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JOINT COMMITTEE ON ELECTORAL MATTERS

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

TUESDAY, 29 JUNE 1999

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**JOINT COMMITTEE ON ELECTORAL MATTERS
Tuesday, 29 June 1999**

~~Members: Mr Nairn (Chair), Mr Danby, Mr Laurie Ferguson, Mr Forrest and Mr Somlyay and~~
Senators and members in attendance: Mr Danby, Mr Laurie Ferguson, Mr Forrest, Mr Nairn
and Mr Somlyay and Senators Bartlett, Murray and Synon

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.

WITNESSES

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Committee met at 12.36 p.m.

CHAIR—I declare open this hearing of the Joint Standing Committee on Electoral Matters inquiry into the 1998 federal election and matters related thereto. Today the committee will be hearing from Senator Grant Tambling, senator for the Northern Territory, concerning the conduct of the 1998 federal election in the Northern Territory.

I welcome Senator Tambling to today's hearing. As you are aware, the evidence that you give at the public hearing today is considered to be part of the proceedings of parliament and therefore the normal rules and regulations which you are well aware of apply. The committee has received your submission No. 157 and it has been authorised for publication. Are there any corrections or amendments you would like to make to your submission?

Senator Tambling—No, Mr Chairman, I am happy with that. I would appreciate the opportunity to make a statement today.

CHAIR—If you would like to now make an opening statement and then I will invite members to ask questions.

Senator Tambling—Thank you, Mr Chairman. As you would be aware from the correspondence that I wrote to the committee on 11 March, there are a number of issues that I would like to address, essentially in the areas of remote polling and assisted voting. I would like to address specifically the issue in the Northern Territory relating to what has become known as mobile polling team 16 and certain irregularities and inconsistencies that concerned me. I would like to comment on the administration issues relating to the Australian Electoral Commission and similarly the Tangentyere booth.

There are also some issues arising from a court case before the Supreme Court of the Northern Territory that I have drawn to your attention. I will make a couple more comments on that. Also, on a slightly different issue, the polling at Christmas and Cocos (Keeling) Islands is an issue that I have raised to your committee on a previous occasion and I would like to come back to that again.

Can I say at the outset that I have had a concern with remote polling and assisted voting at every election since I was elected to the Senate in 1987. If you look back at my declaration of poll statements, particularly for the last few elections, you can see a recurring theme occurring with concerns with difficulties, inequities and inefficiencies associated with remote polling and assisted voting.

Perhaps if I can take a little bit of liberty and go back almost 10 years ago. In my 1990 statement at the declaration of the poll, I said:

One particular aspect of the 1990 election gives me cause for concern. It is the conflicting principles of the right of every citizen to a secret vote and, on the other hand, the obvious need to assist illiterate voters. I believe that many Aborigines are subtly intimidated by ALP 'assistants' who, in the course of their employment and personal relationships, have built up 'a debt of obligation' with the Aboriginal voters. The abnormal and obvious results in remote and mobile polling (generally, 65/75 per cent ALP 20/25 per cent CLP) demonstrate this point clearly. I would call on the Electoral Commission to review its regulations and allow only assistance by paid AEC staff.

In my 1993 statement at the declaration of the poll, I said:

I reiterate my concerns (expressed at the 1990 poll declaration) regarding the conflict of secret voting provisions and the need to assist illiterate voters, particularly the overwillingness of some AEC officials to proffer assistance to voters prior to any request for assistance. Such action, where it occurs, is patronising and open to voter manipulation. The answer lies in pre-election education, not polling booth assistance.

The Northern Territory has at every federal election, with 1998 being no exception, seen extremely high numbers of assisted voters. At some polling booths in remote areas it appears to be standard procedures for voters to receive this assistance. This assistance is often provided by the same person repeatedly and appears to be an organised effort to gain maximum number of votes for a particular party.

If I can draw a comparison, there is a great deal of sophistication, I believe, these days in voting in predominantly Aboriginal communities where Aboriginal voters vote for community and local government elections repeatedly. They vote for elections of the Northern Territory government and they vote for ATSIC, commission and regional council elections and for their own community based organisations. For those elections they do not receive the same degree of assistance that is provided by the federal arrangement. Yet the results at each of those elections do not show up any abnormal or indifferent aspects with regard to informal or invalid voting procedures. I think that is an important comparison in that area.

It is my understanding that assistance can only be given to a voter when the presiding officer is convinced that they have literacy problems or a disability that prevents them marking the ballot paper themselves. This issue is obviously one that has been raised over and over again and has not been, to my opinion, addressed by the AEC. The AEC in the Northern Territory claims that there has never been a formal complaint regarding this issue. I dispute that. I raise it with monotonous regularity at every election and I ask the question: why has no action been taken by AEC officials in the Northern Territory?

I support, as does my political party, the Country Liberal Party and the Labor Party, a system like in the Northern Territory elections whereby candidates' photos are placed on ballot papers, avoiding confusion and lessening the opportunity for abuse of assisted voting. The organisation of mobile polling often leaves a lot to be desired. Getting teams out to the remote area costs everyone involved—the AEC, political parties and candidates—a heck of a lot of money and time. It is often a ludicrous situation when the timetable is changed without warning or with little warning. It is even more ludicrous when places that are visited by remote polling booths are not visited, or there are no voters present at the time. This situation happens several times with what we term for your inquiry Remote Mobile 16—I will come to that a little bit later—and it is a waste of time and money for everyone involved.

I know there is currently before the parliament the Electoral and Referendum Amendment Bill (No. 2) 1998, which makes a number of sensible changes in this area. There is a very obvious dispute between the current federal member for the Northern Territory, Mr Snowdon, and me, with the interpretation of some of that legislation and the degree of assistance with regard to whether it is the presiding AEC official or the scrutineer who actually fills in the voting. I think that is an important point.

If I can turn to the issue of mobile polling team 16, which generally was centred around the community of Hermannsburg. I note from the Electoral Commission votes that there were a number of ordinary votes of 336 at that booth and four declaration votes, a total of 340 amongst a number of communities. A serious and embarrassing administrative error occurred involving mobile polling team 16 during this election. In fact, I believe it is wrong to call what happened an error; rather, it should be referred to as a deliberate, cunning and fraudulent manipulation of a system by an AEC official, the team leader of Mobile 16, Elna Williams, who was also involved with the debacle that was at the Tangentyere booth, which is another issue I will address.

It is important that the committee closely examine the Country Liberal Party's supplementary submission to you—I think it is dated 1 June—in relation to this issue. We have attempted to get the figures from the AEC for the mobile polling teams. There was a great deal of difficulty in getting the figures—there was a lack of cooperation—and eventually I personally had to seek to contact Mr Bill Gray, the AEC Commissioner, who was not available. I spoke to one of his deputy commissioners to obtain the figures for each remote polling team. After scrutiny by CLP officials and scrutineers, it became obvious why there was such a reluctance by the AEC to release these figures. The locations where polling was carried out and the number of votes in the ballot box were clearly incorrect for Mobile 16.

Country Liberal Party scrutineers can verify that locations listed on the return as having been visited were not visited and that several locations listed as having people vote did not have anyone vote at all. The presiding officer at Hermannsburg informed CLP scrutineers that voting was completed, and they subsequently returned to Alice Springs. The presiding officer informed paid employees of the AEC attached to Mobile 16 that voting was finished for the day, and they were sent on a tour of Palm Valley. It appears that approximately one-quarter of the total votes taken by Mobile 16 were then polled in the absence of Country Liberal Party scrutineers and other AEC officials. The CLP and I believe that about 85 people voted or that votes were cast for 85 people.

The presiding officer was in charge of the certified roll and had the capacity to go through those who had not voted and either cast the votes herself or go and seek out the people required. We believe it was a bit of both, but we are unable to check with the AEC list of who voted. This one-quarter of the total vote cannot be attributed to the previous Hermannsburg booth because that section of the work sheet had already been closed off. They cannot be attributed to any one place as there is no one place large enough. The ballot papers were just left in the ballot box and there is no corresponding paper trail. The list of places visited by Mobile 16, with the number of votes cast, that was supplied to me by the AEC highlights the dubious practices that took place with regard to this mobile. With this list the AEC obviously attributed votes to a location where no-one voted to balance the books.

It was this practice that brought the discrepancy to the notice of the Country Liberal Party and me and led to further investigation of Mobile 16. It is very important that your committee investigate thoroughly what took place at this mobile as there were obviously many inequities and activities that can best be described as very dubious and, perhaps more accurately, downright illegal and fraudulent. I do not know exactly what took place at this mobile; I think the only person who does is the team leader, Mrs Elna Williams. She needs to be brought before your committee under oath, along with all of the paperwork related to the mobile, if any sense is to be made of what has occurred. The other two AEC officials on the mobile, Mr Iain Paterson and Mr Joseph Tarwala, should also be brought before this committee to give evidence.

Why was a booth opened at Hermannsburg three times on three different days, particularly after the team leader was ordered by the AEC Commissioner for the Northern Territory, Kerry Heisner, on the second occasion to close the booth? The AEC bodgied the remote polling list and have not been willing to admit this or explain what happened with Remote 16. It does lead one to speculate that this may not have been an isolated occasion.

With regard to the Tangentyere booth, this booth must now be the most infamous polling booth in Australia. I spoke to Kerry Heisner stating that this booth would be a disaster and asking that it be withdrawn. That followed an earlier request when the AEC were proposing to have remote mobiles within the boundaries of Alice Springs town. They were withdrawn because of legal reasons, and this booth was injected then as a form of mobile. My concerns were subsequently, unfortunately, proven to be all too real.

I will quickly restate the problems with Tangentyere. This booth was originally intended to be a mobile booth for town camps but was changed to a static booth for legal and political reasons; the small size of the booth led to crowding and confusion; the political nature of the organisation and placement of the polling booth at such an organisation—where it was located; the lack of control by the presiding officer and obvious bias; the assault on Ms Jenny Sinclair, which I believe can be directly attributed to the foolish placement of the booth; the poor organisation and the poor control of the general atmosphere of bias. The booth at Tangentyere was patronising as community polling booths were in the immediate proximity. It was not needed, apart from being a useful political exercise for the ALP and, I fear, the ALC. I believe this booth was racially discriminatory and divisive.

I am fearful that, if the AEC practices at Tangentyere are accepted or adopted in Timor next month, then Australia's electoral voting will be compromised. Suzanne Cavanagh, the President of the Country Liberal Party, spoke to Kerry Heisner on two occasions on election day. He indicated that the Tangentyere booth would be closed on the recommendation of the assistant returning officer in Alice Springs and that the presiding officer would be relieved of her duties due to the fact that the numerous complaints made by the CLP had been validated. This obviously did not happen but it is a strong indication of the concerns that were held over the activities that occurred at this particular booth. I would strongly urge that members of your committee question Mr Heisner, who I understand is appearing later today, very closely on his reasons for the placement of this booth and on the many complaints and examples of maladministration as identified by the CLP in their submission.

I will quickly comment on the administration of the AEC for this election. There were delays before the final results were produced by the AEC. The posting of the results on the Internet also involved very unacceptable delays and, from my surfing of the Net, appeared to be more with regard to the Northern Territory seat than other seats elsewhere around Australia. There were obvious and serious administrative irregularities involving Mobile 16 and there was the confusion and inconsistency that surrounded the checking of provisional votes. Staff did not seem to be properly trained and it took an inordinately long time to search for some voters. This was a matter reported to me by scrutineers. There was bias by staff employed by the AEC and there was the need for thorough vetting of political affiliations.

There was also the inconsistent and racially biased consideration of provisional voting. For example, with the processing time of a provisional vote, often there were times allowed of eight or 10 minutes if it was from an Aboriginal community compared to the checking of details if it was from an urban centre. There was the acceptance of names that do not closely match those on

the electoral roll due to the wide variety of names used by Aboriginal people and their identification of skin names, et cetera. There was the acceptance of a very wide-ranging discrepancy in birth dates for individuals. I understand that a leniency of some 10 years was often accepted for provisional votes in Aboriginal communities.

