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JOINT COMMITTEE ON ELECTORAL MATTERS

Reference: Conduct of the 1998 federal election

TUESDAY, 19 OCTOBER 1999

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JOINT COMMITTEE ON ELECTORAL MATTERS

Tuesday, 19 October 1999

Members: Mr Nairn *(Chair)*, Senators Bartlett, Boswell, Faulkner, Mason and Murray and Mr Danby, Mr Laurie Ferguson, Mr Forrest and Mr Somlyay

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

Terms of reference for the inquiry:

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

WITNESSES

Committee met at 12.07 p.m.

CUNLIFFE, Mr Mark Ernest, First Assistant Commissioner, Finance and Support Services, Australian Electoral Commission

DACEY, Mr Paul, Assistant Commissioner, Elections and Enrolment, Australian Electoral Commission

GRAY, Mr Bill, Electoral Commissioner, Australian Electoral Commission

HALLETT, Mr Brien James, Director, Information, Australian Electoral Commission

LONGLAND, Mr Robert Lance, Australian Electoral Officer for Queensland

CHAIR—I declare open this hearing of the Joint Standing Committee on Electoral Matters for its inquiry into the 1998 federal election and matters related thereto. Today we will be hearing from the Australian Electoral Commission. The Australian Electoral Commission has been a vital contributor to this inquiry, identifying significant areas of change to improve the efficiency and integrity of the electoral system. This second hearing with the Australian Electoral Commission should prove invaluable in finalising many aspects of this inquiry.

I welcome the Australian Electoral Commission to today's public hearing. The evidence that is given at the public hearing today is considered to be part of the proceedings 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 Nos 88, 159, 176, 210, 232, 238, 239 and 243 which have all been authorised for publication. Are there any amendments that you want to make to those particular submissions?

Mr Gray—No, Mr Chairman.

CHAIR—Would you like to make a brief opening statement before we move to questions?

Mr Gray—Yes, I would, Mr Chairman. The committee's inquiry into the 1998 federal election was announced in January this year and, after conducting some 10 public hearings around Australia and receiving over 200 written submissions, the inquiry is now drawing to a close. In the past year the Australian Electoral Commission has provided seven written submissions and made over 40 recommendations for amendments to the Electoral Act and the referendum act. We believe that these recommendations would, if accepted, improve the accountability and transparency of the electoral process.

The Australian community has reason to be proud of its electoral system, and this is in no small part due to the activities of this committee in examining the detailed conduct of each federal election and finding politically sustainable solutions to legislative and administrative problems as they arise. As has been reported to the committee in our submissions, the 1998 federal election was conducted successfully and appropriately within

the law. Despite the timing of the election during school holidays and many sporting and cultural events, there were no major problems during polling that could not be resolved administratively.

A clear indicator of the successful conduct of the election must lie in the fact that, of the nine petitions to the Court of Disputed Returns after the election, not one resulted in any criticism of the AEC by the court, and no costs were awarded against the AEC as distinct from the Commonwealth. Seven of the petitions were dismissed and the two petitions that succeeded, resulting in the disqualification of Ms Heather Hill, were grounded in the constitution rather than in the Electoral Act.

The AEC is aware that the committee has devoted some considerable time this year to an examination of the allegations made by the Northern Territory CLP in relation to assisted voting, mobile polling and provisional voting in Aboriginal communities. The AEC has responded to these allegations in detail in written submissions and has advised the JSC that there is no credible evidence to support allegations that assisted voting, mobile polling or provisional voting has been conducted illegally or improperly in Aboriginal communities. However, the AEC does recognise the concerns expressed by some about enrolment and voting in Aboriginal communities and has accordingly recommended the re-establishment of the Aboriginal and Torres Strait Islander Electoral Information Service. This would be the most effective means of reducing the level of assisted and provisional voting in Aboriginal communities in the longer term.

It would appear that the majority of the submissions received by this inquiry have, in one form or another, recommended that full preferential voting at federal elections be replaced with optional preferential voting. The AEC, which has chosen not to take a position either way on this issue regarding it as essentially a political issue, recommended to the previous committee in 1996 that a separate inquiry be conducted into the introduction of optional preferential voting at federal elections. But the committee did not support this recommendation.

However, the AEC is prepared to take a position on issues relating to political party campaign activities to the extent that they impact on the franchise. For example, the AEC is concerned about the possible disenfranchisement of postal voters, as the major political parties increasingly channel postal vote applications through their own offices and extract personal information from these applications before they reach the AEC for the issuing of ballot papers. Evidence from the 1998 federal election is that 174 postal voters were disenfranchised because their postal vote applications issued and processed by the political parties were not received by the AEC in time to allow the issue of ballot papers or did not reach the AEC at all. This is 174 mistakes too many and must be addressed—at the very least—by ensuring that the involvement of the political parties in the process of postal voting is not disguised from the voters involved and is made subject to the same levels of accountability as are applied to the AEC.

On another matter related to political party campaign activities, the last three federal elections have thrown up examples of what have come to be called second preference how-to-vote cards. These are how-to-vote cards authorised by a major political party advocating a first preference vote for the candidate from a smaller political party but in reality seeking to

secure second preference votes for the major political party candidate. There is evidence available that voters are being misled by such how-to-vote cards into thinking that they are the official how-to-vote cards for the smaller political party. In a recent court case in Queensland, the judge recommended changes to Queensland electoral law to bring some transparency into this practice, and the AEC has made recommendations along these lines to the effect that second preference how-to-vote cards at federal elections should clearly identify at the top of the card the name of the authoriser and the political party responsible.

The AEC has recommended that the committee seek a reference to inquire into parts 2 and 22 of the Electoral Act, particularly on the powers of the Court of Disputed Returns as they relate to the imposition of cost orders against the Commonwealth. The election petition involving Ms Heather Hill resulted in a substantial costs order against the Commonwealth, which the AEC has been advised must be borne by the AEC. If there were to be a number of such court cases at any one time in the future, then financial arrangements within the AEC could be seriously affected as it attempts to meet heavy cost liabilities on behalf of the Commonwealth. However, as this may raise some larger issues about powers and functions generally, it would be more appropriately dealt with under a separate reference to the committee.

Finally, the committee will be aware that the AEC is currently conducting the 1999 referendums on the republic and the preamble, which has highlighted some machinery problems in the referendum act which require attention. The committee might therefore consider whether it should seek a reference to inquire into the conduct of the 1999 referendums in the first half of the year 2000.

In concluding, I reiterate what I said in my opening statement on 1 April 1999 that the process by which the commission is held to account for the way in which it meets and fulfils its responsibilities is not only welcomed by the commission but also recognised by it as fundamental to ensuring that the parliament and the community at large can continue to place its confidence in the independent and neutral administration of elections. Thank you, Mr Chairman.

CHAIR—Thank you, Mr Gray. If no other representatives want to make an opening statement, I might start on the second preference how-to-vote card issue. In your submission you quote the Queensland committee of the Legislative Assembly in Queensland which made recommendations—3.2. Do you know whether that particular recommendation was a majority view or a unanimous view of that committee?

Mr Gray—No, but we could certainly inform you on that.

