kilometres an hour on a highway. The potential to break the law is always there. When you break the law there are consequences. Do you see what I mean? That is my point. There is always potential to break laws. That is how our society operates. It is the reason you need a law. It only becomes a problem when that law is broken. That is why I am making this point. You cannot remove the risk that a law is going to be broken. It only becomes a problem when it is broken.

CHAIR—I guess what Dr McGrath is saying is that you can change procedures and put in place other things to limit that risk.

Mr LAURIE FERGUSON—Page 9 of this submission cites the question of Macquarie. It is all right to say, 'I am not saying it happened,' or blah, blah, blah but, if I read page 9 with regard to Macquarie, it implies something. It is not actually clear what happened. Could I ask a few questions about that? Did they find that the 250 Jehovah's Witnesses and Plymouth Brethren had voted?

Dr McGrath—Yes.

Mr LAURIE FERGUSON—You say here that they did not get their please explains.

Dr McGrath—They did vote.

Mr LAURIE FERGUSON—They did vote. Now, I am interested—

Dr McGrath—They did not get the please explain—which meant people had voted.

Mr LAURIE FERGUSON—It did mean that, rather than an AEC stuff-up?

Dr McGrath—Yes.

Mr LAURIE FERGUSON—That was proven: they did vote?

Dr McGrath—Yes.

Mr LAURIE FERGUSON—Where was that proven?

Dr McGrath—I think you have to ask the Divisional Returning Officer of the day. The *Watchtower* person said they did vote.

Mr LAURIE FERGUSON—You have written about this, Dr McGrath.

Dr McGrath—The president of the *Watchtower* said that people had voted, and they know.

Mr LAURIE FERGUSON—That is not here. Maybe you could have amplified it and maybe you are saying that now, but it only says here in your submission that the president of the *Watchtower* stated that those who are provisional did not receive please explain notices. It does not say anything about the president of the Jehovah's Witnesses saying they had voted.

Dr McGrath—That would be a supplementary fact—that those people did vote.

Mr LAURIE FERGUSON—As I was reading about this case I had not followed Macquarie at the time. So when I read this it was very interesting. Who has access to this list of conscientious objectors? Both parties?

Dr McGrath—Pardon?

Mr LAURIE FERGUSON—Who has access to this list that you mention? Do the both political parties have access to this list?

Dr McGrath—I do not know who has the lists. That is an interesting point you raise. Who does have them? The Australian Electoral Commission holds them.

CHAIR—I would not have thought that anybody would have access to them other than the AEC.

Dr McGrath—Vaguely in my memory there was some talk that they were stolen from Richmond, but I just dismissed that because it was rumour. I cannot put forward rumour.

Mr LAURIE FERGUSON—We are implying something very serious if the political parties do not have access. We are implying that someone in the Electoral Commission has organised this whole thing.

Dr McGrath—I am not implying any such thing, I am sorry.

Mr LAURIE FERGUSON—Please. Why tell us about it then?

Dr McGrath—I am not implying that the Electoral Commission was involved. I am just stating it occurred, I am sorry.

Mr FORREST—I want to explore the reasons why an ombudsman would do a better job than the Court of Disputed Returns.

Dr McGrath—The courts have occasion, but most cases do not get there, Mr Forrest. I was going to quote Marshall Cooke QC to you on this one. He said that this problem is the same in parliamentary and union elections. He is acting in the Court of Disputed Returns in New Guinea and also in this case in Townsville of the 80 charges against Ehrmann. He is acting in that. He said the problem is that these cases were notified to the Federal Police. Some 109 electorates were affected in a recent state election by multiple voting, and that is the most easy to find. That goes to the Federal Police. That is investigated and a candidate then takes a particular issue to the Court of Disputed Returns and the Federal Police stop doing anything.

The Court of Disputed Returns takes a long time and is very expensive. Most people cannot afford to go. About \$100,000 is flagfall for that. The conservative party man in England said that he had seen many cases in England where they could not afford to do anything about it. When the Court of Disputed Returns is finished, it is out of time for the Federal Police to act due to statutory limitations. I am saying that there are innate problems in the way that the thing functions. The fraud could be from any party, but it is an unsatisfactory situation.

The AEC constantly says that there are very few cases brought to the Court of Disputed Returns. Anybody will tell you it is too expensive. When the electorate offices were fire bombed in Sydney in the 1995 state election, how can you prove who fire bombed them and damaged some of the votes? So you could not go to the Court of Disputed Returns. How do you prove that? It is a problem in that it is an invisible crime and the only stage in the entire scrutiny where you actually see the ballot papers filled in is when they are counting. If they are doing a Mexican bank count, you cannot even see those properly.

Mr FORREST—What powers would the ombudsman have then? Would he just investigate and make recommendations?