Finally, I will comment on the case which I referred to in my letter to you of 11 March with regard to the proceedings in the Supreme Court of the Northern Territory—the case between Peter Julian Hansen and the Northern Land Council. Of particular note is the evidence given by Mr Hansen on Tuesday, 17 November 1998 relating to a meeting held at the Northern Land Council in January 1993. Mr Hansen asserts on page 77 of the transcript that at the meeting Mr Warren Snowdon asked Mr Mick Dodson, who was then the Director of the Northern Land Council:

As in past practice, what can you do to help get me re-elected?

Mr Hansen asserts Mr Dodson responded:

We'll do the usual stuff. . . We'll help as much as possible with vehicles and staff but we'll help with the mobile polling . . . And Peter will give you whatever help he can in promoting your re-election through *Land Rights News*.

Mr Snowdon failed to declare this substantial assistance on his candidate's return for the 1993 election. This failure is deplorable, inequitable and, most importantly, a waste of the land council's and Aboriginal people's resources as a political exercise.

The exercise in assisting Mr Snowdon by the Northern Land Council is described by Mr Hansen in terms that makes one believe that it is standard procedure and it certainly corresponds with my own observations of both federal and local Northern Territory elections. An investigation should be carried out to ascertain if such resources were used at the 1998 election and to what extent, and that is a matter for your committee. I would certainly request that your committee consider calling Mr Hansen before it to obtain the evidence that he referred to in the 1993 election directly and see if his views are recurrent and, in his understanding, are accepted practice for the land councils, and to ascertain how that matter is there.

I would certainly call for the disqualification by the AEC of any land council staff member or official who has participated in campaigning for a party or a candidate from being engaged as AEC poll staff, interpreters or voter assistance. I believe that is the area where we often see the degree of bias and subsequent community confusion that arises in many of those communities.

The final point I would make is with regard to Christmas and Cocos (Keeling) Islands. I have canvassed this with your committee on a previous occasion. Can I restate that I think it is an anomaly that two territories located in the Indian Ocean several thousands kilometres from the Northern Territory should be included as part of this electorate where there is no obvious community of interest either socially or commercially. Christmas and Cocos Islands have no direct air links with the Northern Territory, share no laws on a state basis with the Northern Territory and are administered from Western Australia and Canberra. Most of the community interest for family and education reasons is with communities in Western Australia. It is time this anomaly is resolved and that the territories are incorporated necessarily, I understand, for electoral legal reasons, as part of an Australian Capital Territory electorate. It is obvious that on some future occasion the Northern Territory will progress to statehood and, therefore, there are implications.

The other issue for your committee on this occasion is that it appears that the Northern Territory electorate will be subdivided into two electorates prior to the next federal election. One logically would be based generally geographically on the wider Darwin community. The other would be essentially the rest of the Northern Territory. This will again make a mockery that neither Darwin nor elsewhere in the Territory would have any community of interest with Christmas and Cocos Islands.

I personally enjoy representing both of those communities. I enjoy visiting them. I did so with Mr Somlyay last year when he was the minister, and I have been back subsequently with the minister this year. There are special representational needs of Christmas and Cocos Islands that are very apparent, but I think they could be constitutionally handled from an ACT electorate in a better way than they can be from the Northern Territory, both for cost and effective measurement of how they are put together.

CHAIR—Thanks, Senator Tambling. Just on that issue of Christmas and Cocos (Keeling) Islands: when the Northern Territory becomes a state under the current circumstance the only seats that the Christmas and Cocos Islands could be connected with would be either Canberra or Fraser. Is that correct?

Senator Tambling—That is my understanding, that an external territory has to be attached to an internal territory.

Mr SOMLYAY—Not quite. We have Norfolk Island where the people of Norfolk Island can vote in any federal election they choose.

Senator Tambling—Yes. Maybe something in that area could be applied. I am not trying for any other reason to shut them off from representing them. As I said, I enjoy representing them. They are very unique, but it is a very inefficient and ineffective way. I presume that an ACT senator or member would have a similar geographic problem of representation. But I think their unique constitutional status would be more properly recognised by being attached to the ACT, perhaps with the Norfolk Island extension of expatriates who go there who may wish to retain voting in their previously occupied Australian electorate, or identify themselves with the community with which they have the most community of interest. I think that would largely be Perth.

It was canvassed a number of years ago with the Western Australian government that perhaps the Indian Ocean territories could be incorporated into Western Australia. However, that poses legal and constitutional problems for the Western Australian government and parliament. It would be a matter of conjecture as to whether or not the residents of Christmas and Cocos Islands would in fact want to become Western Australians. They may, from my feeling, want to retain their autonomy in much the same way as Norfolk Island does. Therefore, there is probably no other option than to look at the ACT nexus.

Mr SOMLYAY—My experience in that regard last year was that they would far prefer to be a part of Western Australia than the Northern Territory. Their communication links, shipping, air services, et cetera, are with Western Australia.

CHAIR—The only air services are out of Perth.

Mr SOMLYAY—And they operate under the local government act of Western Australia.

Senator Tambling—The only community of interest is with the federal member for the Northern Territory and with the two senators for the Northern Territory. All three of us do faithfully represent them, despite political differences from time to time.

Mr SOMLYAY—What I was saying was that the laws of Western Australia apply there. The laws of the Northern Territory do not apply there, and you represent them.

Senator Tambling—That is right, yes.

Mr SOMLYAY—It would require a referendum in Western Australia to take them on as part of the state.

CHAIR—Just before I hand over, there is the assisted voting issue. You made the comment that in many of the booths it is just one or two people who seem to have it well organised to carry out the assisted vote. The AEC's response to that is that often there are only one or two people in the community who have the language to be able to assist; therefore, they tend to assist everybody. Have you got a comment on that sort of defence?

Senator Tambling—It is a very difficult one to manage between the familiarity and the very necessary arrangements in many Aboriginal communities of authority figures being able to exert influence, not necessarily verbally, but prior to the polling. When you have to draw on linguists from within the community to assist if it requires language skills, then I think that poses a major problem.

I no longer think that there is such significance having it purely parochial to a particular election booth. The lady who heads up the Anti-Discrimination Commission for the Northern Territory, Ms Dawn Lawrie—herself a former member of the Northern Territory Legislative Assembly—has looked at a whole range of language skills. She has about 13 or 14 significant groups on which interpreter and linguistic skills can be applied across the Northern Territory, where you do not necessarily have to withdraw from within the specific community where the nepotism and the family networks exercise what I would class as undue pressure from time to time. It is giving people the proper service they require but being remotely distant from it.

The legislation before parliament at the moment which restricts the filling in of the voting paper to the presiding officer or the AEC official is an improvement in the right direction. But again, sometimes by necessity, that AEC official is someone drawn from the local community for the conduct of that election at that polling booth. There can be situations.

With respect to Ms Williams at Tangentyere and Mobile 16, it was obvious that she did have close family and familial relationships with many in that area. The AEC obviously appointed her because of that purpose. I and others would argue that unfortunately it was too close to the scene and became transparent with regard to bias.

Mr LAURIE FERGUSON—We will start off with Mr Hansen's fallout with the Northern Land Council. There is no complaint apparently about the 1996 elections and you are saying that perhaps an inquiry should be launched into 1998. Surely you know whether or not you witnessed the use of these resources? Were they used at any stage that you know of—that is, transport, et cetera?

Senator Tambling—It is a matter of personnel. Certainly, I cannot vouch for anything in 1998. I would hope that these resources—stationery, equipment and vehicles—were not used because I certainly sent loud messages following the 1993 election. There was a much reduced use of resources at the 1996 election and subsequent Northern Territory election. However, as is apparent from the magazine, *Land Rights News*, which is a publication of the Northern Land Council, I cannot stop personnel showing their colours in any political area. Certainly, my own supporters in any community would be just as free to do that. It is when they cross the bridge from being the voter's friend in the booth or a party scrutineer or an AEC official that I think causes the problem. I think that problem is unfortunately still there because of a lack of numbers. It is still a serious issue for the AEC to address in the recruitment of personnel. I do not believe that, in a local community, the AEC should be drawing on anyone from a political party identified in that community or that, because of their political nature, the staff or officials of the two major land councils—the Northern and Central Land Councils—should be appointed as electoral officials.

Mr LAURIE FERGUSON—But, as you noted, you are a regular witness in regard to election outcomes and you made no complaint post-1996 about any use of resources, did you?

Senator Tambling—Not to this committee—although I talked about similar issues—but I had previously done so in 1990 and 1993. No, I did not.

Mr LAURIE FERGUSON—To this committee in 1993?

Senator Tambling—Yes, I did. It would have certainly been passed to your committee. My declaration at the 1993 poll was made very plain to the AEC.

Mr LAURIE FERGUSON—You have thrown around phrases such as 'racially discriminatory', 'patronising' and 'racially biased' and you made the comment that the decision in Tangentyere was made for political reasons—I guess you are saying, by the AEC. Could I put to you that other people might analyse the thrust of your own and Ms Cavanagh's contributions as being very decidedly aimed at minimising political participation by Aboriginals? I find it quite amazing that both of you, in your documents, are so put out that so much time is spent on trying to rule these votes in. If people were put in who definitely should not have been, fair enough—let us go through them and maybe we have grounds for worry. But I really question what the motivation was behind the complaint that a whole eight minutes was spent on some.

Senator Tambling—No. I would counter your argument about trying to minimise votes. I want full participation by each and every Territory citizen, properly and effectively in every election, and I am sure that the President of the Country Liberal Party would want exactly the same. There is no way of minimising votes. It is a matter of making sure that they are the deliberate and personally held view of the voter in each and every case.

Mr LAURIE FERGUSON—I am talking about provisional votes.

Senator Tambling—Yes, in each and every Aboriginal vote. I would counter that if you look at the participation of Aboriginal people at local community government elections, Northern Territory government elections and ATSIC elections, Aboriginal people participate fully and actively without any degree of mollycoddling and special effort. The AEC issue in regard to Tangentyere was, I think, totally unnecessary. In my view, there were no additional numbers

voting or anyone denied votes who would not have voted at any of the urban voting polling places in Alice Springs. Tangentyere is closer to the centre of the town than the half dozen or so electorates where the Aboriginal people living in urban communities around Alice Springs would normally have voted. So I think the fact of putting it at Tangentyere, which is an Aboriginal service organisation, is very different from placing it at a polling station, such as a school or an independent polling station, where Aboriginal people would have been fully involved had they so chosen.

Mobile 16 is a separate issue that should be looked at very carefully. I think it is indicative of my past experience of what used to happen more generally. I think, thankfully, that has now been weeded out a lot more, certainly in northern Australia. But it highlights when the AEC does not stand at arm's length sufficiently from the recruitment of the personnel that it has involved in going on mobiles or in running polling stations in significant Aboriginal communities.

Mr LAURIE FERGUSON—Let us get back to provisional voting for a second. Both yourself and Ms Cavanagh make a complaint that the officers of the AEC seem too concerned to get these votes in. In the normal course of events, I would be very worried about a Billy Smith, who claims to be Jack West, and a 10-year discrepancy. I do not want to verbal Ms Cavanagh but I do recollect last time that even she conceded there were a whole lot of earlier births not recorded. A lot of it is oral, people are not absolutely certain in which year they were born and there are language problems. Surely, there has to be a bit more interest in facilitating the voting rights of these people, given these problems, than the normal person educated in a high school in Sydney.

Senator Tambling—I object to issues such as when my scrutineers report to me that there is a policy of the AEC to deliberately allow provisional votes from Aboriginal communities to be processed on an eight- or a 10-minute per issue hunt whereas any provisional vote lodged in an urban community gets a cursory glance, a one-off check and is put into the basket. I notice in Mr Taylor's subsequent submission to you of 1 June that he points out that there is some question as to whether some of the provisional votes were taken aside, scrutinised by more senior officers of the AEC, without scrutineers being present, and then readmitted subsequently to the count the next day or whatever. That, again, I think, is a bastardisation of the process that should be adopted. It goes back to this point of what I call 'undue bias'. I am not saying that a valid vote ought not to be admitted, but in urban communities they are given a cursory glance and are shoved in the yes-no trays. However, for an Aboriginal vote from an isolated community or provisional somewhere there is a policy of at least spending a considerable amount of time on it. I think that needs to be tightened up and looked at very carefully by the AEC.