CHAIR—I wonder whether there were any alternate views within that particular committee because it would be useful.

Mr Gray—We will provide you with a copy of that report.

CHAIR—You used four examples in your submission on this: one from the 1993 election in Macquarie; one from the 1996 election in the seat of Gilmore; and two from the 1998 election in the seats of Richmond and Stirling. You mention that while they gave the

indication that they may have been a how-to-vote card on behalf of the minor party that the first preference was going to. You state:

Indeed the major political parties have been scrupulous to date in authorising their second preference how-to-vote cards with the names of known party operatives.

But there are differences between those four how-to-vote examples, aren't there, in that some really do not give any indication what party it is? The one in Richmond is actually a second preference for Labor but it does not mention the Labor Party anywhere on the how-to-vote card, does it?

Mr Gray—It does say 'authorised by John Della Bosca ALP, 377 Sussex Street'.

CHAIR—Down the side, yes—ALP. So what you are getting at is that the top of the how-to-vote card should clearly say the actual party not just in the authorisation.

Mr Gray—That is right. We are saying that people are fulfilling their responsibilities in relation to authorisation but clearly, as I think you have just demonstrated, it is not overly evident from a perusal of the card.

CHAIR—No. I even jumped past the ALP bit, because you have to know who John Della Bosca was. Some people might; others would not.

Mr Gray—That is right. What was being said in relation to the Queensland judgment is that, to avoid that situation, it ought to be placed on the front and at the top of a card making it clear effectively who benefits from this particular card.

CHAIR—Actually it was the Gilmore one which does not have that, it simply says 'John Della Bosca'. It has Australian Labor Party under Knott on the so-called ballot paper, but the actual how-to-vote card gives no indication of who it has come from at all.

Mr Gray—I think that is right. Even if it were to be included in that small print in the authorisation, I think that is not what most people are perusing when they are handed a how-to-vote card. What is being suggested and what was certainly found and recommended by the judge in Queensland was that it ought to be quite clear and that transparency is served if it were to be quite clear.

CHAIR—You make two recommendations: one is to put that at the top in a particular sized font so it is clear what who it is coming from; and the second recommendation is that section 351 of the Commonwealth Electoral Act be repealed. Section 351 relates to material in a variety of ways and within 351 there is a penalty for any offence against that section, which is publication of matter regarding candidates, with the penalty being $1,000 for an individual and $5,000 for a body corporate. If section 351 was taken out and the recommendation of an amendment to section 328, do you propose a penalty for second preference how-to-vote cards issued that did not comply with what you are proposing in this sense—a penalty similar to the penalty that is in 351 now?

Mr Gray—Certainly I think there should be a penalty. If one is required under legislation to identify, in the way that is being recommended, that there ought to be a penalty in the event that that is not the case. But I am not certain that the level is necessarily exactly the same for the breach which would be involved in section 351.

Mr Dacey—If that penalty was taken over to section 328, there is a similar $1,000 or $5,000 penalty in section 328.

CHAIR—You would just apply that same penalty to this particular amendment?

Mr Dacey—Yes, so the same level of penalty would apply.

CHAIR—Okay. I have a number of other things I might let other committee members have a go and then I will come back to my other ones.

Senator BARTLETT—Just on that second preference how-to-vote cards and section 351 for starters: if that section was repealed, are you confident that does not leave any other potential behaviour that the section attempts to address unregulated?

Mr Gray—Not on our examination. We think it would be effectively redundant.

Senator BARTLETT—Just linking that to some extent with the proposed changes that the Queensland committee has put forward, which I think would have a fair chance of being put into law. It goes to a broader question of unanimity across different systems and obviously it is policy decisions of governments and parliaments that decide legislative outcomes. How much effort through your state based electoral commissions do you put in trying to get a move towards more unanimity or do you see it as not really being a problem?

Mr Gray—I think unanimity is something that would be of advantage to the electorate, particularly at the various levels at which people go to the polls, if the conditions and the requirements were exactly the same. They are not and have not been. I would have to say that we are learning from each other's experiences in a sense. It is not because we seek unanimity with Queensland; it is because we believe that the principle of transparency is essential to the integrity of an electoral process, and this serves that principle of transparency. It is for that reason—that is, we seek to learn from that situation that has been raised, examined and a judgment passed in relation to the Queensland experience—that we feel we should be doing the same. We are being confronted with the same concerns and complaints that were lodged in respect of the Queensland experience.

Senator BARTLETT—Flowing on from that, would you be aware of the proposals that have recently been put forward in New South Wales relating to modifying the requirements for registering political parties and the voting system for upper house ballot papers?

Mr Cunliffe—The registration issue is something that we have also addressed in our submissions—I do not know whether you wish to turn to those more broadly. The solutions that we have suggested are not identical to the proposed New South Wales approach. In our view, we think ours apply to the issue in a way which preserves the balance between the need for people to be able to participate in the political process, form political parties and

play their role and, if you like, the potential abuses that New South Wales has seen but which have not been something we have experienced in the Commonwealth.

I think at a previous session we speculated—and I guess that is part of it—that one of the reasons is that in New South Wales a very much smaller percentage vote is necessary to win a seat in the upper house, which may well have contributed to it. We think that our processes for testing party membership have been reasonably sturdy without necessarily being any better or any worse. There are some issues which have arisen which we have drawn attention to in several recommendations. These relate to our ability to revisit the register, require membership lists, to test differently who should be counted as a member. They are all set forward in the submission and in the recommendations, which I am happy to turn to individually, if you like, rather than comparing it with the New South Wales solution where there is a larger amount of money for registration and larger numbers within the party. We certainly tossed around those sorts of strands of thought, but the proposal we have is an attempt to come up with a balance. The amount of $500, as we have nominated, may not be the right balance but it is a step in the right direction.

Senator BARTLETT—I have read your recommendations in that area and I think they go a fair way towards addressing some of the issues there. You have partly answered my question as to whether you foresaw any problems with what is being suggested in New South Wales, which you have answered to a degree with the registration, and also with adopting yet another form of voting for an upper house that is different again.

Mr Cunliffe—In terms of the house voting systems, I will leave that to the commissioner or Mr Dacey. But on the registration side we have a different operation already. The party registration process within the Commonwealth carries its own results and its own obligations which are not identical in New South Wales as it stands. There will be some lack of unanimity—to revert to the issue that was raised earlier in the how-to-vote cards—but there already is, so I suppose that therefore worries us less.

Senator BARTLETT—That is fine. I might briefly touch on the issue of postal vote applications that I know you have raised a number of times in the past. Apart from the problem you have highlighted of perhaps people not getting their ballot papers in time, I have seen allegations relating to the recent ATSIC election that the ballot papers were sent to the candidate or people on behalf of the candidate rather than the voter and then allegedly being filled out—I do not know if that is under investigation or not and I am not necessarily wanting you to comment on that—but have you seen any evidence of activity like that at the federal election level?

Mr Gray—No, we have not. Perhaps if I could ask Mr Longland to very briefly outline—now that you have mentioned that—what in fact is being looked at in respect of the ATSIC election. I know it is not immediately within your province but having got it on the record—

Senator BARTLETT—I think it is relevant in terms of postal votes and potential misuse of them anyway.