Dr McGrath—We think that needs an inquiry which the joint standing committee could be well involved with to see how best to investigate them. The AEC is immensely busy. It has an enormous task during elections. It needs somebody people can go to because there are constantly problems. You cannot go to a returning officer. You cannot ring the electoral office. The phones are engaged. It is like the hail storm I have just been through. Nobody wants to know you after the election. They say it is the candidate having sour grapes. I think it would benefit all parties. It would benefit parties who are being attacked to have some office which would focus on these problems and complaints, and they are manifold. It would be of benefit to the parliament, because, after all, the reputation of democracy in this country is important. The most important thing you can do in your life is to be a voter, and you should not have to defend those people in—

Mr FORREST—Don't you think he would be a very busy ombudsman, because that would make access for all sorts of frivolous suggestions? I have seen them happen outside polling booths myself. People make an assumption about the returning officer's integrity and—

Dr McGrath—I am not talking about what happens outside polling booths; I am talking about what happens in the polling booth—for instance, cardboard boxes. Nobody likes the cardboard boxes. One of the things that I have just taken up with Barry O'Keefe, after querying him about whether it was eligible, was that, in the last state election and the federal election, boxes were put behind the counter. I don't know whether you noticed that. So you could not put your own vote in the box. This is the fundamental principle—1856: in a secret ballot, you put your vote in the box.

CHAIR—You could in my polling booth.

Dr McGrath—I went in the prepoll booth and he would not let me put a prepoll vote in the box, which was five feet behind the counter. I said, 'I want to put my own vote in.' He said, 'No, we'll do that for you.' I said, 'No, you won't. This is a secret ballot.' He said, 'This part isn't a secret ballot.' Since when does a secret ballot not be the prepoll? Then I went to Bondi Junction and it was even worse. That was two state electorates.

CHAIR—You didn't go to vote a second time, did you?

Dr McGrath—No, but somebody did at the last election because they thought I was talking nonsense about multiple voting. He went and voted in the state election six times. When he got to the fourth one she said, 'Have you voted before?' He said, 'Yes, three times', and then she handed him a vote. Another one was in North Sydney. She said, 'Have you voted before?' He said, 'Yes', although he hadn't, and she gave him a vote. This is what I mean about the general decline in standards.

Senator SYNON—I must admit that I was not allowed to put my vote in the box either when I did a prepoll vote.

Dr McGrath—Which electorate?

Senator SYNON—It was a Labor electorate in Melbourne.

CHAIR—The point of standards is something that needs to be raised. When I went to vote in the last state election where I live, the polling clerk said, 'Mr Nairn'. I didn't get a chance to say who I was. I said to the clerk, 'You are supposed to ask me to give my address before you cross me off.' These things do get a little slack.

Dr McGrath—The Chief Electoral Officer in North Island went up to a lady—she was the polling clerk. The voter walked up and said, 'But you know me.' The voter was told, 'You are supposed to produce identification when you vote in North Island.' She was very upset because she was asked for identification. As to the boxes at Bondi Junction, they were chucking votes on the floor, as far as I could see. There was no 'absent' box on the counter. One thing I will take up is that the Commonwealth Electoral Act says that you cannot put your own vote in the 'absent' envelope. When people walk off, how can they be sure that it has been put in, or put in a box? Up at Katoomba in the 1996 election they weren't even putting them in a box. It is practice and procedure. You could cut those tapes with scissors. There were things with little loops. Somebody gave me one in 1996 and I fiddled with it. I realised that if you put it in the wrong way it wasn't secure: it looked as though it was. They are the ones with spikes on and, if you put them on the other way round, they are like New Guinea spears.

CHAIR—They go in, but they don't come out.

Dr McGrath—Yes, but if you put them on the wrong way they do.

CHAIR—Thank you very much, Dr McGrath, for your submissions and your evidence to this inquiry.

[11.06 a.m.]

CHAIR—Welcome. In what capacity do you appear here today?

Mr Cox—As an interested private citizen. I am a former Electoral Commissioner.

CHAIR—The evidence you give at the public hearing today is considered to be part of the proceedings of parliament, and the various forms and aspects related to that, which I am sure you are aware of, do apply. The committee has received your submission, No. 31, and it has been authorised for publication. Are there any corrections or amendments you would like to make to your submission?

Mr Cox—Perhaps a clarification. First of all, I thank the committee for inviting me to appear. It is very flattering. On page 104 of the volume, which is page 6 of my submission, I refer to funding and disclosure. In the second paragraph of that section I say that in practice the AEC pays parties and candidates the greater part of their funding entitlement, based on votes obtained, very quickly after the election, but there is no formal link between funding and disclosure, so that funding payments are not dependent on receipt of disclosure returns. I just mention that I wrote many parts of this submission from recollection and from observing the processes of the last election and I do not have lots of records and office support available. But, in connection with that particular item on funding and disclosure that I just read out, I notice that in its own submission the AEC makes reference to the actual process in volume 3, part 5 of the assembled submissions, and that gives some more clarification and precision to what I have said. I just draw the committee's attention to that. It is not particularly material, though, for the case I am making. Otherwise, I do not think I have any amendments.