Mr LAURIE FERGUSON—I certainly sympathise with your complaint about votes being decided without the presence of scrutineers. That is valid. If that is true, there is no argument. But representing an electorate where a proportion of people from overseas do not know when they were born and some of them depend on a different calendar from ours—the Islamic calendar, et cetera—I would put it to you that there probably is a reason why more time should be spent on a number of Aboriginal votes in regard to people's knowledge of the way they spell their name. I think you made some reference to skin names, et cetera. Surely, compared with the average person in the street, there should be more time spent on whether these votes should be admitted or not.

Senator Tambling—Yes, there should be, but because of the repetitive nature of polling, both for federal and Northern Territory elections, the electoral rolls are now very well

understood, particularly in local communities. If a person is making a provisional vote, where they have to go through the process of filling in additional forms, that ought to be very clear both to that local community and the presiding officer who would assist in the completion of that provisional vote. Also, these days I would hope that there has been an AEC process of getting the nomenclature very correct in these communities. I do not think there has been sufficient regard to that by the AEC.

Mr LAURIE FERGUSON—With regard to their continued participation in various votes, which you have referred to on a number of occasions, I actually requested the secretary to get some figures on turnout and informality in the ATSIC elections. My own experience—admittedly, in Sydney rather than up there—was that, being non-compulsory, one cannot assume the turnout is all that high.

Senator Tambling—Certainly, the ATSIC election is disappointingly low because it is voluntary. But you will find that, in most of the communities that have a significant representation on regional councils or commission elections, there is a good turnout, and they are comparable. Probably, the better comparison is between the Northern Territory election and the federal election where there are similarities, but I do not think that there are similar problems.

Mr SOMLYAY—In a part of your comments, Senator, you said that getting teams out to these remote areas costs a lot of money. How much are we talking about? Put in perspective for those people who do not understand the problems of remote—

Senator Tambling—You should address that question to the political parties themselves. I would imagine, from my recollection of figures that have been used, that to visit so many remote polling areas all by charter aircraft—and this would be apparent from the figures declared by the political parties—for a federal election for the Northern Territory, we would be looking at \$40,000 to \$100,000 in air charter costs.

Mr SOMLYAY—And both parties do the same thing?

Senator Tambling—Both parties have to do it. Unfortunately, we cannot sit on the same plane as the AEC officials, and I think that that is awful. I think that, particularly where there are major things, there should be a way in which they can share the costs of the charter—and there are occasions when the political parties do cooperate and collaborate and share costs, but not significantly enough, I think. But the fact is that running a federal election in the Northern Territory can cost half a million dollars or more for a political party. There is a very significant cost that is borne in the servicing of remote polling by the scrutineers. If the AEC changes the ball game and decides to run a polling booth on a particular day and there is not sufficient time, you have got to recruit people who are volunteers, plus organise your charters and often you miss the opportunity to participate. You are going into a community for six, 10, 15 or 60 votes at a very, very high cost.

Mr SOMLYAY—Is there any evidence that one political party might be favoured over another political party in notification of these changed timetables?

Senator Tambling—I do not believe so.

Mr SOMLYAY—So both parties face the same problem when that occurs?

Senator Tambling—In some areas where the Labor Party may have more people on the ground because of personal reasons in a particular community—it may be more advantageous for the Labor Party in other communities where there is proximity to the Country Liberal Party supporters, proximity to a particular community—it might then be a disadvantage to the Labor Party. I think that that would shake out in the longer term. In most of the areas there certainly needs to be a lot more attention given to the numbers of votes in some of these remote communities—set aside team 16. But if you look at the numbers where often the plane went in and there were no votes, or there were five or six, unfortunately when you draw a comparison to other non-Aboriginal people living in small communities elsewhere in the Northern Territory, they do not get afforded the same degree of electoral assistance or remote polling. Cattle stations, other small towns or small congregations of people get services by postal voting. Because of the nature of postal voting, that can sometimes trip over itself, and the returns do not get in and are not admissible because of mail times. But there is certainly a very considerable bias by the AEC to Aboriginal communities of any size—more than four or five people—to be served by remote polling.

Mr SOMLYAY—The question of ATSIC facilities and funds being used to support a political party breaks no law, does it?

Senator Tambling—I am not referring to ATSIC. I believe that ATSIC and—

Mr SOMLYAY—Sorry—the Northern Land Council.

Senator Tambling—I have always felt and believed that land council staff officials have participated very actively in elections. Last year it was very obvious. We were running a plebiscite at the same time with regard to statehood, and the land councils were running a separate agenda with regard to the statehood debate, and they put a lot of resources—more than normal—into their position on that particular plebiscite. I have no problem with that.

Mr SOMLYAY—Yes, but from the point of view of the Electoral Act, the transgression is non-disclosure. The use of the facilities—let us assume they did use them—by the Northern Land Council does not break any law, does it?

Senator Tambling—No.

Mr SOMLYAY—So it is really the disclosure provisions of it?

Senator Tambling—The disclosure. And I must state that Mr Snowdon has put on the record that he has written a letter in which he states that he was not aware of any of these provisions. However, I believe that any proper audit of land council affairs would show—particularly in last year's election where the statehood issue was being run parallel, at the same time and on the same date—there would have been very considerable expenditure on transportation costs, staff time and allocation of land council resources, both to the plebiscite and to the federal election. So I would expect and hope that in due course the land councils will make an appropriate and fully honest disclosure of what they consider to be their political support. They certainly did not give much to me.

Mr SOMLYAY—But you would expect that the land council would have to disclose that expenditure? The land council has to report to someone, to government, on the use of public funds, doesn't it?

Senator Tambling—Yes.

Mr SOMLYAY—The question is: are public funds being used for these purposes?

Senator Tambling—I think it should be looked at by the Auditor-General and by the AEC with regard to the appropriate declaration of application of their funds. I do not know whether they made any donations. I would doubt that they would have made donations to any political party. But certainly resources—

Mr SOMLYAY—In kind.

Senator Tambling—both in kind and, as I said, particularly transport and staff time, would have been considerable.

Mr FORREST—I have two questions: one about ballot papers and one about Tangentyere. I must say I am a little concerned by the admission by the Electoral Commission that they have admitted photocopied and unsigned ballot papers. I was wondering if your scrutineers reported to you on that. I can accept that, if there is a shortage, you need to photocopy extra ballot papers and they might not be green or red or whatever, but to have them counted when there is no initial on them is a real bother, especially when we are talking about communities where the participation in voting is very low in terms of what we would normally expect. Have your scrutineers reported back to you that votes were admitted that did not have an initial on them?

Senator Tambling—I have been present when there have been discussions on that, and I think that is reflected in Ms Cavanagh's and Mr Taylor's Country Liberal Party submissions to you. I think that is further addressed there. I suggest that you refer that to the political parties. I am certainly aware it was an issue that was canvassed, but it was not something that I had to stick my nose into.

Mr FORREST—I think it would be a major issue. Certainly my own experience is they are not accepted where I come from. But I am just worried that, in the AEC's response, they actually say the divisional returning officer has the right to include ballot papers that he says are correct. There must be some loophole in what we are trying to provide here as a procedure that cannot be challenged.

Senator Tambling—I certainly think it is an issue that requires great vigilance by the AEC and the presiding officer, and, as you say, if it is in a substitute form it should be issued in the normal manner, particularly with the initialling by the presiding officer.

Mr FORREST—It was the colour as much as the fact that it should have approved initials. Tangentyere: I understand the committee is going to visit there later. The allegation I remember from evidence in Darwin was that this was a site which was politically active prior to the election, especially on the issue of statehood—there were posters all over the building and so forth. Did you visit that booth during the election and, from your own experience, can you report what you saw there?

Senator Tambling—I did not visit Tangentyere. I was based in Darwin last year during the election campaign. This is in Alice Springs. I saw the photographs that I think have been submitted to your committee. Subsequently, I spoke to the scrutineers who were present. I am

aware of the location of the site. I have visited in other capacities at other times. I think it was unsuitable and certainly not seen as an independent place like a school or normal polling area. The AEC generally attempts to have neutral ground polling booths. This one under no circumstances could be described as neutral ground. Because of the people who work there, the people who were recruited as the assistant and staff, would all have been identified with the normal politics of that particular site. That is why I objected to Mr Heisner at the location of the particular site in the first instance. Prior to that I objected to him about the special provision to set up mobiles within the Aboriginal communities inside the town of Alice Springs. He accepted, after getting legal advice, that he did not want to proceed with the first initiative but then this form of sticking Tangentyere in at the last minute certainly exacerbated and created the problem. I do not believe any of the people who voted there would have been denied a vote in the Alice Springs environment on that day, had it been at another location or at any of the other established polling stations.

Mr SOMLYAY—Put it this way: where did they vote in 1996?

Senator Tambling—They would have voted at schools in the adjacent area less than a quarter or half a mile away. There would be two of them within a radius of half a mile.

Mr SOMLYAY—Was there any glaring discrepancy in 1996 which would have influenced the AEC to put that booth there?

Senator Tambling—I am not aware of such. There was certainly nothing in any of the reports that I saw subsequent to the 1996 report that suggested people had been denied voting rights. I think it was more a face-saving exercise on the part of the AEC because of my intervention, in saying the remote mobile polling within a municipality was unnecessary and incorrect. They had to save face because they had been seen to be doing it, so they dreamt up Tangentyere as the alternative and quite frankly it was a catastrophe.

Mr SOMLYAY—Who would have initiated that polling booth?

Senator Tambling—You would have to ask Mr Heisner that.

Mr SOMLYAY—Do you think the local people of Alice Springs pushed for that booth or was it an idea at the time by—

Senator Tambling—I have no idea why either that booth or the initiative to try remote polling within the municipality was even contemplated at all by the AEC. It was totally unnecessary.

CHAIR—Can you just clear up some aspects of Mobile 16. As I understand it, after the election you requested the AEC to provide you some details in relation to the number of people who voted on the mobiles and on which mobiles. Is that the case?

Senator Tambling—Yes, I asked for details. The AEC initially balked at the idea of providing that information to me. I rang Mr Gray's office—

CHAIR—So you were asking them specifically about the number of people who voted at various locations?

Senator Tambling—For full comprehensive detail. The only way I got intervention in that was that I eventually had to ring Mr Gray's office. I was passed to a Deputy Commissioner—I do not recall the name, it is a record I have got in Darwin—who intervened by speaking to, in Mr Heisner's absence, Mr Jim Stewart in Darwin, who subsequently had to work overtime during a weekend in order to provide what should have been by then public information. I was given certain information which does not reconcile with the official reports, which leads us to believe that there has been a bodgying of figures on the record to show that people voted at particular places where we know that there were no polling places.

CHAIR—My recollection of the way in which they do the administration is that an actual record is kept of the number of votes cast at each of the locations that the mobile poll stops at. Is that correct?

Senator Tambling—That is my understanding.

CHAIR—What information did they ultimately give you at the time in relation to Mobile 16?

Senator Tambling—They initially gave us a set of figures, which I passed to Mr Taylor at the Country Liberal Party, which did not reconcile with what he was then provided by the AEC. I understand that one of the reasons given was that people were identified against places on the polling chart where they were possibly resident. Of course, we know that when the team visited that site they were not cast at that site. They were cast somewhere else.

CHAIR—Did you know that they were not cast at that site because at some of those sites nobody voted?

Senator Tambling—Nobody voted. So they subsequently appeared. I am saying the administration of that should be—

Mr SOMLYAY—Your scrutineers were present when no-one voted?

Senator Tambling—Yes.

Mr SOMLYAY—Yet it still appeared in the figures that people had voted there?