Mr Longland—Oftentimes people will ask for their postal voting material to be returned to a common address, and that is a case in ATSIC, but the individuals still have to make that application and they still have to sign it. Any checks that are made as a result of complaints tend to be followed through. In the case of the recent ATSIC election we have only had one formal complaint. It is being investigated but it would appear on the surface to be a case of confusion on the part of the elector—without pre-empting any results of that investigation—rather than a case of impersonation. And in the final analysis the vote was not counted because postal voting for ATSIC has fairly high hurdle to jump—and that is the provision of a certificate of Aboriginality—and that was not provided in this case.

Senator BARTLETT—Just one formal complaint that made a big newspaper article.

CHAIR—They usually do.

Mr Longland—Anything to do with Cunnamulla.

Senator BARTLETT—You mentioned the Aboriginal and Torres Strait Islander Electoral Information Service and from my point of view I would certainly agree with the reintroduction of that. What sorts of programs does the commission have in relation to non-English speaking background people?

Mr Gray—There is not a similar program of the kind that was provided for in relation to Aboriginal and Torres Strait Islanders but, during the course of a lead-up to an election and so on, there are translations into a range of languages through newspapers and other media. That, in essence, is the activity which we engage in in terms of non-English speaking background groups. There is the interpreter services as well during the electoral processes leading into an election. So we have interpreter services; we have the material of information translated into a range of languages and provided through those media outlets which service non-English speaking background groups.

Mr Dacey—We also as part of our enrolment strategies provide a service where AEC staff attend citizenship ceremonies and we receive enrolment forms from new citizens at those ceremonies. So that covers basically the enrolment side.

Senator BARTLETT—Do you actively seek to recruit and proselytise or do you just stand quietly in a corner?

Mr Dacey—No, it is active recruitment. In fact, the enrolment forms are pre-printed by the department of immigration with all the elector details on them, so all we need is the signature and the witnessing done. We are achieving in excess of 90 per cent of people actually giving us those enrolment forms at the ceremonies.

Senator BARTLETT—It sounds good. My last one or two questions relate to the Northern Territory and in particular the issue of the polling booth at Tangentyere railway siding. I realise there were specific circumstances in terms of late notice and that sort of thing but, having visited and had a look at it, the conditions, the size of the booth and things like that did strike me. Are there any specific formal criteria for size of booths such as if you anticipate 200 electors it must be this size, 500 electors this size or anything like that?

Mr Dacey—Certainly we should seek the ideal premises and in most cases we do. But, in some cases, it is a matter of what is available. If that proves to be unsuitable, we then look for alternatives in the future. There is no sort of set criteria. It is basically a judgment on behalf of the returning officer as to the number of votes that are expected and whether those premises would be suitable for that booth.

Senator BARTLETT—With the mobile polling aspect that led to that experience—you may have put this in one of your submissions and I have not absorbed it, so I apologise if you have already said it—would you recommend a change to the criteria for mobile polling to enable it to occur in situations such as was initially proposed around Alice springs?

Mr Gray—No, we have not identified a recommendation to that effect. Mobile polling occurs in three categories and they are hospitals, prisons and remote. In order to conduct something by way of remote polling, it has to be gazetted as a remote electorate before remote polling can occur. We have not made any recommendation in relation to that, but flexibility would have allowed mobile polling to have occurred, had that been the case. It was not, and we know the result of that. But flexibility would have allowed mobile polling in places that are other than remote but which may facilitate the participation of people in the electoral process that might otherwise not find it quite so easy.

Senator BARTLETT—But given your decision not to proceed with that, as I recall, based on advice that it may be challengeable because it is not really remote, you would not suggest there be some additional category to mobile to cover circumstances such as those?

Mr Gray—I would not say that we should rule it out. In the light of all that has been said and the experiences in relation to what has been said, there may be a need for some flexibility and not constrain mobile polling merely to remote areas in the way that it is currently. The AEC would be happy to give further consideration to formulating some recommendation, if that was the committee's desire. I certainly would not want to rule it out if people were sufficiently supportive of the notion that it ought to occur and that at least that flexibility be available.

Senator MASON—My question carries on from where Senator Bartlett has let off. I have not had the benefit of being on this committee for very long but, like Senator Bartlett I took evidence in Alice Springs relating to the polling booth at Tangentyere, and the evidence was that about 90 per cent of Aboriginal people voting at that booth required assisted voting. You mentioned a scheme you are putting in place, the Aboriginal and Torres Strait Islander—

Mr Gray—Aboriginal and Torres Strait Islander Electoral Information Service or ATSIEIS.

Senator MASON—Do you think that will ameliorate the need for that sort of level of assistance?

Mr Gray—I think in the longer term it will lead to a better educated electorate in what is required in order to cast a vote. But it is also the case that you cannot pretend that, where people do not use English as their first language and live in the communities that they do

and with the degree of illiteracy and lack of education in respect of older Aboriginal citizens, it will necessarily disappear merely because we reintroduce that particular scheme. I do not think we are trying to suggest that. We are suggesting that it certainly assists some communities, and I think that this committee received advice to that effect in both enrolment and voting. But it would be wrong of me to suggest that, by introducing that scheme, that alone will either in the short term or mid term make all the difference. There will still be a need for assisted voting.

Senator MASON—As you said before, none of the voting was improper or illegal—and I am sure that is right—but we nearly had the suggestion at one stage that assisted voting was nearly a cultural norm and that it was nearly a communal decision. What do you say to that sort of evidence?

Mr Gray—I don't know what credibility that evidence may have; I don't know that it is a cultural norm; and I don't know that it is a community decision. I am not sure in anything I have read in the transcripts that that is other than an assertion. But whether it is an Aboriginal community or Chinese, Greek or Turkish community, those who have difficulty in casting a vote ought to be given assistance. I don't think we should be looking so much as to one ethnic group having more assistance than another. It is a question of whether the individual voter should be benefiting from those provisions of the act that provide for assistance; it is then a question of how that assistance is given.

Senator MASON—The process by which that is given.

Mr Gray—Yes, that is right.

Senator MASON—Quite right. Thank you.

Senator FAULKNER—I want to ask Mr Gray a question about the second preference how-to-vote cards arising from the submission. If your recommendation 5.2 was embraced warmly in the Electoral Act and I were a manipulative person, which I am not, I would be looking at running a third preference how-to-vote card through some sort of non-competitive candidate. While I understand the spirit of the recommendation, it seems to me that some of these things would need to be thought about if one were to go down the next step and amend section 328(1) of the Electoral Act. What would be your response to that? I know it is a hypothetical question, because you would know that I would not be such a manipulative person.

Mr Gray—Let me just go straight to the question.

Senator FAULKNER—Please. I am very relieved to hear you are going to do that.

Mr Gray—In all seriousness, I think all that we have indicated is that people are often confused. We seek transparency. To the extent that it may be again manipulated or sought to be manipulated, we may have to find a remedy for that. But there is clearly a problem in relation to second preference voting. If we are true to the spirit of what we are trying to do here—that is, to refine and revise our act in order to address the problems as they arise—we should at least be going so far as looking at the second preference voter card. If it were to

be the case that people were then looking to the third and other preferences, I am sure that a similar approach might be adopted in any advertising or cards that were issued in respect of trying to persuade the voter to that particular point.