CHAIR—Right. Would you like to make an opening statement before we go to questions?

Mr Cox—Thank you. The committee's terms of reference are to inquire into and report on all aspects of the conduct of the 1998 election and matters relating thereto. I suppose a fairly narrow interpretation of 'all aspect of the conduct of the election' relates to the way the AEC did its job and whether there were any major hiccups in the processes and procedures provided for in the Electoral Act and the AEC's way of doing things. I was not aware of any particular incidents relating to the conduct of the election on this occasion or in terms of the AEC's management of the arrangements which call for adverse comment by me and inquiry and report by the committee. Against this background, my submission relates to some broader issues which generated some public concern during the election campaign and to some more general issues of importance relating to the fairness of federal elections in this country. So my submission tends to be a broad one. In that context I refer to one or two issues that I am personally a bit uneasy about. They are my own views but there are wider policy issues there. They are no more than views and no better than anybody else's views.

Turning particularly to my own submission and some of the issues I raise, the first section I mentioned related to postal vote applications. What I have said is fairly self-explanatory and probably needs no other explanation or comment by me. But I do see that the AEC's submission, in volume 3, page 393, gives some information on some of the points I raise, for example, the

number of postal votes and declaration votes of one kind or another in different categories and how they have increased over the years and particularly seem to increase in this election compared with the last couple of elections, on the figures provided by the AEC. Some of the concern I expressed there did catch the AEC's attention separately—or I should say that what the AEC was on about caught my attention separately—and they have provided some of the information that I thought would be helpful to the committee. That can be found on the pages I have referred to.

On the caretaker conventions, I would say that I wrote and submitted my submission before I saw any others, and on the caretaker conventions I see that the ALP submission raises some of the same issues. Particularly Senator Faulkner, in various letters that he wrote, went into it in a good deal of detail and expressed a lot of anxiety as to whether the advertising campaign that the government engaged in was altogether kosher in terms of ethics. In my submission I suggested that the caretaker conventions might be the subject of a charter of caretaker behaviour which would apply during caretaker government periods. I raised this because, whatever the caretaker conventions are, they are not at all clear. One way or another over many years I have had a bit to do with them. Most of my career was in the Department of Prime Minister and Cabinet, in which from time to time I helped to draft documents for the incumbent Prime Minister to issue to his ministers or to raise in cabinet in relation to those conventions. But, whatever they are, they are not particularly available to the man on the street, whereas I felt that if there were a caretaker convention enshrined in some form of legislation then the man in the street has access to it and everybody involved, including the Public Service in some of those matters that I raise, would know more clearly where they stand.

I notice again from the ALP's submission that in New Zealand the government and the parliament has had a go at some caretaker conventions that would apply in that country, so I feel that if they can do it, why can't we? I know that it would be extremely difficult to legislate to cover all situations, but why not give it a go? Legislation gets amended and developed over the years, as you can see from the Electoral Act itself.

I also note from the AEC submission, volume 3 page 368, that stretching the conventions, whatever they are, is not limited to incumbent coalition governments. In 1996—I think it might have been—the suggestion was that the incumbent ALP government was pushing them a bit hard, although that was on the slightly different issue of authorisation of advertisements. I suppose that, if the conventions are possibly being breached, the willingness to put one's name to an authorisation on an ad is not quite so great.

In the section on advantages of incumbency, I referred to a mail-out in the ACT by Senator Margaret Reid. I would like to emphasise two points in the context of the use of stamp allowances. The first point is that I do not know whether Senator Reid's stamp allowance was used for that mail-out, so I make no accusation there. Also, I did not wish to single the senator out at all for any adverse comment or reflection; I was simply aware of her case because I live in this area, and I used that awareness to illustrate the point I was trying to make.

Since I wrote that, I have received all these submissions, and I note that the senator herself made a submission in volume 1, page 84, where she refers to a mail-out to the whole of the Australian Capital Territory for the purposes of bringing attention to letters returned marked 'not at this address'. This should raise questions about the accuracy of the electoral roll.

I suppose this is an opportunity to get back at this committee's predecessor, if I can put it that way—and thank you for smiling, Mr Chairman—but during my time as electoral commissioner the AEC's practice of appointing dual polling places was often raised and was heavily criticised. The basis of the criticism, as I remember, was that these polling places were confusing to the public—to the voters. Whilst I had never voted at one of these things, I could not see why they had to be confusing, so this time—as I was living near a dual polling place in the village of Sutton, which is just in the electorate of Hume, and I am an Eden-Monaro voter—I chose to go to Sutton rather than to Bungendore to see what this dual polling place was like. I have to report that it was all peace and quiet, with people going about their business.