Senator Tambling—That is right. In the subsequent official AEC figure it shows it against it. Obviously, there is an administrative bungle in how that has been put together. That is what I am saying I think your committee needs to get. By calling only Mrs Williams and the people that went off to Palm Valley and then came back and subsequently signed returns at the request of Mrs Williams, obviously that shows that there was an absolute breakdown at that particular polling booth.

Mr FORREST—How was the information supplied to you as a result of that contact with Mr Gray? Did you receive a letter?

Senator Tambling—Mr Stewart, the deputy in Darwin, provided certain information with regard to the polling. I think it was on a Monday morning. It was a week or so later.

Mr FORREST—Just by phone he said—

Senator Tambling—No. We actually did receive a written set of figures and then the subsequent reports were different. That is what alerted us to it. Of course, anyone who knows the history of Mr Taylor, the secretary-general of the Northern Territory, knows he is one of the Territory's best detectives. It set his mind going down a track and I do not think the AEC stands on very good ground at the moment with regard to some of its statements. I would rely on Mr Taylor's walking through the process before I would rely on some of the statements by the AEC.

Mr FORREST—That information relates specifically to the 1998 election. Could you provide it to the committee?

Senator Tambling—Yes.

Mr FORREST—We can then check as to the subsequent disagreement that occurred when the new figures were provided.

CHAIR—Also, in relation to Mobile 16, could I just clarify an issue? I think you said in your opening statement that the Hermannsburg poll was opened on three separate days, but I think we have evidence to show that it was on two separate days but was open on three occasions.

Senator Tambling—I would have to see that. Again, I believe that the scrutineers were not present when they should have been on those occasions and were not given the sufficient notice, et cetera.

CHAIR—That is a matter that we need to clear up with Mr Heisner. My last question is back on Tangentyere. You said that you had a conversation with Mr Heisner prior to polling day and encouraged him not to have Tangentyere as a static poll.

Senator Tambling—In the lead-up to the election I had several discussions with Mr Heisner. The first related to the remote polling, which I considered to be totally provocative. And that was not only in Alice Springs. That was also proposed in Tennant Creek and, I think, Borroloola. It turned out that the Aboriginal community in Tennant Creek objected to having remote polling within the municipality. So that one was set to one side very easily by the AEC. I am sure there was a situation also at Borroloola. But with regard to Alice Springs, I understand Mr Heisner sought legal opinion. He was advised it would probably be in the best interest not to have remote mobile polling within the town boundary municipality, so they then created the polling station of Tangentyere. When that appeared, again I, and I think Mrs Cavanagh also, expressed dismay that it was a provocative location that would not achieve good results, was unnecessary and—as the events of the day subsequently turned out, totally and without any provocation on the Country Liberal Party scrutineer side—just the sheer physical nature of it, let alone anything else, was totally ill advised by the AEC. You have probably gone through the processes that took place.

Mr SOMLYAY—So when the Aboriginal community objected to the same thing happening at Tennant, it was overturned?

Senator Tambling—You would have to ask Mr Heisner that, but I understand that in Tennant Creek the Electoral Commission was proposing these remote mobiles within a municipality of a local area. I certainly objected and I understood that Tennant Creek said they did not want it. In fact, we heard that they wanted it scrapped. I understood that Mr Heisner

subsequently received legal advice to say it would be inadvisable. He accepted that advice, but then he set up the Tangentyere booth inappropriately, unnecessarily and provocatively.

CHAIR—But there was no additional booth in Tennant Creek?

Senator Tambling—No. I do not believe there was one at Borroloola either.

Mr SOMLYAY—Were you given any reasons by the AEC as to why they overturned one and not the other? You lodged your objections.

Senator Tambling—They were telephone discussions between me and Mr Heisner and I think between Mrs Cavanagh and Mr Heisner at the time. The rationale, as I recall it, that the AEC were seeking to present for either initiative—either the remote polling or the special booth at Tangentyere—was to facilitate a greater facility for Aboriginal people to participate in the polling, and I can understand that. But, as I said, history records quite freely that Aboriginal people in the wider Alice Springs area did not need that special area of mollycoddling.

Mr FORREST—For my information, who was Peter Julian Hansen? I will get a copy of the Supreme Court transcript—

Senator Tambling—Mr Hansen was a former employee of the Northern Land Council. The court case that has been fully heard and is awaiting judgment at the moment before Justice Angel is with regard to an unfair dismissal. It is a very comprehensive case—if you want some good reading about a number of other issues that are totally unrelated to your committee, you could read that.

One of the areas that was specifically raised was that Mr Hansen was under direction from the then director, Mick Dodson, of the Land Council, to be involved in manipulation of electoral assistance. That whole issue was used as evidence in that case.

Mr LAURIE FERGUSON—You have posited the proposition—it is quite logical—that when a person is influential in a community that person might be able to have leverage over people who are getting assistance from him or her and perhaps people feel intimidated to some degree by that practice. Why is there not a similar concern with the thrust of what I understand is this Country Liberal Party's alternative, that essentially a whole lot of people should stand around knowing how people vote, rather than the vote being secret? Those people could be attached to the Territory government and associated with power. Why is there not a legitimate concern with that as well?

Senator Tambling—I think there is a difference between whether the vote is being completed by a scrutineer or friend who is associated with the voter. Often the same person marches 30 people through one polling station as one person, as opposed to scrutineers of any party being able to observe a vote being validly done by a voter and assistance being given by the electoral official. I think it is a matter of who completes the bit of paper that is very important. There is a set practice that where an illiterate vote is, scrutineers from either side of politics can observe. But it is a matter of whether the voter's friend actually completes the paper.

Scrutineers have told me anecdotally that at the one booth you will often see the same handwriting of the friend. You will have a three or a nine written backwards on the paper and

that will appear on all 40 or 50 votes at that particular site. So very obviously there is major collusion.

The choice of who are the scrutineers is a matter for the political parties. They have to be equally as sensitive as the AEC. The principal problem comes if the AEC selects people to be on the inside working as officials and they are known to have an identification. It is a hard one when you have got small communities with extensive family networks. Often the AEC recruits an interpreter to assist the poll clerk at the table. It is a hard one when you have small communities with extensive family networks.

Often the AEC recruits an interpreter to assist the poll clerk at the table identifying people with names. A lot of conversations can happen in a language where the officials and the scrutineers have no knowledge of what is really being said because the scrutineer often does not speak the language. That is a particular problem in a local community. That is why I use the term 'patronising'. I think it is just done as a matter of course in some of these booths where, quite frankly, the voter is quite capable of exercising a proper and valid vote without assistance, but because the assistance is there the formality goes through and that ends up in bias.

Mr LAURIE FERGUSON—We understand the thrust of your complaints and your concerns, but I am putting to you: couldn't someone have an alternative view that, whether the Country Liberal Party likes it or doesn't like it, I prefer this person over here to assist me and why should I have to show my vote to the Country Liberal Party scrutineers? Why isn't that a concern with your alternative proposal?

Senator Tambling—If it is an illiterate vote it should be shown to all scrutineers.

Mr LAURIE FERGUSON—It is not a secret ballot.

Senator Tambling—It is not a secret ballot when it is an exercised illiterate vote—it never has been—and all scrutineers can observe it. It is a matter of who fills in the bit of paper that we are worried about. We do not attempt to fill in the bits of paper. Even if the person was someone who came up to us outside, we would generally take the person in and ask the poll official to do it. We would want to observe it, but I am not aware of any circumstances where Country Liberal Party scrutineers would want to actually fill in the ballot paper.

CHAIR—Thank you very much for your evidence today.

Proceedings suspended from 1.42 p.m. to 4.11 p.m.

CHAIR—Welcome to today's public hearing, Mr Heisner. The Northern Territory Country Liberal Party and the Australian Electoral Commission had divergent views on the conduct of polling in the Northern Territory during the 1998 federal election, in matters related to mobile polling and other issues. Understanding the sequence of events and details of that is important for the committee, so that we can clarify those and go through a number of issues of concern.

Mr Heisner, the evidence that you give at the public hearing today is considered to be part of the procedures of parliament. Accordingly, I 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 submissions from the Australian Electoral Commission, numbered 88, 159 and 176, and they have been authorised for publication. I invite you to make an opening statement before I invite members to ask some questions. Just before you do that, we thank you very much for making the time available to come down at relatively short notice and fit in with the committee and also with the parliament this afternoon with the various things that are happening at this time. Thank you.

Mr Heisner—Thank you, Mr Chairman. I do have a written statement that I will read and then I will answer any questions that I can for you. Thank you for the opportunity to appear before the committee today. As you are aware, I will shortly be leaving the Australian Electoral Commission to take up a position as project manager with the International Foundation for Election Systems, which operates out of Washington. I then expect to be posted to Kyrgyzstan to assist their central electoral commission with election preparations. This means I would be unable to attend the scheduled meeting for Alice Springs, and so instead the commissioner has made me available today.

My appearance at this time is to enable me to provide to the committee an early response to the written and oral submissions made by the Northern Territory Country Liberal Party, which has been critical of the conduct of the election by the AEC and Aboriginal communities in the Northern Territory. The CLP has complained about assisted voting and remote mobile polling in Aboriginal communities in the Northern Territory, alleging that the conduct of such polling in particular instances and generally was illegal and improper. The CLP has also made specific criticism of my conduct and that of certain AEC officials in relation to both arrangements for such polling and the preliminary scrutiny of declaration votes, particularly provisional votes.

The CLP allegations and complaints are contained in submissions Nos 92, 157, 201 and the transcript of the hearing in Darwin on 21 May. The AEC has formally responded in parts 7.5 and 7.6 of submission No. 88 and in parts 30 and 38 of submission No. 176. It was only late last week that the AEC completed its investigations of particular incidents and taking of statements from relevant individuals in relation to the further detail provided by the CLP in its latest submission No. 201 on 11 June. An AEC submission containing the results of those investigations and interviews will be filed with the committee shortly. In the meantime, I am available to answer your questions to the best of my ability.

I would like to take this opportunity to make some general statements of principle in response to the claims by the CLP that the AEC has not administered its powers properly and lawfully in the provision of the franchise to Aboriginal voters in the Northern Territory. The

Australian Electoral Commission is empowered under the Commonwealth Electoral Act to conduct federal elections. The central plank of that legislation is compulsory voting. That means the AEC is obliged by legislation to ensure that all electors in Australia have access to polling facilities so that each elector is able to discharge his or her compulsory voting responsibilities.

Many Australian electors live in townships in remote and inaccessible parts of the large land mass, many of them servicing primary industries such as agriculture and mining. Other Australian electors who are equally entitled to the franchise live in Aboriginal communities in remote areas such as in the sparsely populated desert areas of the NT. The Electoral Act makes provision for remote mobile polling which enables the AEC to service all Australian electors in such remote townships and communities.

In many Aboriginal communities, English is not the first language and is not fluently spoken or written. Such electors may require assistance not in making up their minds who to vote for but in marking the ballot paper properly. The federal electoral system requires full preferential voting, which means that marking the ballot paper is not a simple matter of a tick or a cross. The provision for assisted voting in the act ensures all Aboriginal electors are able to communicate their preferences and to cast a formal vote. Without assisted voting and remote mobile polling, many Aboriginal electors in the NT as well as in other remote parts of Australia would be denied their right to vote.

The committee would be aware that the AEC is considered a leader in the provision of a franchise to remote communities. Our expertise has been extensively drawn upon by the United Nations for the past decade and by emergent democracies with large and inaccessible land masses such as South Africa, Namibia and Cambodia.

The complaints by the Northern Territory Country Liberal Party against the AEC and its conduct of polling in the Aboriginal communities should be considered in the light of the following factors: (a) the AEC has received no formal complaints from Aboriginal electors themselves about the conduct of assisted voting and remote mobile polling in the NT or elsewhere in Australia; (b) the AEC does not accept that there is any balanced or credible evidence to support generalised claims that assisted voting and remote mobile polling in Aboriginal communities have been conducted improperly or illegally either at the last federal election or at previous federal elections; and (c) the CLP did not put its allegations about illegalities under the Electoral Act before the Court of Disputed Returns for judicial consideration following the 1998 election.