Senator FAULKNER—But whether or not I think this is a sensible idea, an obvious weakness is in the use of the term 'second preference'. If I were to distribute a how-to-vote card—there is an example here from each of the major political parties in the name of the One Nation Party—that ran the second preference to a contestant who was maybe an independent or other minor party candidate unlikely to worry the scorers too much and then, in my third or fourth preference, ensured that these preferences flowed to the major political party or major candidate in a two candidate preferred count who was a serious contender, it seems to me that the same objective is realised. That is the point of my question: I am wondering whether in the use of this terminology 'second preference card'—I am not commenting on whether this is a very good idea or not—you are not actually going to achieve what might be your objective or whether the use of this terminology 'second preference' is, in and of itself, a little misleading in this context.

Mr Gray—All I can say by way of response is that we are seeking to address something that, during the last election and indeed before it, has been referred to as a second preference vote problem and that it seems to have some general usage within both the parties and the public. If it were seen to be a first step, I think it would be an important step. You may be right in suggesting that, again, someone could find a loophole or a means by which to avoid in a sense our objective and to continue to try to avoid transparency or confusing the voter. Effectively, it has to be recognised that some of those cards may well have the intent of passing off as something that they are not. What we are trying to ensure is that the voter at least ought not to be confused if they have certain information available to them. I do not pass a judgment on your view as to whether our objective would not be met by virtue of the scenario you outlined. But, certainly as a first step, our objective would be met in respect of what has been referred to as 'second preference voting'.

Senator FAULKNER—Why did the AEC come down in favour of having 12 point font?

Mr Gray—It seems to be an accepted size in ensuring that it is not overwhelmed by the other information on the voter card.

Senator FAULKNER—I just wondered if there was any science in it, basically.

Mr Gray—I think we have taken it from the experience of the suggestion that was made in the Queensland judgment by Justice MacKenzie who suggested that there be such a font and that it not be overwhelmed by the other printing, and 12 font seems to meet that particular requirement.

Senator FAULKNER—Has the AEC actually produced any mock-ups to show what these cards that have been produced and distributed on polling day might look like—or similar cards—if this change were made to the Electoral Act?

Mr Gray—The answer, as I understand it, is no, but we would be willing to provide such mock-ups to the committee so that it could conclude its deliberations—

Senator FAULKNER—No, I just wondered this in the context of the size and the wording and so forth that you are looking at. I do not think it is necessarily your job to do so—

Mr Gray—The short answer is no, we have not.

Mr FORREST—I have four different subjects and I am sure you will let me know if we have already covered them—being late. I was interested in the recording of the election results for 1998 in the little handbook where rather than showing the successful candidate as member of the Liberal Party or member of the National Party, it shows them as coalition members. I am curious how it can be put that way given there is no such registered political party as a coalition. I actually went back and checked and found that it has been the habit of the Electoral Commission to report that way for eons. I am curious how that can be justified.

Mr Gray—In fact, it was brought to my attention when I first took up this commission that we were talking about Labor and non-Labor and that certainly had to be addressed. But I think you are the first to draw attention to the fact that there is some difficulty with the use of the word 'coalition'. I wonder if I could ask our Director of Information, who has responsibility for the preparation of that material, to give us some of the history on what we currently do.

Mr Hallett—As I understand it, Mr Forrest, are you referring to where we report two-party preferred results and two-candidate preferred results?

Mr FORREST—No, where you record the successful member in the seat. It occurs right across the documentation. It comes out of the final reporting of a result.

Mr Hallett—Where a candidate is elected we put a hash beside the name. For example, in our electoral pocketbook, which I think is the book you are referring to, to show that candidate X was the successful candidate we have first preference votes. Then at the bottom we have a two-party preferred figure which in most of the seats is the appropriate figure. In a few cases such as Newcastle and one or two others that were not two-party preferred cases, we showed two candidate-preferred. Is this the pocketbook you are referring to?

Mr FORREST—I should have brought a copy. It is a small handbook about that size.

Mr Hallett—At the back of the pocketbook we provided results for every division in Australia in the House of Representatives. In all cases we showed first preference results and then a two-party preferred result or, in the small number of cases where it was not contested between the coalition and the Labor Party, we also showed a two-candidate preferred result. But if you want to provide further details, we are happy to pursue it.

Mr Gray—I understood your point to be, Mr Forrest, that we do not mention Liberal Party or National Party, it is mentioned by way of reference to coalition.

Mr FORREST—Where the poll has been declared as a successful Labor Party member, it shows the seat as a Labor seat; where it is a coalition seat, it just shows it as a coalition seat, whereas in fact it could be held by a member of the Liberal Party or a member of the National Party. I believe that it ought to be recorded that way rather than just as a coalition seat.

Mr Hallett—We can take that on board and consider it. Now I understand the gist of your question, you are quite correct that it is shown as 'coalition'. As Mr Gray said a minute ago, many years ago we used to refer to it as Labor and non-Labor and, following representations from a member of the parliament of the day in about 1995, we changed it to Labor and coalition. It was our understanding that the member who made those representations was happy with that. But we can take that feedback on board next time we publish it.

Mr FORREST—It leads me to the next question on the conduct of the count. It often comes as a bit of frustration when the electoral commissioner signs some notional two candidate preferred arrangement but, if the result shows something different than predicted with the rise of an independent or other parties, there is no flexibility to check an early indication of where preferences are going. I am wondering why there is not that flexibility. Do you understand the question?

Mr Gray—Yes, I understand it only too well. It is always the subject of question. Our judgment has to be made some time before the actual election occurs as to which two particular candidates we will identify as being the two which are in this sense compared. Sometimes we get that wrong and then you are quite right: it is not then easy and there is no flexibility to change that at the later date. In a sense, we have to make our judgment. We make it. In some cases, we get it wrong. But I am not sure that there is much more I can tell you other than that we do not get it wrong often when compared with the 148 electorates that are standing and the number of candidates that actually nominate for those electorates. Nevertheless, we do get it wrong and that is frustrating to candidates, particularly if they think they ought to have been selected as potentially a winner or at least coming close to it. Do you want to add anything, Mr Longland?

Mr Longland—Only to the extent that the flexibility disappears once we have made that selection because you cannot transmit a changed selection to every polling place on the night for them to do anything else. They are out there in their schools and halls busily throwing papers to two polls. It is not until we get that back to the office and then, if it is still close, the impact of the declaration votes still make it difficult for us to choose who the two correct candidates might be.

My recollection of the election last year was that we got three wrong nationally and, by the end of the week following polling day, we had reversed that and started to throw the results to the correct two. It was a process that was designed in consultation with this committee or its predecessors so that the widespread ability of parties to provide trained scrutineers in each polling place to observe the throw of preferences was not so important. The scrutineers now are far more interested in the throw to the two-candidate preferred count, as we call it, and that is working extremely well.