I made a point of asking the officer in charge of the Eden-Monaro portion of the dual polling place whether he thought that it was a satisfactory arrangement or whether there was any confusion, and I have reported pretty accurately in this submission what he said. Indeed, before writing this submission, I checked with him that what I was saying was a fair reflection of his perception. Mr Chairman, you have given me a good hearing for my opening statement. Am I allowed to raise a matter or two that are outside the ambit of my submission?

CHAIR—Yes, briefly, if you would like to, so that we will have a bit of time for questions.

Mr Cox—Looking through all of these submissions very briefly—I know that you people have to look at them a lot more carefully than I do—I was struck by the number of submissions which referred adversely to the requirement in the Electoral Act for full preferential voting. I remembered that I had made a submission on that to this committee after the 1996 election. That is in volume 1, page 29 of the submission made to that committee. My submission then was that there seemed to be sufficient concern being expressed about compulsory full preferential voting, including—if I remember correctly—by my predecessor, Dr Hughes, that I thought the time had come for the matter to be seriously looked at again. I think I am still of that mind. So I do have this other short submission, and if you are not fagged out by submissions already, then I would draw it to your attention.

CHAIR—Was that the only other issue you wanted to raise?

Mr Cox—Am I permitted to comment on the submission of another person here?

CHAIR—Yes.

Mr Cox—I do not know whether I can find it readily. It was the submission of the last witness, Dr McGrath. I have not read her whole submission but I have looked at bits of it. I had the impression that there are lots of assertions in it, but very little in the way of hard evidence. It is not my place to tell members of the committee how to suck eggs, and I certainly do not do that, but I think in most cases the assertions she makes should be very carefully tested.

There are some that I can comment on at the beginning of the submission. She begins by saying that 'THERE WILL BE CORRUPT AND DUBIOUS PRACTICES IN THE NOVEMBER REFERENDUM'. She says that in capital letters in her first sentence. In support of that, just on this first page, she refers to the process for making the draw for places—the draw of marbles—and she says that this is evidence of a dubious practice. She might not like the practice, but I do not know that it is evidence of dubious practice.

She also raises the question of who printed the ballot papers for the Constitutional Convention election. She makes something of the fact that the printing job was changed from MacMillans in Sydney to Salmat in Melbourne, which is apparently owned by Rupert Murdoch's News Limited, although he is an avowed republican. I am at an absolute loss to know what the hell who prints the ballot paper has got to do with the conduct or the result of an election. It seems to me to be a nonsense, and I am sure the committee members will recognise that very clearly themselves. There is nothing which requires the Electoral Commission to use the same printer every time, so what is wrong with changing them if you perhaps get a better deal? I do not know what the background is in this case.

CHAIR—We can possibly come back to some of those additional things, Mr Cox, if we have time.

Mr Cox—Yes, sure.

CHAIR—I think I would first of all like to give the committee the opportunity to ask some questions in relation to your submission and, then, if you have any other further comments—

Mr Cox—Yes. There are a couple I am very keen to make.

CHAIR—We will try to give you time at the end, if that is okay?

Mr Cox—Yes.

CHAIR—With the postal vote application mentioned in your submission, because your submission is now a public document, considering that I was one of the candidates for Eden-Monaro, I have some knowledge of this.

Mr Cox—Again, I was basing what I said there on recollection.

CHAIR—With regard to the postal vote application, which has been raised in other evidence given, can I just clarify that certainly in Eden-Monaro the Labor candidate address for the postal vote was clearly, 'Electoral officer, post office box something', and that was all that was on it. In relation to the ones that the Liberal Party put out, it was clearly to the Liberal Party.

Mr Cox—Was it?

CHAIR—Even though the Labor one did clearly come with Labor documentation, the actual address on the return simply said 'Electoral officer, post office box'. But the return address for the application provided by my campaign clearly designated the Liberal Party. So I thought I would get that on the record because your submission is public.

Mr Cox—Thank you. I think the point you make really reinforces my submission that the perception in the public mind is that these things are going back to the electoral office.

CHAIR—Yes. Clearly with the ALP one, I agree with you, it was not clear where it was going and people could have that assumption, but not in the other case.

Mr FORREST—I was encouraged to read the recommendation. I have to say to you that I made a decision in my office not to be responsible for somebody being disenfranchised, because

things can go wrong, and did not put that step in place. I recommended they went straight to the electoral returning officer in my electorate. But the issue for me is not so much that but that it is clear where the address is—in other words, the elector knows jolly well that this is not going back directly, that it is going back to the party or to the candidate first. I think that is the real issue. My reading of any complaint is that people thought they were sending it to their returning officer but they did not really understand it was going via a third party. When they got to the booth, they ended up being disenfranchised. I think that is the difficulty.