It is notable that CLP complaints about assisted voting and remote mobile polling in the Northern Territory are concentrated on one polling booth, the Tangentyere polling booth in Alice Springs—remote mobile polling runs 15 and 16. Remote mobile polling by the AEC in the Northern Territory covers a total of 21 remote mobile teams, 70 polling officials and 241 communities in a six-day period.

The first CLP submission No. 92 reported that most scrutineers have high praise for the efficiency and cooperation received from both the AEC and mobile teams. It was conceded by the CLP that difficulty seems to be limited to a few people. No new allegations of complaints of substance were made in regard to our oral submissions in Darwin on 21 May or our latest submission. The AEC is of the view that, when the facts are separated from the rhetoric in these submissions, it should be clear that the CLP has no grounds for claiming that the legislative

provisions governing Aboriginal voting require any substantial amendment or that AEC officials in the Northern Territory such as myself deserve any censure.

I would like to take this opportunity to foreshadow a recommendation from the AEC that is central to the general concerns raised by the CLP about the extent of assisted voting and provisional voting in the Northern Territory. For more than a decade, until 1996, the AEC conducted a highly successful information and education program in Aboriginal communities across Australia known as the Aboriginal and Torres Strait Islander Electoral Information and Education Service. The program employed 15 to 20 field officers nationwide who regularly visited remote communities in most states and in the Northern Territory at a cost to the taxpayer of some \$2 million a year. In 1996 the federal government withdrew funding for the program in the budget.

The ATSIEIS program educated Aboriginal people on the federal electoral system and in the mechanics of expressing their franchise, such as marking a ballot paper formally. It also functioned as an enrolment review program in Aboriginal communities. Aboriginal people were encouraged to enrol and their enrolments were checked for the accuracy of name spelling and community address. The movement of people was also informally tracked so that their enrolments could be kept up to date. The ATSIEIS program was not only important in reducing the need for assisted voting but also important in keeping the roll up to date, thereby reducing the need for provisional voting.

It is my opinion, as the senior electoral officer for the Northern Territory, that the roll covering Aboriginal communities in the Territory is not being maintained to the same standard as that which resulted from the ongoing implementation of the ATSIEIS program because field officers are no longer available to visit those communities and to cleanse the roll. If this committee is of the view that the CLP complaints about the conduct of the election in the Northern Territory merit attention, then the most effective way of reducing the extent of assisted voting and provisional voting in Aboriginal communities would be to recommend the immediate reinstatement of the ATSIEIS program. Thank you for your time.

Mr SOMLYAY—In the statement you left out a paragraph—was that for a reason?

Mr Heisner—Which paragraph did I leave out?

Mr SOMLYAY—The second last one on the third last page. It starts, 'Indeed it has been said elsewhere'.

Mr Heisner—It is not in mine. Could I just read that for a minute?

Mr SOMLYAY—Yes. There is quite a bit of difference between the version we have and the version you read.

CHAIR—Where did our copy come from? I thought it was a copy of yours.

Mr SOMLYAY—Also, on the second last page, in the last paragraph you say, 'It is my opinion as a senior electoral officer in NT that the roll covering Aboriginal communities in the territory is now in a process of decay.' But you said it is not in a process of decay.

Mr Heisner—What you have here is an earlier version, I would suggest. I have the version that was settled on. The production has been done in the office here and, unfortunately, it would appear that you have an earlier version.

CHAIR—We will take the *Hansard* version, but we will not accept this as a supplementary submission.

Mr Heisner—We are happy to give you a hard copy if that is what you so desire.

CHAIR—It will be in the *Hansard*.

Mr SOMLYAY—There have been quite a few allegations made in evidence given to us that the AEC acted in an irregular fashion. Did you or any of your staff check provisional 'don't know' or 'unsure' votes without scrutineers present?

Mr Heisner—The committee actually saw the process that is used on the on-screen. There is a room on the ninth floor of our office which is used each election for this process. That room has four computers in it. Four of our staff are there and there are four trays of the processed documents. The first tray is the one that says our staff have found on the screen a deleted enrolment record and we should not have deleted the person. So they go in that accepted tray. We have the tray which has the rejects in it. There is a tray which is the grey area—the one you are talking about—which means that the person operating the screen cannot be sure that that is the declaration belonging to that elector. They are put into a separate tray.

Depending on the workload of the office during the day, the declaration envelopes are then taken, still on the ninth floor and still within our office, to other terminals and to a machine called a Canofile. The Canofile stores the enrolment forms. A print-out is actually taken from the microfilm, or from the CD discs now, of the original enrolment form. The signatures are checked on the declaration to try to verify it.

That process is totally open. At no stage did anyone, whether it was the CLP or ALP, ever ask to view it. People walk past it the whole time to the room. If the CLP or the ALP had stopped or had wanted to watch it, they were quite free to. If the CLP say that they have been prevented, I can only dispute that in the sense that, if they, on the first day, had said to us, 'You are preventing us,' we would have said, 'No we are not, go in.' There was no prevention of anyone or any scrutineer observing that process.

Mr SOMLYAY—Do you have obligations under the act to advise scrutineers of what they can and cannot do?

Mr Heisner—Under the act we are required to put a notice up of preliminary scrutiny, which details the commencement of the scrutiny—and we did of course.

Mr SOMLYAY—And that covered the procedure that you were talking about?

Mr Heisner—Yes. As I said, if I followed this as a CLP scrutineer and I saw a trail to be verified going somewhere, the first thing I would have said is, 'Where is it going? Can I come?' The process was totally free and open. There has been no attempt by my staff at all to not include people.

The same process was used in the 1996 election in the same room and the machine was in the same area. In 1996 the ALP was obviously very interested in the process because they were collecting information for the later challenge. Even in 1996 neither the ALP nor the CLP requested to look at that part of it. But it is open and there is no prevention whatsoever; all it needs is someone to say, 'Yes, we want to provide scrutineers for it,' or 'Can we stand there?' As I said, it is on the same floor and people walk past it the whole time.

Mr SOMLYAY—You will bear in mind that some of us have never seen this sort of thing before.

Mr Heisner—When people enrol, because of the volume of enrolment forms we store them on new technology. That area retrieves it and then they will compare the signature. If the signature is the same as on the declaration, the declaration will be accepted.

Mr SOMLYAY—So under no circumstances would any scrutineers have been denied the right to be there?

Mr Heisner—I will be very specific about it. At no stage were they denied if they had requested to or if they had wanted to. In any of the elections that I have been up there for, no-one has ever requested to watch that process—and I was quite surprised when I actually read the first document. I am sure from here on in people may wish to watch that process, but my staff have not ever prevented anyone from watching the scrutiny.

CHAIR—Is it more a case of them not understanding what was happening and therefore not realising there was the opportunity to scrutinise?

Mr Heisner—I think that may be part of it obviously but—

Mr SOMLYAY—Were there signs up telling people where things were happening?

Mr Heisner—No. There is a sign which is required under section 266, from memory—I may be wrong there—which says where the preliminary scrutiny will be and what time it starts each day. As for the process itself, my divisional returning officer has informed me that he did explain to scrutineers the process and that the process commenced and scrutineers were present. At no stage, however, did any of the scrutineers follow through on that part of the process. They could have if they so desired. As I said, if I had been a CLP scrutineer, I would have said if I had an interest in it, 'Where are they going? Can we watch it?' They actually went around the corner into the room where the Canofile was. That process is undertaken—

Mr SOMLYAY—And the scrutineers could have gone in there?

Mr Heisner—Exactly. There is no prevention whatsoever. It is a process which they would only observe. They cannot object to a matching of the signatures, but if they wished to observe it they could have observed it. At the end of the day it is part of the process. Certainly, there were no scrutineers there but they could have been there if they so desired and if they had actually asked for it or pursued it.

Mr SOMLYAY—Do you know that Senator Tambling appeared before us today?

Mr Heisner—I do know that.

Mr SOMLYAY—He raised a number of issues. I have some dot-points to ask you.

Mr Heisner—That is fine.

Mr SOMLYAY—He did say that it did take quite a long time for remote polling figures to be provided to him by the AEC. Is there a valid reason for that?

Mr Heisner—I will just cover the situation of the provision of statistics. The Electoral Commission has a suite of statistics which are generated out of the ELM system, the election management system. That system generates figures which are team based figures. They are the result of the count. They are static polling places and team results, and we have 21 teams so it is actually 21 results.

The AEC in the Northern Territory has informally, over each election, extracted from the OICs' returns the number of votes issued at each polling place. We do that after the event and we do it simply as a record we have historically kept. It gives us a picture each election, election by election, for each of these communities and we can see trends—whether the votes are up, down or whatever. In recent elections the political parties, both the ALP and CLP, have asked for access to that, which we have given. As I said, it is not part of our official statistics; it is a process we do in the Northern Territory for our own internal workings.

In this particular election Senator Tambling requested that information rather quickly after polling day; I am not sure of the exact timing. The AEC in the Northern Territory at that stage is really heavily involved in the scrutines. We have more declaration votes than most other divisions. There are 105,000 on the roll and we have 900 polling officials to pay. My priority for my staff has always been that the scrutines must be first and then the payment of the polling officials.

Senator Tambling wanted those figures and, as I said, we initially said, 'Look, they will be produced but we do have other things we must do.' I came to Canberra for several days for a meeting and Senator Tambling then approached our central office and our central office rang our divisional returning officer and said, 'Produce those figures.' My divisional returning officer stopped doing his other duties and produced those figures. They are informal figures which have printed at the bottom: 'These are not final figures and are subject to adjustment.' During the production of those—

Mr SOMLYAY—That is why they were altered later?

Mr Heisner—That is exactly right. I will explain the problem that is central to some of the complaints. When the divisional returning officer was actually producing the results of team 16, the OIC of team 16 had not fully completed her election return. The votes were in the ballot box, we had all the signatures on the seals—which we will cover a little bit later, I presume—everything was totally legal; it was in the box. He was unsure how many votes were issued in some of those places. These votes have historically been used by us—and presumably by the parties—as information. Obviously, the CLP this time used them for other purposes to try to verify what their scrutineers had probably recorded.

The divisional returning officer in the process, when it got to team 16, basically averaged out or apportioned those votes amongst the polling places, roughly according to the number of

people enrolled there for our statistical purposes. For us it made no difference. To us it is only a guide. However, when the CLP got the figures, obviously they did not agree with what the scrutineers had told it. The complaints that the ballot boxes had been stuffed and the AFP complaint have all revolved around that simple process. My divisional returning officer now thinks it is the worst thing he has ever done in his life. It was an apportionment of figures on an informal basis for our use, which the CLP and ALP are entitled to get and which we gave to them. Unfortunately, when they compared them with their figures, they did not match and they then presumed that we—or the OIC in particular—had in fact done something illegal with the ballot boxes.

Mr FORREST—If you have released figures that have no resemblance to reality and, in addition to that, you have ballot papers in there that have not got initials on them, you open yourself to that sort of criticism.

Mr Heisner—There are two issues that I will need to address.

Mr SOMLYAY—Can you clarify one thing in the process, in line with what John said? We have been told by Grant Tambling today that the mobile booths went to some places—polling places—and nobody turned up to vote.

Mr Heisner—That is correct.

Mr SOMLYAY—Then, when the figures were published, they showed that there were a certain number of votes from that booth. Wouldn't you think that the scrutineers would say, 'Hey, hang on. There is something wrong here'?

Mr Heisner—Exactly. I need to go back to what I was saying—that we have produced these figures basically informally for our own purposes within the—

Mr SOMLYAY—Well, how does the CLP know that those votes were not—

Mr Heisner—I agree entirely. CLP then discovered a discrepancy. The CLP took it to the Australian Federal Police directly, and then the federal police came to me to discuss the accusation. I then went to Charlie Taylor. Charlie Taylor came into my office and we explained to him what had actually happened. At that stage, Charlie Taylor went away quite happy. I have now read in 201 that they are not happy and have now resurrected it as part of another scenario. It was a mistake in our office to apportion those votes—probably not realising that the political parties would compare back. But they are not published in the sense of 'published'; they are, as I said, produced by us as an internal guide for the AEC Northern Territory for our future planning.