We do get some very difficult ones right—and I don't think we get much credit for that—where we have a lot of three cornered contests. Particularly in Queensland this year, speaking as a nervous picker of two candidates, the rise of the One Nation Party also made it very difficult where we effectively had four cornered contests, and we got some tough ones right. The fact that we made three mistakes does not alter the efficacy of that process.

Mr FORREST—Having just been through a recent example in the state of Victoria, it is the same there. I am still curious as to why there is not the flexibility, if there is an indication that there could be a change to the way the count is conducted within a day or so rather than waiting until the final count, why cannot it be changed if the indication is there?

Mr Longland—Again, I can only draw on one example: the one example that I got wrong in Queensland was the division of Wide Bay. Even on polling night when all of the booths had reported their count, it was still not clear because of the potential number of outstanding declaration votes who the two correct candidates were. So on Monday, had I directed the DRO to throw the ordinary votes to two new polls, I may have had to reverse that decision later in the count as the declaration votes were counted. So it was at the earliest moment where it was clear who the two leading candidates were to be that the direction was given to change. It is very difficult in very close seats. With the rise in declaration voting, which runs to about 20 per cent of the vote now, that will become even more difficult.

Senator MASON—At the last state election in Queensland it must have been much more difficult.

Mr Longland—They got 35 wrong, I believe.

Mr FORREST—What sort of criteria are used in establishing the two candidate position in the first place? What do you use for that?

Mr Longland—It is a combination of history, which is I suppose the major input, and contemporary events in a very imperfect way because, given that the commission is focused on the machinery rather than the outcome, we take into account where we can contemporary events. What was in my mind in the division of Wide Bay was the fact that encompassed completely within that division were three seats that had only recently, within the past two months, gone to One Nation. That was a significant determining factor in that decision. As the vote turned out, while it was repeated largely across the division, it was not enough, given other preference flows, to upset the sitting member.

Senator FAULKNER—Can I just say that I agree it is a very tough thing and I think you have done pretty well to get 145 right in the circumstances because, in some of those three cornered contests, where three and four might fall is obviously crucial. These are really tough predictions without the benefit of opinion polling, to be honest.

I would say this to you: on one occasion I provided some input where I thought the AEC was quite wrong in one of the decisions it made; my views were not heeded at the time; and, for once, I was actually right. But some of the expertise—I think this might be what Mr Forrest might be driving at—is actually on the ground in the political parties themselves with the candidates, the political parties, the machines. I think I have heard previously that you do

draw on that. If you do not, I thought you did. You might tell us that and you might also say whether you think that is a useful thing to do, given there are some people out there in the political parties of various complexions and the candidates who have a pretty good feel for some of this.

Mr Gray—I think they probably are people who have that degree of expertise. There is a very thin line we are treading here in respect of seeking information and leaving people with impressions that we may have accepted that advice and then saying that the AEC is going to predict. As you know, the two-party preferred is held confidential until the night, and it is held such that people are not in any way swayed by what we think may be the outcome of that election. It is a very thin line. To then move through the parties canvassing what people think may well leave within those parties or some individuals a view that we have come to a particular decision or a judgment. I think we have to be exceedingly careful. Therefore, I am not sure that we do have the range or the flexibility to move out and canvass across all of the players and those who might be best informed on the issue, without raising a very real risk of appearing to become part of that political process rather than being the neutral umpire standing away and giving effect to that process.

Senator FAULKNER—The worst case scenario would be—if decisions made on the night meant that we had votes thrown to the wrong candidates in a two-candidate preferred count—that we would not know the result of an election on the night. That is not a problem we have faced. I actually think the AEC have done exceptionally well in difficult circumstances on this, with one or two glaringly obvious exceptions which on at least one occasion that we will not go into I think could have been averted. You probably know what I am referring to.

Mr Gray—The problem I face and the Australian electoral officers, AEOs, in each of the states face is that each one we get wrong we are told it was a glaringly obvious mistake. It may have been to the candidate but it was not necessarily to others.

Senator FAULKNER—It depends if you can open a newspaper and look at published opinion polls and that sort of thing.

Mr Gray—You can, and clearly that informs some of our judgment. I have not actually identified how successful we have been in comparing it with national polls, but it might be pretty competitive.

Senator FAULKNER—No, I think you have done well and I mean that quite genuinely. I think it is tough.

Mr Gray—We do inform ourselves.

Senator FAULKNER—It is important that, when we now have the advantage of a two-candidate preferred count—it is a fantastic thing for all Australians who want to know who their government might be on the night of an election—we do everything to make sure we get this right. It is an important issue that Mr Forrest raises.

Mr Gray—It is.

Mr FORREST—Turning to a new subject—I am happy to leave that one—on the cleansing of the roll. I have raised this before and I am wondering whether in the interim—since I raised it the last time we spoke to you—you have had the opportunity to think about it. Cleansing the roll is a huge effort and very costly. I have been through roll cleansing twice now for my electorate. I am wondering if there might be an opportunity to use some data matching of procedures to try to save the cost of that door knocking. Have you had any opportunity to think about ways of improving on roll cleansing? As I said last time, you go through the exercise of sending out a letter to people you think are new enrollees and it still comes back.

CHAIR—There were recommendations made after the 1996 election in relation to data matching.

Mr FORREST—Telstra and Water Board records—

CHAIR—Electricity, yes, that is right.

Mr Dacey—Perhaps I can comment: before the last federal election in 1998 was basically our last national door knock. That is not to say there is no place in the future for door knocking particularly targeted areas. We can door knock areas of high growth but we are looking now at more continuous means of updating the roll. This year we have embarked on a project with Australia Post where we get information on people who do change their address with Australia Post and then we mail out to electors suggesting and also inviting those electors to also change their address with the AEC. That is a first step.

We are also talking to other agencies. We are currently speaking with Centrelink about the possibility. Centrelink has a very large database and has between 25,000 and 30,000 address changes per week. That is the sort of information that we are looking at getting electronically.

What we would like to do eventually—it is something we will perhaps put before this committee at a later stage—is look at the possibility of direct address change. If we currently get notification of an address change through an agency such as Centrelink, we then have to write to that elector and say, 'You have changed your address with Centrelink. Here is an enrolment form, would you like to change your address with the AEC?' What we think would be ideal is if that address change with Centrelink, for example, could also trigger an address change with us without having to go back to that elector.

We would advise the elector, 'Yes, we have changed your address on the roll,' but we do not see—we would need legislative change and there are privacy issues to consider—it should be necessary for us to go back and say, 'Here is a form; fill it out,' because that elector has already changed their address with an agency who has strict proof of identity requirements so that we know that elector is in fact a bona fide person.

So yes, Mr Forrest, we are working on continuous roll activities and we are looking at using other agencies' databases to update the addresses, and also our state colleagues are looking at state agencies because we have joint roll arrangements. For instance, our colleagues in the Victorian Electoral Commission recently got information from the

education database in that state and sent 17- and 18-year-olds who were having a birthday a birthday card and included in that birthday card was an invitation to get on the roll. That was very successful: in a matter of two or three weeks we received in excess of 20,000 enrolment cards from 17- and 18-year-olds. So we are looking at all sorts of initiatives.

Mr FORREST—If I can just ask a question on postal voting—you may have already covered postal voting.