CHAIR—It was not passed on.

Mr FORREST—Then you can make your own choice: 'No, I'm not sending it there.' That is the option, rather than preventing it from happening. How do you react to that? Your recommendation is to insist that it go to only one place.

Mr Cox—I think that is the better course. I am encouraged by what you say—that you chose not to have these go back to your own campaign area. I notice too in the AEC submission that they do refer to numbers of people who were apparently disenfranchised in this process.

Mr FORREST—Yes.

Mr Cox—I am not sure, Mr Forrest, that I totally follow what you are saying.

Mr FORREST—It is a little different for me because I have a fairly significant margin. But there is a difference for some members who want to make sure they have an opportunity to put their case to a potential voter.

Mr Cox—I am sorry, could you restate the proposition that you are asking me to comment on?

Mr FORREST—The issue is that as long as it is clear to a voter where they are sending their information to be processed, not that it is mandatory that it should go. They might choose to have it sent that way—they might have their own particular bias or something. But if they think they are sending it to the electoral returning officer and they are not, that is of more concern to me—

Mr Cox—Yes, I think that is a concern.

Mr FORREST—rather than banning it altogether.

Mr Cox—As to giving them a choice, saying, 'You're not going to send this to the electorate officer candidate,' means that, human nature been what it is, they will often take the easy way out which is simply to use what is in front of them through the mail, which of course would not be available to them if my recommendation were followed. I think that is my reaction.

Mr FORREST—But you are obviously clear that you just do not think it is good practice and should not happen at all?

Mr Cox—I think that, given that this committee's predecessor and the parliament decided it was okay for parties to put out postal applications, there is a limit to the extent that one should

tilt at windmills. So I would think that, given that they have decided to allow this practice, the best thing is to make the best of it, which is to make sure that the material goes to the DRO.

CHAIR—I guess one of the difficulties you have during an election campaign is that people will just walk into their local member's office, and say, 'Look, I'm going to be away. I've got to apply for a postal vote.' If the sitting member—and the same thing could happen to a candidate with an office—has to say, 'Look, I'm sorry. I'm not allowed to provide you with a postal vote application. You'll have to go three towns away to the electoral office to get one,' I do not think that is good practice. If you can give them one but they must send it to the Electoral Commission, once again you have got a situation where they could be in your office, and say, 'I'll fill out an application for one now. Can you send it on to me? Where do you start to police it? That is, I guess, the reason why we have ended up in the circumstance where we are now.

Mr Cox—Yes.

Mr FORREST—It is very much the nature of the kind of electorate I represent. It is a 2½-hour drive to the DRO's office.

Mr Cox—Okay, I take that point.

Mr FORREST—That is why it is in there. I share your concern that it could end up that that voter is disenfranchised. That is what we need to protect.

Mr Cox—I believe that, if someone goes into your office and says he wants a postal vote, you would hand over one of the forms you have printed yourself. You say, 'You've got to post that off to the DRO. There's a mailbox on the corner.' There will not be one too far away in most towns or villages. That is not asking a lot. There is the service provided by the local member of giving him the form he can fill out on a table or something like that, and all he has to do is post it. I am afraid I am a bit unyielding, Chairman.

CHAIR—That is okay.

Mr FORREST—It is not like there is an option to move up to a booth that is not far away. It is a long way between booths in the part of the world I come from. I have people in the street ask me for these postal vote applications, and I am a little bit disempowered when I say, 'I'm sorry, you have to make this phone call and do all these other things.'

Mr Cox—Yes, but this is the point I was allowing. It has been accepted by the committee and the parliament that candidates can produce their own PVAs. If someone asks you for one, you can hand it out. But at that point you are distanced from it under my proposition, even though towns are a long way apart. Where is your electorate?

Mr FORREST—The north-west of Victoria—the Mallee.

Mr Cox—But surely most villages in the Mallee have a postbox?

Mr FORREST—Of course they do. But take Horsham: it is nearly a four-hour drive to where the DRO is. I am just defending why that change occurred to allow this process to happen. But your concern is that voters get disenfranchised, and I share that. All I am trying to find is one way to get something in between, I suppose.

Mr Cox—I cannot really follow why the voter cannot use your PVA and stick it in a post box. The fact that the DRO's office is in Horsham and this conversation that you are speaking of takes place in Echuca or somewhere is not a problem in posting the thing off, I would not have thought.