On the informal ballot paper question, the legislation actually allows photocopies or whatever of ballot papers to be formal ballot papers as long as the divisional returning officer is satisfied that they are in fact legitimate ballot papers. In other words, if there is a static polling place, for example, and they run out, they do photocopy and sometimes they do not initial them in the rush of the matter because there is probably a backlog of electors. The legislation allows for the divisional returning officer to be satisfied, by looking at the circumstances in which those ballot papers are received, whether he or she considers them to be formal. The divisional returning officer in the Northern Territory deemed the photocopies that were not initialled to be formal ballot papers in accordance with their legislation.

Mr SOMLYAY—But, in reality, what was to stop somebody getting a ballot paper, walking out of the booth, photocopying it 100 times, filling it in, coming back and stuffing it in the ballot box?

Mr Heisner—Remember that you do have a controlled situation in a polling place. You cannot just wander in with 100 ballot papers and stick them in the ballot box.

Mr SOMLYAY—You can walk in 100 times with one.

Mr FORREST—It is easy.

Mr Heisner—But if you think how they are structured you will realise that you have your name marked off and you queue up. You cannot simply walk in the exit and walk straight up. There is a ballot box guard. The ballot box guard actually stands next to the ballot box the whole time ensuring that what goes in there is the ballot paper.

CHAIR—It is pretty unusual, though, for no initial to be on those papers. In most other circumstances when the ballot papers ran out—it did happen in the last federal election; it was a long weekend and there were a lot of problems in some booths where there were a lot more people—

Mr SOMLYAY—It happened in my electorate.

CHAIR—the photocopying was quite widespread. But my understanding was that the AEC's procedures were that those photocopied ballot papers were to be initialled, whether it is in the act or not. From what I remember of some of the evidence provided, that was generally the circumstances.

Mr Heisner—I agree. I have been a divisional returning officer. I have worked in the AEC for 27 years in Queensland and been a divisional returning officer in probably 10 divisions and ran in every federal election since 1972. I have seen photocopied ballot papers in every election. Some are initialled; some are not initialled. It is really the luck of the draw in that sense.

Mr FORREST—The issue is not about a photocopied ballot paper—I have no problem with that. But I have a problem with the authorisation that this is a legitimate ballot paper. When it is handed to the elector, the elector should check whether it has an initial on it. It is done when you are ticked off the roll and handed your paper. I would hate to think that we have a procedure that allows that if we are going to assist in East Timor in any ballot over there. I am amazed that we would approve that as a valid vote with no initial, whether it is photocopied or not.

Mr Heisner—It is in the legislation, and the officers act within that legislation. I have also been reminded that OICs keep record of photocopies. They have to do a balance of the ballot papers they receive in their returns back to what remains unissued. Obviously, if you start with 1,000 and you have 200 left and there are 1,400 in the box, there is a problem, and the AEC itself would take action on that.

Mr FORREST—Unbelievable.

Mr SOMLYAY—I want to get to Mobile 16 and the issues that were raised there.

Mr Heisner—Specifically, do you wish to—

Mr SOMLYAY—Senator Tambling told us today that complaints were made very early in the day about that and you agreed that things would happen to that booth and they did not happen.

Mr Heisner—Is this Tangentyere?

CHAIR—Yes. Mobile 16 is the true mobile. Mobile 22 is the static poll which was at Tangentyere. It was classed as a mobile 4 and we understand the reasons why—

Mr SOMLYAY—Was that 22?

CHAIR—It was Tangentyere town council.

Mr Heisner—And the question is?

Mr SOMLYAY—If I recall rightly, Senator Tambling said today that the CLP complained about the activities of that booth and you had advised that it would be withdrawn.

Mr Heisner—I can state to the committee that I never claimed that the booth would be closed. I had several calls that day from CLPs, Suzanne Cavanagh in particular. In Alice Springs, our representative is an assistant divisional returning officer who actually is not a Northern Territory person. He is a Queensland electoral person and we brought him over for it. He actually works in the division of Hinkler, which is close. He visited that booth. Every time I had a complaint, I answered the complainant along the lines that, if there was a problem, we would address the problem. If there was violence at the booth—one of the complaints was that there was fighting—we would look at what action we would take. At each complaint, I rang my assistant divisional returning officer. He visited that booth eight times during the day, some in answer to complaints and some as the normal visit that you would do. On each occasion, he rang me back with the results of his visit. We were never thinking of the situation of closing that booth.

CHAIR—The assistant returning officer in Alice Springs did not indicate to the CLP during the day that he would recommend that it would be closed down?

Mr Heisner—He has stated that he has not recommended that to the CLP. The CLP was dealing basically with me. I understand that he was talking to Jenny Sinclair during the day down there but, from my memory of the statement that the assistant divisional returning officers made, he stated that he has never said that the booth should be closed down. On the first visit when he arrived, he found that it was a little bit chaotic. If you think of some Aboriginal booths in particular, people tend to turn up and everyone tries to go in at once. The initial inspection did require some calming down of the polling place.

CHAIR—What about the evidence that the CLP gave that the person working at the land council actually ensured that the ALP had their material set up before anybody else was allowed into the enclosed area?

Mr Heisner—I went down with the assistant divisional returning officer and spoke to the AEC employees. We have been unable to find any evidence that that actually happened.

CHAIR—What about the evidence that Mrs Sinclair gave that she arrived, could not get in, then came back and the ALP material was all set up and the gates were still closed? She is not telling the truth?

Mr Heisner—I cannot answer whether she is telling the truth or not. All I am saying is that, from talking to the AEC officials, we cannot ascertain whether or not that happened. I think that is a question you may have to address to Tangentyere Council, if you wish, as to whether or not someone there allowed the ALP in. I cannot actually shed any light on that issue because the AEC officials say that—

CHAIR—There have been a lot of statements and allegations in reasonably specific detail. In every single one of them, there seems to be total rejection. In fact, in the AEC's response to some of these, it then says, 'We refute every one of those. To have some balance, we understand that there were objections against the CLP in other ways.' It just seems that there are so many things that happened in that booth that it is very difficult to accept that none of the incidences that were put forward by the CLP, in the view of the AEC, offended anything in any way. It just seems too much.

Mr Heisner—The person on the ground was the assistant divisional returning officer, who visited there. He did report, at the first visit, that there were problems with the crowd control—which were sorted out. In one of our submissions it was mentioned that there was a drunken person in the booth who had to be removed. We understand that is the person who may have assaulted Jenny Sinclair, outside the six metres.

CHAIR—How long was he in the booth for, before he was removed?

Mr Heisner—My understanding is that he came in and out probably three times. When you are dealing with a drunken person, it can be very difficult. My advice is that he was finally removed by an Aboriginal woman talking in language to him—one of our assistants, who finally convinced him, in language, that he should not be there. It is difficult, as I said, dealing in any situation with a person who is drunk, let alone at a polling place. We have said that that occurred.

We have said that the two CLP scrutineers were asked to leave the polling place. It is not that we are rejecting outright what people are saying. What we are saying is that there is another side to each of the stories. Regarding the two CLP scrutineers that were asked to leave, as we have said in our submission, there were two issuing points. They should have had two in there. There were four in there. The OIC was quite within her rights. The ADRO who, as I said, was not a Northern Territorian person, was there at the time and assured me she was quite within her rights because there were two too many CLP scrutineers in that building. I understand that, after they left, one came back appointed for the yes case. And that was quite okay.

My understanding is that the requirements of the legislation for the operation of a polling place were being enforced, which is the correct way to go. We are not disputing that things never happened. We are simply saying that there is always another side to the story.

Mr SOMLYAY—Was there ever a booth there before?

Mr Heisner—No.

Mr SOMLYAY—Whose idea was it to have it there?

Mr Heisner—I will go a little bit back in history. This election in the Northern Territory was very unusual. It is the only election in Australia in this round of elections—in the federal election—that had three ballot papers, because we agreed with the NT that we would also run the referendum on the republic.

Mr SOMLYAY—I remember that.

Mr Heisner—What that meant was that we had a sit down. The AEC officers, including me as I am the AEO, sat down in the Northern Territory and said, 'What problems will this give us?' The first problem was that polling would take longer because people would have to complete three ballot papers. The second problem was that some people would need more assistance because we were then faced with three voting systems—one requiring yes and no, one requiring straight preferential for the House of Representatives and one for the Senate where you can vote either above the line or below the line. We then thought, as electoral officers should think, 'What can we do to help this situation?'

We identified that there was a group of people, which in the Territory are the community people in town—the township people—who, because of English literacy problems would have had a larger problem. We decided what we would like to do was to have mobile polling in the town camps to assist those people fill in the three ballot papers formally. When I had signalled that to the political parties, the CLP rang me and wrote to me, and very forcefully told me several times that they thought this was incorrect—that I was favouring one race of people.

I then decided I should get a legal opinion on whether or not remote mobile polling can actually happen in town camps. The legal opinion came back with the words that, even though they could find nothing illegal, if a court challenge was mounted after the election by the CLP, the 'word' remote may in fact cause us a problem. We were still, therefore, faced with the problem of how to assist the town camp people. I had already been talking to Tangentyere Council in Alice Springs because they are the group that look after the town camps. When I withdrew the mobiles because of that legal opinion, in the discussion between Tangentyere and me we basically thought that we may be able to service them by having that polling place at Tangentyere Council.

I discussed that with my officers, and we all thought it was a reasonable proposition. It did two things for us: it gave us a polling place where Aboriginal people would feel culturally right and happy and we could concentrate assistance, and it also helped us operationally in most of the other polling places. Because of the three ballot papers, voting takes longer. If you have assisted voting, the more assisted voting you have, the longer voting takes for everyone else in the queue. By having the Tangentyere Council established as a polling place, we actually reduced the assisted voting in most other static polling places in Alice Springs, and, after the election, most of the assistant returning officers informally said that it worked very well for them because it made their polling places flow much faster. It worked well for the Aboriginal people in the sense that over 400 voted there.

CHAIR—In hindsight, do you regret having the polling place at Tangentyere?

Mr Heisner—I am leaving the commission, sadly, but I would pursue that next time as well, and I would recommend that the AEC have it there next time, for the reasons I have outlined. I only regret it in the sense of the arguments it has caused me. I think the purpose was achieved.

CHAIR—So you do not have a problem with the very small area that was available? I am not questioning having an additional polling booth; I am questioning whether there may have been a more appropriate location to have the additional polling booth.

Mr Heisner—Prior to polling day, the ADRO was sent out to inspect that building. The building, he admitted, was small, but he thought it would work if all the furniture were removed. Unfortunately, the people in Tangentyere Council and the OIC did not remove the furniture; they simply pushed it to the back. I have seen the building myself, after polling day, and the ADRO estimates that 40 per cent of the room was lost because all the furniture in the room was simply pushed back rather than being removed. Certainly, if it were going to happen again, one of two things would happen: all the furniture would be removed or we would find a larger building.

CHAIR—What about the comment that, generally speaking, the AEC tries to have polling booths in neutral territory, and the fact that Tangentyere Council is very well known to be a fairly political organisation which has been involved very vigorously over a number of years—which I personally am well aware of—in the political debate?

Mr Heisner—I think you may read in one of our submissions—the latest one, maybe—that there is no convention which mentions 'neutral territory'. What is neutral to one group may not be neutral to another. It may be that, for example, the Alice Springs Town Council building, which we also use, would not be perceived by Aboriginal people—who have local council by-laws used with them—as a totally unbiased thing. Certainly we wanted to ensure that there was no political activity at Tangentyere before we made that decision. I spoke to the management of Tangentyere, and the ADRO went out there and inspected Tangentyere. There were posters up, we freely admit, and they were removed. There were no posters up from about two days prior to our appointing that building as a polling place.