CHAIR—There were some questions.

Mr FORREST—The issue of returned postal votes with the ballot paper outside the declaration envelope. Has there been any progress in making instructions clearer about that? And a second question: what happens to a postal vote received where the ballot paper is outside the declaration envelope; is it accepted as a valid vote?

Mr Dacey—Under current legislation it is not accepted. That vote is rejected. However, we have changed for the referendum to double enveloping for postal voting. Whilst it is early days yet—we are keeping statistics—the statistics of postal vote ballot papers returned outside the envelopes is significantly smaller than it was for the last event at this stage. We are getting very small numbers of ballot papers returned outside the envelope.

Mr FORREST—It is still about five per cent for the Senate. Is there reason why it would be different for the Senate than the House of Representatives?

Mr Dacey—Currently with the new procedures that we have, which includes revised labelling of the instructions and advice to electors, we are running at less than one per cent.

CHAIR—That is a big improvement from 1998 where it was 5.2 per cent for Senate and two per cent for House of Representatives. Mr Forrest was just asking why there was such a big difference between the Senate and House of Representatives—

Mr Dacey—The size of the ballot paper. People were frustrated that they could not get it to fit properly so they said, 'We will leave it outside.'

Mr FORREST—Okay.

Mr LAURIE FERGUSON—I have one minor question that continues on from Mr Forrest's point. There was also a late submission from one of my South Australian colleagues in regard to a seeming distinction in the way in which you pursue enrolment. I think you mentioned high growth areas as opposed to other areas.

CHAIR—Yes, there was.

Mr Dacey—High growth or target areas

Mr LAURIE FERGUSON—I have some concern at that seeming distinction that he puts forward in that submission. For instance, in my area it might not be defined as high

growth but we have a fair degree of flats which have high turnover—Harris Park, Granville, Parramatta—if they were to be basically not on the same as these new growth areas—

Mr Dacey—I will correct my previous statement, Mr Ferguson. It was my term of words when I said 'high growth'; I should have said 'high turnover of electors' or 'areas of high mobility'. In those areas we will continue, where necessary, to do door knocks. For instance, in very well established inner city areas where there are lots of students, it may not be appropriate and it may not be successful to use data matching to get information to update the roll, and in those areas we look at continuing to door knock or using other face-to-face activities. It was my words which were confusing you. It is highly mobile populations.

Mr LAURIE FERGUSON—Have you seen Mr Cox's submission?

Mr Dacey—No, I have not.

CHAIR—It is a very recent one which we only got last week. He actually mentioned an area where the high turnover area had been ignored for several years whereas a new growth area was being door knocked. He thought that, in many respects, it almost should be the other way around.

Mr Gray—We will certainly look at that particular comment and see whether or not our people in South Australia have a similar view. There are a couple of things I want to say when we are talking about continuous roll update: it needs to be made clear that we are not talking about the abolition of door knock. It is a more targeted approach that we feel ought to be adopted under the criteria as Mr Dacey has identified. I would hope that that picks up the problem that has been identified by Mr Cox and I believe that it probably would.

But it is the case that we are moving to new methodologies and techniques, which are also being initiated overseas—Canada being the most recent to move from enumeration through to continuous roll update. Indeed, we have had the benefit of some visits by our people across there, seeking to learn from their experience and trying to initiate some of those reforms and changes to better deal with the difficulties of maintaining a continuous roll here in Australia.

Mr LAURIE FERGUSON—Another minor point very quickly: I do not know whether you have already responded to this but it concerns Mr Lloyd's complaints about alleged deceased people still being on the roll. My recollection is that you clarified that there are actually people with the same name, et cetera. He was under the impression that John Smith died, whereas one John Smith died and there was still one naturally on the roll. I thought the committee at one stage asked whether you would come back to us as to whether we are going slightly over the top in regard to privacy rules in not telling Mr Lloyd that it was going to be looked at. That is my recollection.

Mr Gray—My understanding, Mr Ferguson, was that we had been asked whether or not we had actually conveyed the findings to the member and I think we had indicated that at that point we had not. I think you suggested that perhaps it would be a good idea if we did, and we have.

CHAIR—But you were not able to tell him the names of the people who really were alive and not dead that he thought were dead. He was given a list of people who were not alive but it ended up that some of them had passed away but some had not, and he did not know which ones they were. I thought we were told that you were not able to provide that information because of privacy reasons.

Mr Dacey—That is correct. We did not provide the actual names to the member; we provided those names to this committee and ask that they be kept confidential.

CHAIR—I think that is what Mr Ferguson is asking: are we going too far with privacy in that respect so that we can clear it up?

Mr Gray—Isn't that a question that is better put to the Privacy Commissioner? We are trying to abide by the various principles which have been promulgated by the commission. The question is whether we are interpreting them too narrowly—I do not believe that we are.

Senator MURRAY—Surely being dead is not private. It is public, isn't it?

Mr Cunliffe—But being alive involves the person still having an element of privacy, and the privacy principles which are laid down in the Privacy Act do not give anybody who is subject to them—that includes the AEC and other public instrumentalities—an ability to pass personal information to somebody that is not authorised to receive it.

Senator MURRAY—But you can for somebody who is dead?

Mr Cunliffe—That may be a separate issue.

Mr Dacey—Senator, these people were found to be not dead.

Mr Gray—It was alleged they were dead.

Senator MURRAY—By natural selection you would say, 'You have your list of 50 and these five people are dead,' then the other 45 are alive.

Mr Cunliffe—If that is a distinction that would be acceptable to the Privacy Commissioner. I think that the Privacy Commission might say, 'If you start with a set of numbers and of those numbers you knock out five, it is fairly obvious that the other 40 are being asserted to be alive.' They may see that as a loophole perhaps.

Senator MURRAY—It seems weird to me.

Mr Cunliffe—I think you would probably find some support in a range of instrumentalities.

CHAIR—It has been a constraint. With updates of rolls and things he may be able to sort it out by some other process.

Senator MURRAY—Mr Chairman, if I could deal with one issue and then we will return to your longer list. I want to come back to an area that was raised by Senator Faulkner and that is this issue of second preference votes. It seems to me that we as a committee and you as a commission have to perhaps decide on principle here: you can either go the specific route, which is trying to address a particular mischief, or you can go the general rule route. I agree with the spirit of what you are recommending.

I wondered if you have ever thought of cross fertilising your ideas perhaps with the experiences of the Trade Practices Commission, because essentially what you are trying to eliminate is to try to eliminate misleading and deceptive conduct. That area in law is developed by fairly general provisions in the Trade Practices Act, supported by case law which is now very well developed. I thought Senator Faulkner made a good point: if people want to get around things, they always try. It may be better for us to look within the Electoral Act for a misleading and deceptive conduct kind of provision with strong penalties rather than try to fix each problem incrementally as they come along.

My impression of the Trade Practices Act is that it has worked very well, having a broad provision supported by case law and strong penalties, rather than try to fix every circumstance. It is a twofold question to you: firstly, have you ever thought of going in that direction of cross fertilising by discussions with the ACCC; and, secondly, if you have not, would you consider that an appropriate thing to look at?