Mr FORREST—I just want to be confident that that is what he has done with it. You are already aware of the step that I took. I did not want to be responsible for having some person not able to vote if I messed up. In your submission, you actually say that you were surprised to discover that there was a new section in the act. I think you were reacting more to that. I am just trying to justify to you why I think it was a good change.

Mr Cox—I probably was, and I understand the reasons that are given. I think I am better informed for that. But I still think my recommendation is the right one.

Senator SYNON—I wanted to discuss the same issue. I accept the chairman's view that it should be clear where the return address is, whether it is a political party or whether it is the AEC. Like Mr Forrest, I was just going to point out that if an elector chooses to use the option of a political party they should not be disenfranchised because they are in fact making that choice for themselves. Probably the only issue is where having a post office box means it is not clear where they are returning the papers to.

Mr LAURIE FERGUSON—I just make the observation that obviously dual polling booths are inescapable, but sedate polling booths where 200 or 300 people vote are not the total picture. I would submit that dual polling booths are undesirable if we can avoid them. In the last New South Wales state election, at the Guildford West polling booth between the electorates of Smithfield and Granville, for instance, they were 300 or 400 ballot papers short because one returning officer was given responsibility for the dual nature of those polling booths. I agree that it might have happened if they had been in two separate polling booths but I think there is an element that because he lacked intimate knowledge of the electorate next door there was a major problem in the count of votes given to the polling booth. Secondly, when you have got very identifiable electoral boundaries like a pipeline or a major road it is easy enough. But there are some disadvantages, when you have electorates with boundaries that are not quite so evident and snake around, having people on polling booths trying to identify, as people go in, the electorate they are in and perhaps giving them the wrong how-to-vote card and thereby basically increasing the informal votes because people are too lazy to come out to get the right how-to-vote card. I am saying that it is inescapable but if we can avoid them it would be a good thing.

Mr Cox—I do accept that some polling places are an awful lot busier than others, but I am surprised to hear you say that there was one officer-in-charge for the two polling places.

Mr LAURIE FERGUSON—As I understand, the general returning officer for the one electorate was responsible for determining the number of people voting in each electorate at that polling booth.

Mr Cox—Off the top of my head, where there are dual polling places there would certainly be an officer in charge of each of them separately.

CHAIR—Is that the case in Sutton?

Mr Cox—Yes, I believe so.

CHAIR—So there are two separate OICs.

Mr Cox—Yes.

Mr LAURIE FERGUSON—Much of your submission, obviously, would be very popular in a multiparty democracy with proportional representation where you have a number of political parties with competing interests. In a two-party democracy, whilst I would have some feeling for many of the submissions that you make, the reality is that neither of the major political parties is going to rush to increase fairness for smaller parties. Many of these things go to those issues.

Mr Cox—They do indeed, Mr Ferguson. Generally, I am a realist too—I can identify a windmill when I see it in a paddock—but that does not stop me from having a go at it.

Mr LAURIE FERGUSON—I take your point. Wouldn't Mr Forrest's submission be a step forward at least? I hear what the chair has said, but I think it would be a step forward to actually specify that there must be a designation as to where the papers are going. Those people who are violently against it or are being misled are possibly not sending it through that party.

Mr Cox—I think it would be a step forward. What you are saying is that this PVA should say 'return addresses, the returning officer, Labor Party electorate office and post office box'.

Mr LAURIE FERGUSON—Or 'Joe Bloggs, candidate 4'.

Mr Cox—Yes. I think that would be a step forward. People would be better informed with that in front of them.

Mr LAURIE FERGUSON—Gary is in a more marginal seat than I am. I am not as altruistic as Mr Forrest, but certainly in my own electorate we resisted, for as long as was possible, the party's move towards these postal vote cards because they were more work and distracting for the electorate office. The agenda for that from both political parties is just so strong that it is going to happen. The main reason is to have access to the people from the point of view of giving them a how to vote card and the other party not having access.

CHAIR—There is nothing to hide here. Everybody knows the reality of it. People who are casting a postal vote are not showing up to a polling booth where you can hand them a how to vote card. So political parties want to be able to say, 'Consider us when you vote.' The only way you can do that is by knowing who is lodging a postal vote. Therefore, you try to maximise your knowledge in that respect. Certainly, I got considerable feedback from the October election in relation to my Labor opponent's how to vote card. Quite clearly, many people had no idea it was going back to the Labor Party because it quite cleverly—I give the Labor Party credit for it—put 'Electoral officer, post office box such and such, Queanbeyan'. Many people would think that that was going to the AEC in Queanbeyan, where the AEC is. Our particular one designated the Liberal Party.

Mr Cox—I understand what you are saying. I am not sure whether this question can be answered, but to balance against that, did the mass issue of PVAs by the parties—I know it happened in Eden-Monaro and I suppose it is widespread throughout the country—increase the incidence of postal voting?

CHAIR—That is another issue.