The staff we recruited from Tangentyere Council were recruited after they had filled out an application form, read the neutrality statement and signed the neutrality statement. They were recruited for two purposes. The first is that they worked with Aboriginal people all the time. If you are going to have a booth where the majority of voters are expected to be Aboriginal, they are the people you want. The second is that they knew the people they were dealing with, and that also assists in a highly assisted process.

Mr LAURIE FERGUSON—I just have one question. I was a bit confused by Senator Tambling this morning with regard to one aspect of assisted voting. In questioning this morning, he said that people whom he described as the 'illiterate voters' have always had an open vote and not a secret ballot.

As I said to him this morning, even if you say that there is a possibility now that people were intimidated by the helpers and the assistance, I would still have concerns about the alternative that the CLP is putting forward of everyone being able to watch someone's ballot paper. That worries me. He gave the impression this morning that illiterate voters have never had a secret ballot. What is the story on that?

Mr Heisner—The AEC would agree with your statement that having a group of scrutineers is far more intimidating. I think Senator Tambling may have been referring to the fact that if you have an assisted vote someone is there with you. Therefore if someone is there with you it is not secret—so what is the difference between having one or six there? Our point of view on that is a very simple one: that if you nominate the person, you know that person and you trust that person, you probably do not mind that person being there.

Mr LAURIE FERGUSON—So there is no subgroup of assisted people that at the moment have to or—as he put it—always have had to show their ballot paper to others?

Mr Heisner—Never have I ever heard of that. I would suggest that it is this understanding that, if you have someone there, you might as well have five there; it is not private in that sense.

CHAIR—I wish to ask further questions about the location of Tangentyere. How many other static booths were operational that day in Alice Springs?

Mr Heisner—I do not have the stats; it is probably between six and eight in Alice Springs.

CHAIR—How many of those would be fairly close to Tangentyere?

Mr Heisner—There are probably two within about two kilometres; I have not measured them. That was not a consideration for the establishment of Tangentyere. As I outlined previously, the problem was initially with the three ballot papers and how we could overcome perceived problems that may occur in the other booth with assisted voting and how we could concentrate on this group of voters who have strong English literacy problems. If we had not taken that into consideration, what you are saying is totally correct: they could have voted anywhere, and distance certainly would not have been overly a problem for them. I would presume that the Tangentyere Council would have supplied buses, as they would normally do, to take people to a polling place.

CHAIR—Do you have a correction?

Mr Heisner—It has been drawn to my attention that, when we were talking about the referendum, I said the NT referendum was on becoming a republic. I have been told that it should have been on becoming a state, so my apologies.

When we talk about assisted voting, there are two types of assisted voting. One is if you bring someone whom you trust along. If not, you ask the presiding officer and at that stage other people can watch. Throughout Australia—and it is used probably a lot in the Northern Territory in remote mobile polling—there is the power of delegation. Even though one section of the act says it is the presiding officer, another section of the act allows him to delegate his powers. What would happen with remote mobile polling is that, if you had the presiding officer only assisting all assisted voters, the polling place would probably quickly deteriorate into chaos because he would spend all of his time assisting and not in fact managing. The delegation to his polling officials basically happens at all polling places.

CHAIR—Can I move to Remote Mobile 16. How many times did Remote Mobile 16 collect votes at Hermannsburg?

Mr Heisner—It collected votes twice. I have read the latest submission from Charlie Taylor. It collected on the Tuesday, which was the advertised day. On the Wednesday morning, when the OIC was informed by a traditional owner that they should not go to another community, the OIC reopened the polling place there.

That in itself is not an illegal activity under the legislation. Under the Commonwealth Electoral Act, the only time that an OIC or presiding officer must contact the divisional returning officer is if they substitute another place for a cancelled visit. Even the substitution is an option for the OIC. In the example of the two places that the Mobile Team 16 did not go to, because at one they were advised by a traditional owner not to and at the other they were told that people were drunk—and that actually came to my desk and I said not to go—because there was no substitute polling place nominated, the OIC had no legal responsibility to inform the divisional returning officer. Under the legislation, the OIC is only required to inform the divisional returning officer if there is a substitute. At Hermannsburg, where it was closed on the Tuesday and reopened on the Wednesday, there is nothing whatsoever illegal about that, according to the legislation. She basically extended the polling. There was no requirement for her to actually contact the divisional returning officer with that.

CHAIR—So the returning officer—that was the presiding officer—did not reopen the booth in Hermannsburg on the Friday?

Mr Heisner—Once we got submission 201, I contacted the presiding officer, who now works in a domestic unit in Kalgoorlie. She supplied me with a written statement which we have sent down. It will be part of the new documents. As I said in my statement, we will have a submission replying to 201. Under no circumstances did she open that booth at Hermannsburg on Friday. The seals that were put on it were the seals that were intact at counting on Saturday night.

CHAIR—So why did she ask one of the other AEC workers, when they came back from their tour to Palm Valley on the Friday, to sign off on the seals because new seals had been put on it?

Mr Heisner—First of all, we disagree entirely that anyone went to Palm Valley on Friday. The Palm Valley trip was on Wednesday afternoon after polling was finalised. We have the signatures of the staff on the sealed documents for Wednesday afternoon. The Palm Valley trip then occurred after polling had ceased. On Friday, the polling occurred in the morning. The box was sealed. They went back to Hermannsburg and went back. There was no polling whatsoever or Palm Valley trip at all on Friday. That is our information. We can find no evidence whatsoever to support the information that Mr Taylor has supplied in 201. As I said, we actually have the sealed sheet with the signatures on it of the polling officials on that Friday, which were the ones that were checked on Saturday night when the tin was opened. I do not know where he has got his information from. All I can say is that, from our information, that did not occur. The Palm Valley trip happened on Wednesday afternoon after polling.

CHAIR—With respect to the Mobile 16, the other part of the submission provided by the CLP gives the names of two people who they believe voted at Hermannsburg on the Friday—Mr Eli Fly and Mr Preston Enalanga. Has the AEC made any investigations as to whether those two people voted and where they voted?

Mr Heisner—We did an investigation on Eli, because he was the gentleman mentioned in the first submission from the CLP. They just mentioned his Christian name. We actually located him as Eli Fly. I think they said they came across a gentleman called Eli. We went through our records and found Eli Fly. The OIC at the interview with us remembered him for two reasons: firstly, she remembered seeing him on the road and, secondly, remembered that he had voted at Hermannsburg on the Tuesday.

CHAIR—I thought that was in reference to another Eli?

Mr Heisner—No. There is only one Eli that I can recall and that is Eli Fly.

CHAIR—You do not mention the surname in your response.

Mr Heisner—No. We suppressed the name, and we suppressed the names of several people, simply because if we did put it in our document, we did not know where the documents were going and we thought it may not be correct for the people.

CHAIR—But the evidence provided by the CLP was that their scrutineers spoke to Eli on Friday and that he said he had not voted.

Mr Heisner—I can only answer that our OIC—and I had not led her at all, when I said Eli Fly—actually said that Eli Fly had voted at Hermannsburg on the Tuesday. I can only go on what my staff have told me, and that is what I believe to be true at this time.

Mr FORREST—The burning issue for me is that it is a bit difficult for me to sit back and go through all the evidence—and I am pleased to finally meet you. From my reading of all the information, you are a guy with two horns.

Mr Heisner—I know.

Mr FORREST—It is hard for us, so long after, to try to undo things in what is an already emotive environment. I just feel that the Electoral Commission opens itself up to the assertions that are made, particularly in regard to this idea that you count a ballot paper that is not initialled. I cannot get my mind around that. I would like to put a scenario to you: let us say you have 400 people who you know have voted at a booth, but you have 402 ballot papers in your box and four of them are not signed. Which two do you count to make up the net and how do you choose which two to count?

Mr Heisner—We will simply count what is in the box. It is not unusual in any polling place in Australia not to have an exact balance. When the balances on the returns are done, in many places there may be some adjustment, and that can be for a variety of reasons—such as, there may be more than 100 in a bundle or what was issued may not be exactly what was taken aboard; there may be more ballot papers. The balance is done in two ways. One is the balance between what is in the tin and what remains as to what was issued, and that gives the AEC an indication, obviously, as to whether or not there has been any foul play. If there were 402 in the tin and they were formal, they would be counted as 402. We do not go through and take out two ballot papers to make it 400.

Mr FORREST—But what about the other two unsigned ones?

Mr Heisner—If a ballot paper is in the ballot box and it has gone through the process and the box has been sealed all day, it is up to the discretion of the divisional returning officer if it is not initialled. The OIC that night may put it in the informal pile. At the recheck stage, whatever we are subject to, if the divisional returning officer is satisfied that it is a legitimate ballot paper, it may in fact go back from the informal pile to the formal.

Mr FORREST—But what I am trying to get at is what processes the divisional returning officers put themselves through to be satisfied it is legitimate. Is there a manual for this?

Mr Heisner—There is a detailed manual which spells out every activity that a divisional returning officer undertakes during an election—a rather large manual, by the way. However, the legislation simply says 'If the divisional returning officer is satisfied.' As an ex-divisional returning officer, if that ballot paper came out of a ballot box which had legitimate seals on it and was counted on the night, I would leave it as a formal ballot paper; I would have no grounds to suspect that someone had dropped one in.

Mr FORREST—But you have not explained to me what rationale is used.

Mr Heisner—Simply the process that we use.

Mr FORREST—Turn your back on the box for half a second and it is easy to drop a paper in it. I just worry that you are opening yourself to criticism unless there is a rigorous procedure that is followed when you discover a ballot paper that is not initialled.

Mr Heisner—I stated earlier that there is a record kept of photocopied ballot papers. In practice, if there were four in a tin, it would be recorded that there were four photocopied ballot papers.

Mr FORREST—But what if it is not photocopied? It obviously occurs with the uninitialled conventional ballot paper. You say that, in the heat of the moment—

Mr Heisner—But they also have a watermark on them—the initial is there. But the act does not make it informal simply because the initial is not there.

Mr SOMLYAY—Do you think the act should make it informal?

Mr Heisner—No, I actually believe that the present process is legitimate. If there were irregularities during the polling and there was a suspicion that something had gone on, I think that the divisional returning officer would make the ballot paper informal. If there are no reported informalities and if the record on photocopied ballot papers is correct, I, as a divisional returning officer, would not have, in those days, taken it out.

CHAIR—In some states I think the legislation requires all the ballot papers to be initialled. Is that the case?

Mr Heisner—I think that may be—

Mr FORREST—They are not counted in Victoria if they are not initialled.

CHAIR—Personally, I do not have a problem with the official ballot papers because, as I understand it, X number of ballot papers are allocated to each booth and every ballot paper is then accounted for in some way. But I am afraid that I take Mr Forrest's point as far as photocopied ballot papers are concerned, because although you can say, 'We keep tabs on how many are photocopied,' there is no safeguard on that. The safeguard on the official ballot papers is the number of papers that maybe you, as the Northern Territory electoral officer, ticks off on as having been distributed to each booth, and those ballot papers are then tallied up against the number of people who voted and how many are left over that have not been used and that all adds up. But when all of a sudden you are running out of ballot papers and you introduce at the booth, quite outside other administration, photocopied ones, I would think that there would need to be some safeguard. A simple signature to confirm that this was an additional ballot paper issued for somebody who has been marked off the roll clears up any suggestion of impropriety.

Mr Heisner—Do not forget, also, that when the ballot papers are photocopied, they are actually taken on as ballot papers, so your total will go up and your balance will stay the same.

CHAIR—But it is all done within the polling booth and, within that, there is no check and balance from outside; whereas, with the official ballot papers, there is a check and balance.

Mr Heisner—We would also come from the position, of course, that someone should not be disenfranchised because of an error of a polling official. That is the premise that we work on and have worked on with this legislation.

Mr FORREST—We need an electoral process that is squeaky clean and beyond criticism. I just cannot understand why you would not support, at least in that instance, that if a ballot paper has to be photocopied the only way it can be accepted is if it is initialled by an authorised officer.