Mr Dacey—I can comment briefly and I would probably need some more information. I understand that, in seeking advice from DPP on the second preference how-to-vote cards, the DPP have advised that they are not a misleading and deceptive publication in terms of section 329 of the act. Therefore there may not be that relevance to the route that you suggest.

Mr Gray—One of the difficulties also is that our experience and I am sure the experience of parties is that that section 329, which was designed originally to take account of deceptive information being promulgated, has been defined rather narrowly as a consequence of case law. Therefore, I suppose our experience would tell us that we need to be careful about the general approach because it could, depending on the case law which emerges, be seen to be very narrow and not address or meet the issue we are trying to address. I do not think there is anything wrong with canvassing and looking at the experience of other agencies such as you have suggested, and we could clearly undertake to do that. Whether it leads us then to conclude that that is the best way to do it, I am not sure. But why not have a look, and I think we should.

Senator MURRAY—It is a suggestion, if you thought it was productive, because I fear the point Senator Faulkner was making; that is, if you fix one mischief then another might emerge—

Mr Gray—I think that is a legitimate point to make.

Senator MURRAY—may require us not only to do that but also to look at the general rule to see if that could be improved. Thank you, Mr Chairman.

CHAIR—I will just go through a number of things to try to tidy up some matters. Before I do that, if I could ask a couple of questions about your paper on dual and multiple voting. Paragraph 3.6 states:

In cases where a declaration vote is involved, checking may reveal that the wrong name has been marked off the declaration voter certified list. This stage results in more eliminations of multiple marks from further investigation.

Can you explain to me how you would know that it has been marked off incorrectly? Is it a separate roll that you keep of those declarations or something?

Mr Longland—There are separate certified lists kept. The ones that are used in the polling places, for example, record all those ordinary votes. We have a series of them that we use for absent, provisional and postal pre-polls. We try to combine those now because we are doing those scrutinies using the computer as far as possible, but they are separately marked off. It is the comparison of those lists through the electronic scanning process that throws up where there might be multiple marks.

CHAIR—So if John Smith has been marked off on a normal roll at the local school but he has also been marked off on one of the certified lists, when you go back and check who was a declaration voter, an absentee voter or a postal voter and there is no John Smith, that is where you can say that he has been marked off the certified list incorrectly.

Mr Longland—Not necessarily, but that is a part of the investigation.

CHAIR—Isn't that what this is saying?

Mr Longland—We go back and say, 'Is there genuinely an envelope for that person?'

CHAIR—Yes, That is right. And, if there is not, that means it has been marked incorrectly.

Mr Longland—It is a mistake.

CHAIR—The fact that you have to file a petition in relation to an election within 40 days if you want to challenge something, how does that coincide with the checking of multiple voting? For example, if you have 50 multiple votes and the election is won by 10, then clearly the election could have been another way. You state:

Assuming evidence of electoral fraud is uncovered by the AEC sufficient to have affected an election result, then a petition to the court will be considered by the commission.

A petition by an individual—

Mr Longland—No.

CHAIR—A petition by yourselves?

Mr Longland—A petition by the commission.

Mr Gray—By the AEC.

CHAIR—That can be done after the 40 days?

Mr Longland—No, but the timing of that comparison is really quite swift. It is generally within 10 days of polling day that we complete the electronic scanning and have available to ourselves that list of apparent dual or multi voters.

CHAIR—So that is done very quickly—

Mr Gray—It is done within the 40-day period which would allow us to come to a conclusion that, where it was potentially able to change that result, there is the provision for the AEC itself to petition the Court of Disputed Returns.

CHAIR—I see the detail of all of the ones from the 1998 election and that there is no further action on 90-odd per cent of them from the AFP. How many have ever been successfully prosecuted for multiple voting in recent years; do we know?

Mr Gray—Approximately three per election.

CHAIR—I do not suppose you have been able to come up with any commonality. But it would seem to me that the worst places were in Melbourne where there were three or four electorates that each had 50 or 60 multiple votes—sorry not multiple—

Mr Gray—Dual votes.

CHAIR—Dual votes.

Mr Gray—Whereas the multiples are in Sydney.

CHAIR—Yes. If I can give you one correction for table 3: my seat is a marginal Liberal seat otherwise I would not be here.

Mr Gray—What do we have?

CHAIR—Marginal ALP.

Mr Gray—I do apologise. I think I remember rightly that the bottom line on multiple voters is that there were 45 multiple voters, some of which we sought inquiry on, and the results are identified in that particular table.

CHAIR—I presume most of the multiple votes people—not the dual votes—just deny that they do it. Unless there is clear cut evidence there is nothing for the AFP to follow up.

Mr Gray—It has certainly been our experience that the first reaction is deny. If there is not then additional evidence to pursue, it is difficult to take it further.

Mr Dacey—On the other hand, we do get admissions from people who want to make a point. That is basically where we have been successful.

CHAIR—If I could just go through a few other things. You state:

The AEC telephone inquiry service responded to 533,451 calls during the election period but was unable to answer 610,171.

I assume that, of that 610,000-odd, a lot of those people are included ultimately in the 533,000—

Mr Hallett—I believe so, Mr Nairn. From memory this question was raised by Senator Faulkner at the hearing in April

CHAIR—Was it? I am sorry.

Mr Hallett—The figures that Telstra supply us are successful calls and unsuccessful calls. We do believe—on advice from Telstra—that many people who are unsuccessful on the first attempt do dial again later and are then part, as you say, of the successful calls. We have taken that on board. We are trying to get better statistics for the referendum that we are currently running so that we will be able to provide this committee and anyone else with more detailed information about the level of successful calls.

CHAIR—It is just that, when we are preparing the report, I thought if we left it like that it would give the impression that a lot of people did not get through. But somebody can ring five times and they are recorded five times in that 610,000 and once in the 533,000 because they got through the sixth time.

Mr Hallett—If I can add something from our response to the question that Senator Faulkner raised in April, which has just been brought to my attention: there are some major technical difficulties from Telstra's point of view in the system actually identifying—for example, if you call our number, it is engaged, you are unsuccessful, and you then call again 10 minutes later and you may be successful—that you were the person who was unsuccessful the first time and successful the second time. But we have gone to a fair bit of effort to try to refine the sorts of statistics that we will be providing following the referendum.

CHAIR—Good. You state that, between the issue of the writs and the close of rolls, the AEC received and processed 351,913 enrolment forms. I think we have discussed this before but just for clarification: they were processed but there was no checking done against those ones—

Mr Dacey—There was checking done within the system that it is a legitimate address, but in that close of roll period there is no field checking done.

CHAIR—They are checked that the address is legitimate and that is they are not already on the roll somewhere else.

Mr Dacey—That is correct. Those internal checks within our system are done.

CHAIR—Are done on all of them between the close of rolls and the actual election?

Mr Dacey—Yes. There are some phone calls made with address checks, if there is a problem with the address. If the address does not quite gel with what we have on our system.

Mr FORREST—Has the issue of photographs on the ballot papers been raised?

CHAIR—No, it is on my list here. You can raise it now, if you like.