Mr Cox—I do not quite know how one could get to the bottom of that. I notice from the AEC's submission that the number of postal votes did increase substantially.

Mr LAURIE FERGUSON—We cannot totally separate that from the nature of this particular election and the timing of it.

CHAIR—It was a long weekend; that was also a factor and so it is very difficult to break it up.

Mr Cox—School holidays too.

CHAIR—There have been concerns expressed about the number of people voting in the prepoll who were really doing it quite illegally, if you read the letter of the law.

Mr Cox—Yes.

CHAIR—You talked separately about—not in your submission—a number of submissions to this inquiry from people about compulsory full preferential voting. It is probably fair to say that a lot of those submissions came about as a result of the changes to the act with the Langer aspect after the 1996 election.

Mr Cox—Most of them refer to some July 1998 'sneaky' legislation.

CHAIR—It was all subject to the inquiry by this committee and recommendations from this committee, which were then accepted by government, put into legislation and accepted by both houses of parliament. This is not quite sneaky, in my view.

Mr Cox—I was using their inference.

CHAIR—But it seems, certainly from some of the letters and phone calls I received, that there was this quite wrong view that, all of a sudden, we had introduced full preferential voting, as if it were not the case before. That raised the hackles of many people—and the fact that, at a state level, they have optional preferential. I think many of these people made submissions believing that it used to be optional preferential and then all of a sudden we made it full preferential. That is probably why there were so many, and certain groups were really putting this about the media. I think that is why we got so many submissions in this particular case. Would you like to briefly make some comments about why you feel we should look at it again?

Mr Cox—One aspect of the matters you raised that comes to my mind is that some of these submissions to the committee almost have a campaign air about them. One of my impressions is that an awful lot of them are coming from One Nation organisations or sympathisers.

CHAIR—If not all.

Mr Cox—There seems to be a campaign that has been organised there, and some of the language is the same. I have no brief at all for One Nation, but some of the points they make—indeed some of the points made by Mr Langer, for whom I also have no brief—are that under the

full preferential system, whether you like it or not, you are voting for one of the major parties at the end of the day, and there is no escaping that. If you really do not want to put the Labor or the Liberal candidate into your seat, why should you be forced to vote for one ahead of the other? That is one of the concerns that I have.

CHAIR—But you have the option to vote informally under those circumstances. You can vote for your other candidate and the balance of your paper is informal, but your vote does not count at all—okay.

Mr Cox—But if I were a rabid greenie and I desperately wanted to vote Green—and I desperately did not want to vote for Labor or Liberal—if you make me vote informal, then I cannot vote at all. I am disenfranchised.

CHAIR—My view is that you have to bring into this debate the aspect of compulsory and voluntary voting as well. I believe that if you run an argument that you should not force somebody to vote all the way through a ticket, then, equally, that same person should argue that you should not force somebody to vote.

Mr Cox—Actually, I noticed that Anthony Green from the ABC makes the same kind of linkage in his submission. That might be worth having a look at. I just make the general comment that a few years ago I strongly believed in the full preferential system and, with the passage of time and a bit of maturity, I have swung rather away from that—for the reasons that I give.

CHAIR—Maybe we should have something like the French system. We would have to increase the budget for the AEC, unfortunately.

Mr Cox—As I mentioned in my earlier submission, New South Wales and Queensland have given it a try, but I have never seen any analysis of what their experience has been. Maybe that could be investigated.

CHAIR—As a cursory comment on that, I felt the way in which people voted in the recent New South Wales election—as it was optional preferential—almost pushed us into a first-past-the-post voting system because of the very high proportion of exhausted votes. Although I think that part of the problem there was that there was an upper house where you were able to just put '1' in a box, knowing that preferences were going to flow. I think many people felt the same could occur in the lower house, but in many seats it was almost getting to a first-past-the-post voting system as a result of optional preferential. I am not sure that is the best thing in the long term.

Mr Cox—I did notice in one of the submissions—this is one of the One Nation submissions—that they gave some figures. I have not yet seen any official AEC figures from the 1998 election. It was stated that in the seat of Blair, I think—was that Pauline Hanson's own seat?

CHAIR—Yes.

Mr Cox—That she got 40 per cent of the first preference votes and the next best candidate got 17 per cent. I do not know if that is right, but she did not get up. If those figures are right—

CHAIR—That would be impossible; not 40 per cent. It could have been 30 per cent but certainly not 40 per cent.

Mr Cox—As I said, I have not yet seen the official figures, or I don't have them, anyway.

Mr FORREST—In my first election in 1993, I got 38 per cent of the vote, the next candidate to me got 32 per cent and the one below that got 25 per cent. Which one should be the member? It is an interesting debate, probably beyond what we are considering, but I look at those countries where first past the post operates and they have all got unstable parliaments as a result.