Mr Heisner—At the end of the day, what is recommended is a decision for this committee. But, obviously, as an electoral officer, I do not think I would penalise a voter for the mistake of a polling official. A polling place also receives other ballot papers during the day. If, for example, they are running low, we have liaison officers who deliver ballot papers. They are taken on. So there is a flow of ballot papers into the booth and totals are adjusted. The photocopies are just a part of that.

Mr SOMLYAY—Earlier on, when you said there may be more or less ballot papers in the bundle, you were talking about the official ones?

Mr Heisner—Yes.

Mr SOMLYAY—Not photocopied ones, Mr Chairman. Do they come out in bundles of 100?

Mr Heisner—Yes. At the moment we are also putting them into books, for example, which have numbered butts, which gives control over it. Certainly, in the past, where a government printer printed bundles of 100, you might find 108 or 94 or whatever. There was always a variation to them.

Mr SOMLYAY—Do you want to comment on Christmas Island and Cocos Island? That is also within your bailiwick, is it not?

Mr Heisner—Even though I look after it from the Northern Territory and we train the people to do the polling and we send the material over, I would prefer that the Electoral Commission address that issue. We are, and have been, quite content in the Northern Territory maintaining those territories electorally. We ourselves, as electoral administrators of the territories, have not found any great problems for us. We go over there when there is an electoral roll review and train people. At election time, we bring their people to Darwin and train them. They take the material back. As a management exercise, it is quite easy to do. It is also quite interesting. As to the argument as to whether or not they should be part of the Territory, it is not for me to comment.

Mr SOMLYAY—No. I did not ask you that. But you have not found any voting discrepancies, such as the level of informals being higher than in the Territory? Do they need further education from the commission in the islands?

Mr Heisner—We actually have ADROs—assistant divisional returning officers—who are on the island all the time. They are the contact for questions, electoral roll reviews, elections and whatever. We have not had on those islands, to any degree at all, any of the problems we have with remote Aboriginal communities.

CHAIR—How many people are on the roll, all up, on those islands?

Mr Heisner—I think one is about 800 and one is about 200.

CHAIR—So if they were moved out of the Northern Territory division, they would not impact on the possibility of an additional seat?

Mr Heisner—Obviously, it will reduce the number.

CHAIR—It is not thousands, though?

Mr Heisner—No, it is not thousands. It is probably a total of about 1,000.

Mr SOMLYAY—Twelve hundred.

Mr Heisner—Yes.

CHAIR—Could I come back to another matter that was raised? There is clearly a lot of bad blood between the CLP and yourself. I guess that is an understatement, given some of the evidence. There was evidence given in Darwin in relation to the scrutiny in your offices in Darwin and, seemingly, some attitudes of one group of people to the other. One particular incident was highlighted by the CLP to explain the way in which they felt that they were not being treated fairly. That was in relation to one of the scrutineers who, the CLP were told by the AEC, was hassling one of your employees. The evidence given was that the employee said she did not complain about the scrutineer at all but there was a complaint issued to the CLP by the AEC.

Mr Heisner—I was actually there at the time. The situation, as the AEC read it, was that the young lady, an election casual, was sitting in her chair doing her job. There was a CLP gentleman sitting in the chair next to her, extremely close. During a natural break in the proceedings, the young lady was asked if she felt comfortable with that situation. To the supervisors, it appeared

that the person was sitting really close. The young lady answered that she did not feel comfortable with it and would prefer if he could move slightly to the side or slightly back. The CLP are correct when they say that she did not complain. I have yet to see an election casual, who needs the money, complain about anything. They just do not do that, because they want their employment to continue.

We drew the attention of the CLP to the situation and asked if the gentleman could move back or to the side slightly. He could still do his job, but he would not crowd the young lady. That is how it happened, and I was actually there at the time.

CHAIR—The other comment was about not providing chairs—that there was a 'let them stand' attitude.

Mr Heisner—I have been a divisional returning officer since 1972, and I have yet to see many divisions where chairs are provided. The reason is that in the scrutiny room we had 12 AEC officials; therefore, each of the candidates could have 12. At any one time, we had between 24 and 36 scrutineers standing around these 12 people. Unless we went out and hired chairs, we simply did not have the chairs. There has never been a policy within the AEC to go out and hire 30 or 40 chairs for this purpose. If the committee thinks that the AEC should spend money doing that, so be it, but certainly there is no policy and we do not have the chairs.

CHAIR—The incident was raised not so much to say that chairs should be provided to all scrutineers. It was in relation to one person who was apparently not feeling well, and a chair was refused.

Mr Heisner—The chair was given—

CHAIR—So it was not refused?

Mr Heisner—It was, I understand, initially. I came in on the end of this one. Chairs were requested and the statement was made that no-one has chairs except the workers—and people can come and go, mingle and whatever else. It was drawn to my attention rather strongly—I think it was by Susan or one of the CLPs; I cannot be sure it was Susan—that this person had been in hospital and was ill, and we obviously then allowed a chair. A lot of things seem to be blown up out of proportion.

CHAIR—I am just giving you the opportunity to discuss these issues that have been raised.

Mr LAURIE FERGUSON—All the way through, you said that the disappearance of this Aboriginal education officer—I have not got his exact name—had led to a situation where there had not been, to your mind, a cleansing of the rolls. Is there a parallel problem, do you feel, with regard to a large number of Aboriginals not being on the rolls who should be on the rolls?

Mr Heisner—Of course. When you live in a suburb of Canberra and have gone to a local school, you most likely have enrolled at school when you turned 18 or you have gone to the local post office or whatever. If you are in a remote community and your involvement in wider Australia is limited, you just do not get on the roll. Someone needs to come along and tell you about the roll, explain enrolment and the voting system and get you on the roll so that you actually participate in the democratic part of Australia. Currently, no-one does it. Obviously the young ones are the important ones, because they are the future generation. The second group are

Aboriginal people who shift. They are very mobile and go from community to community within their own area, but once they move, it may be that they do not enrol.

As I said in the statement, as the head of the AEC in the Northern Territory, I have grave worries that the roll is not as good as it used to be and that it will continue to deteriorate. We have programs at election time; for example, for the ATSIC election coming up we will have, starting in the middle of July, a miniature field program lasting a couple of months. We will put field officers out there to do two things: one is to promote the ATSIC election, or the process, and the other is to try to get the roll up to date rather quickly. It is a near impossible job to tackle such a big problem in such a short time.

Mr LAURIE FERGUSON—Both Ms Cavanagh, in her written submission, and Senator Tambling lamented the fact that, according to them, polling officers spent an abnormal amount of time trying to rule in provisional Aboriginal, as opposed to white, votes. Essentially they were saying that as long as eight minutes were spent on trying to rule in eight Aboriginal votes and that white votes were given a cursory coverage and basically put in a pile. What is your response to that?

Mr Heisner—I think that must be coming from a total misreading and misunderstanding of the whole system. Every declaration envelope goes through the same process. It is simply that, if they come across a declaration envelope for Kerry Heisner, 31 Brolga Street, born on 15 April 1949, there is the information on their declaration and there it is on the screen and it is in. If you have a variation—if it is Kerry Heisner, born with three years difference—it will do exactly the same process or go into the grey file to get the signature. The process is the same.

Certainly there is no distinction at all between the processing of Aboriginal votes and any other votes. There are two issues. First of all, I do not know how you tell an Aboriginal declaration from a mainstream declaration, unless you are specifically domiciled in a remote community. Certainly in Darwin or Alice Springs it would be difficult.

Secondly, Aboriginal people do not live at 31 Brolga Street, Wulagi, Darwin; they live in a community in Maningrida where there might be 1,800 people on the roll. There are no streets; it is a community. They use several names, depending on what is happening in their lives and, just by the fact of the beast, it does take longer to try and legitimately include as many of the declarations that should be included as possible. There is no difference in policy at all between any declaration envelopes.

Mr SOMLYAY—It must cause you difficulty running an election when you have different systems in place for state, local, ATSIC and federal elections particularly in the communities. Do you think photographs on ballot papers would help?

Mr Heisner—We need to differentiate here slightly. The Northern Territory Legislative Assembly has the one ballot paper normally with a very small number of candidates—hitherto a very small proportion of three to four—and it is easy for the ballot paper to contain a photograph. With the House of Representatives or Senate—especially the Senate—I think it would cause great logistical problems to try and include photographs of candidates on those sorts of ballot papers. Secondly, if it were only for the Northern Territory, I think other remote parts of Australia—whether it is the Kimberleys, Kalgoorlie or Cape York—would have equal claims in that respect, so you may end up with the New South Wales Senate ballot paper being really big.

CHAIR—I think that suggestion would be really only in respect of the House of Representatives, not the Senate. When we visited Darwin and a couple of communities we certainly got the strong word from the people that they would like to see such photographs at a federal election. They commented that they certainly assisted dramatically in the Northern Territory election.

Mr Heisner—From my experience, the people out there would agree that they would love that type of thing. However, as I said, the balance needs to be on the logistics of the exercise. But obviously that is for your committee to look at.

Mr FORREST—I do not see how all this evidence could just be generated. Perhaps there were some sorts of communication problems or basic problems there. But, whether it is distortion or something emotive, I note something that the chairman said earlier: there must be something here that we need to clear up and make a bit more precise. I think there seems to be very little willingness by the Electoral Commission to admit that it has stuffed up a bit in the Northern Territory.

CHAIR—Can I add to that? It seems that the two areas where we have got real problems are Tangentyere and Mobile 16, both run by the same person. The last question I was going to ask, which follows from that, is: is the AEC confident that both those were run in a proper professional manner by the person in charge? I know that you have said that she has had experience of six elections or something like that, but I feel that it has probably not been run as professionally as it could have been—which is maybe due to some slack administration or some hesitancy to sort out, early on, problems that may have prevented other problems. Perhaps there could be a bit of work done there in respect of choosing appropriate people to run those sorts of booths.

Mr Heisner—I think the OIC was put under extreme pressure on both the mobile and at Tangentyere. I think on both occasions her job was a very difficult job to perform. The OIC has done nothing illegal that we have been able to find. At the end of the day, the ballot papers were counted and, as I said, we can find nothing wrong. The ADRO in Alice Springs, who visited that booth eight times during the day—that is a lot of visits—has said that throughout the day he was happy with the progress of that polling place, allowing for the smallness of it with the furniture in, and the niggling that he observed between the CLP scrutineers and the OIC. As I said, he is not a Northern Territory person so he is not coming from a loyalty sense. He is an electoral person we brought over. As I said, he is not a Northern Territory AEC person. He is a Queensland AEC person. Certainly, from the AEC's point of view, the OIC had an extremely difficult job to do on both of those.

CHAIR—You mentioned that the assistant divisional returning officer in Alice Springs is from the Queensland division of Hinkler.

Mr Heisner—That is correct.

CHAIR—The committee will possibly be hearing in Brisbane, so I presume he would be available as well if the committee so decides?

Mr Heisner—We initially thought that he would have been able to attend if I had attended in Darwin. That is up to the Electoral Commissioner. I cannot make those sorts of decisions. Yes, he is from the division of Hinkler.

CHAIR—We will be dividing pretty soon.

Mr SOMLYAY—I have no further questions and we are about to go into division. I want to thank the AEC for allowing Mr Heisner to come down here. There were a number of issues, as you can imagine, for people who were new to the committee that seem fairly strange to us. I believe you had to have the opportunity to meet with us face to face. I know that you have gone out of your way to come down here. It is no quick journey to come down from Darwin. I wish you all the very best in your new career. We might come across you some other time. A number of us are in international parliamentary organisations where we promote the spread of democracy and democratic elections, so it is good to see the actual hands-on involvement of Australian officials in that process.

Mr Heisner—I would like to thank you for the opportunity to appear, to try to explain a very difficult election.

CHAIR—Thank you for appearing before the committee today. Thank you gentlemen and Bev and thanks to Hansard.

Resolved (on motion by **Mr Laurie Ferguson**):

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

Committee adjourned at 5.34 p.m.