Mr Cox—It is very hard to see the end of the argument. That is why it would be interesting to see what has happened in Queensland and New South Wales. If, for example, 60 per cent or something like that of the people voted full preferential and 40 per cent did not and, in your case, you got 37 per cent of the first preferences, maybe in full preferential that would be enough to get you over the line. I do not know. One can only speculate.

CHAIR—There was one other issue that you wanted to raise out of one of the submissions. Would you like to very quickly raise that issue?

Mr Cox—It gets back to Dr McGrath again. She had a chapter about outsourcing the electoral roll that worried me quite a bit. I read that with some care and interest. She is saying that the Australian Electoral Commission has outsourced the management of the electoral roll. She has based that on a letter that was sent to her by Mr Dacey who is the AEC Assistant Commissioner. I will read what Mr Dacey said, according to the quote from her submission:

The AEC has not in its history (from 1984) used its own computer system or its own computer to manage the roll. It was managed on the computer of the old Department of Administrative Services (DAS) now the Department of Finance and Administration. The input of data into the computer is done by the AEC staff but the computer itself is managed on an outsourced basis.

That is a very different thing from saying that the AEC has outsourced the management of the roll. It is not saying that at all. It is simply saying it is using somebody else's computer.

If I were to go home and telephone you, Mr Chairman, I am using a platform which is provided by Telstra but they are not managing my use of the telephone. I am still managing it but I am using somebody else's platform, and that is exactly what the AEC have done here. They are using a platform to put the roll on. The RMANS enrolment system, which is a program that was developed by the AEC, is an AEC development and RMANS stands for roll management system. So just on their own definition, the AEC manage the roll.

It is just astounding that somebody could infer from Mr Dacey's letter that the AEC has handed over the management of the roll. Putting it on the DAS system I think happened in my day as Electoral Commissioner, and it was no more than the platform with AEC's computers being online to the DAS computer, which was bigger than the AEC's computer. She seems to be saying that the roll is at some risk of being tainted because it is on somebody else's computer and also because the AEC computer was hacked some years ago. I think the point she is missing out on is that it was the AEC's computer that was hacked and not the DAS computer. This submission seems to be a beat-up to try to undermine confidence in the election system.

If I can just refer to this hacking for a minute because that also was in my day and I can give you some facts even from memory. We fortunately found out that the computer system had been penetrated very quickly after the penetration began and pretty well in advance of the election. Despite what she asserts, the AEC were able to test all the election programs that were on the computer before election day began. They established, as I recall it, that there was no damage done. We were also able to find out, as I recall, that the hacker had not gone from the AEC's Sequent on to the DAS server, so the roll was not tainted.

The other important thing for the committee to understand here is that the computer, so far as the election night system is concerned, is only a vehicle for conveying results. It does not determine what the count is; that is done in the same way as it has always been done—by people looking at ballot papers, writing up scores and, when the counting is done in the polling place, the OIC getting on the telephone and phoning it through to the divisional office. Those processes are not affected by the computer at all. Even if the computer goes haywire but there is no evidence that it has, that does not affect the election result in any way at all. So

what she is saying is really quite preposterous. I think that is about all I want to say about Dr McGrath's submission.

Mr LAURIE FERGUSON—Does the AEC maintain a list of the permanent, conscientious objectors to voting in an electorate?

Mr Cox—I do not know. I think we need to take that on notice.

CHAIR—We can get that information later, but you do not recall from when you were there?

Mr Cox—No, I really have no idea. Can I just make one final point still on Dr McGrath. She seems to imply, speaking about our friend Tony Cooper who was the hacker, that we tried to cover up the hacking by not reporting to parliament and doing all sorts of things like that. The facts of that matter are that there was no cover up and I will explain why and I hope it will convince you totally.

The process for discovering the hacker meant that we were on to the fact that somebody had penetrated before this guy knew that we were aware he was into it. With the aid of the police and Telstra, we were able to trace it back to his house and he was virtually caught red-handed. It seemed to me that that was really a fair cop, and we then had a choice. We knew full well that, if this thing went to court, it would raise the kind of hysterical reactions we get in this submission and bad publicity for the AEC. But I and my colleagues chose to do that and to pursue Mr Cooper to justice rather than to try to cover it up.

So we referred it to the Director of Public Prosecutions, and if he says, 'Prosecute,' then that is what happens under the system. We knew that other people had been hacked and were sitting on their hands and closing their mouths, but we decided that this chap ought to be brought to justice, knowing full well that that was a public process. So the suggestion that we were covering up was just absolute nonsense. Thank you, Mr Chairman, for hearing me.

CHAIR—Thank you. I wish to thank all witnesses who appeared before the committee today.

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

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.

Committee adjourned at 12.02 p.m.