Mr FORREST—In some of our inspections it was seen as a possibility of reducing the amount of assisted voting that occurs. As I understand it, the Electoral Commission does not favour it—I can imagine why—because of the impact it would have on the size of the ballot paper. But it could well be that it is a good option, especially in some of our remote communities, to have a photograph certainly in the House of Representatives. I can imagine the difficulties with the Senate paper. Isn't there some room to meet in the middle on such a suggestion?

Mr Gray—There is certainly always room to meet. If it were to facilitate and assist then we ought to consider it but there are also the constraints of practicality. We have to see how that might impact on the administration and the way in which we proceed with close of nominations, candidates getting photographs and getting them on ballot papers. It is a pretty major logistical exercise that we do engage in and one which does stretch and push the envelope in terms of timing.

But you would appreciate that we provide photographs in relation to ATSIC elections. So it is not unique. It is not unknown to us to have to meet that particular requirement in certain ballots that we conduct. If you are suggesting that it may not be appropriate for the whole of Australia but in certain locations to further assist people in areas where assisted voting may be high, then I think that is something to consider. But I would not want to indicate that it is without its logistical difficulties. I do not think we are denying or suggesting it cannot be done or must not be done. I am not aware of, in my time, ever suggesting that. But there are logistical practicalities and constraints that would apply. We would have to see whether or not that could be met. I am not sure the extent to which you feel that could apply across the whole of the national electorate.

Mr FORREST—It seems to be a problem in certain areas. I was toying with the suggestion of why not have photographs with a name actually in the polling booth as part of the wall of the booth so that people could say, 'I want to vote for him or her' and pointing. Is there the potential for that suggestion to be considered?

Mr Gray—You have to be careful because we are talking about the secrecy of the vote as well having to be protected. I cannot quite see the pointing out method, but there may be other methods by which a person at least knows the face of the candidate as opposed to just the name. That certainly is what ATSIC is about.

CHAIR—The Northern Territory, as you would be aware, have had photos on ballot papers in their Legislative Assembly elections now for a number of years.

Mr Gray—Indeed. I guess I was commenting on the pointing in a public way to the person you want. There are other ways of dealing with it. I think it is a matter we could give further consideration to and report our findings of practicality and what we need to do, particularly if it were limited to certain electorates where the committee was of a view that it might be a useful introduction. We could come back to you.

CHAIR—We certainly have strong evidence on it. The committee saw that it could be very beneficial and could be another way in which to assist the assisted voting circumstance, because a number of people would not require an assisted vote if the photograph was there. I take Mr Forrest's point regarding the Senate; I think the Senate is a different matter. But in the House of Representatives there are very few electorates where you have dozens of candidates. What would be the average number of candidates in any House of Representatives electorate—seven or eight probably?

Mr Dacey—Six, although you do get some higher ones.

Mr Gray—But if we are not talking about the whole of the country, then I think we are talking about possibly a more practical approach.

CHAIR—Perhaps—although I think some people might have some problem with that in saying it is only for some electorates and not others. I personally think that you would have to consider it for all of the House of Representatives seats.

Mr Gray—We will have to come back to you and identify what our considered thoughts were in relation to the practicality of that suggestion.

CHAIR—I know the Northern Territory act requires candidates to lodge a photograph with their nomination and they have to certify that that is a photograph of them of no older vintage than six months. So it is recent.

Mr Gray—And they meet the cost of that photograph, not the commission.

CHAIR—It is provided to the commission.

Senator MURRAY—I remember in Zimbabwe—because of the literacy problem—that they use symbols there for people to identify political parties because obviously the logistics of getting photographs are very difficult.

CHAIR—You could have a lot of fun with that.

Senator MURRAY—The winning party was a cockerel.

Mr Gray—In India you have a one bottle party, a two bottle party, a three bottle party and even a four bottle party—there are symbols galore, thousands and thousands of symbols,

in an Indian election. Yes, there are various means by which people seek to identify without necessarily reading a particular name.

Mr Cunliffe—New Zealand also has party symbols.

Mr Hallett—And Fiji.

CHAIR—I will try to pick out the questions that I need to go through in the time that I have left. One thing that was raised was more than one postal vote application coming in. If I recall correctly, more than one application could go out so therefore you could end up with one person putting in more than one vote. Would there need to be some sort of legislative change so that if you had the circumstance by which once you had sent out a postal vote ballot to a person and there was then another application to send to exactly the same person then that would not be done? So you actually stop it at the sending of the ballot paper rather than ending up with a circumstance where you have two and therefore presumably both are ineligible. They are both ruled out, so they get no vote.

Mr Gray—It has caused a difficulty, there is no question. It is something that we addressed in our original submission where we identified a process. I think that process would require legislation. Mr Dacey might like to make a comment.

Mr Dacey—We would probably need some legislative support to inquire of the electorate. Maybe there can be two legitimate applications. For instance, if the postal voting material did not turn up and the elector may have gone to the post office, picked up another application and sent it in because their first material did not arrive. But, in the main, you would expect that two postal vote applications may mean confusion. What we are more concerned about is getting the legislative basis to be able to reject multiple postal votes once the votes have been received by us, if we have more than one vote for an elector.

CHAIR—So what you are saying is that you could accept the first one that arrives and then reject any further ones that come from that same person?

Mr Dacey—That is correct.

CHAIR—That has the same result, doesn't it?

Mr Dacey—That is right.

Mr Gray—It is making sure that the second vote is not included in the ballot and making sure that only one is.

Mr Dacey—In terms of the application, we can handle that fairly well administratively, although we have suggested here that we do get some legislative support for that, but certainly strong support to give us the facility to be able to reject any more than one that is received, which we currently do not have. The act does not provide for that.

Mr Gray—And that is an important issue with the greater volume of postal vote applications now being received. We need to have a remedy to what is now becoming

apparent in terms of people receiving more than one invitation to fill in a postal vote application.

CHAIR—Turning to overseas voters and enrolment. You may remember that we had a circumstance of Mr Mueller who basically the only thing he could do was to come back to Australia for a month, get back on the roll and then depart again. He had no other way of getting on the roll. The committee feels that perhaps something should be done to address that circumstance. Do you have any other comments you would like to make? I know the commission did make some comments on it.

Mr Longland—Mr Mueller's letter outlined a process that appeared to him to be exceedingly bureaucratic, but it is in fact the case. That is where we stand with the law right now. Whether or not the committee is of a mind to make recommendations that people who in effect live permanently overseas but retain their Australian citizenship have an extended or complete right to vote would be something that you would need to turn your minds to. It is a difficult situation for us. We have very many individuals who come here, acquire citizenship and return to their home countries and who retain their name on the roll as I guess a part of a link to coming back to Australia one day.

CHAIR—I do not think the committee was probably wanting to go that far. It was probably more some of the individuals that were caught in between due to timing.

Mr Gray—Certainly the legislation does not provide that flexibility at this point. How you then provide for almost the exceptions rather than the generality is always the problem of legislation. Regardless of how you amend it, I think some people will fall through the crack somewhere. It is a question of whether we think we have the vast majority of people we are trying to provide that service and facility to covered by the legislation. Unless you do extend it, as Mr Longland has suggested, and I have understood you to say that is not quite the intention of the committee.

CHAIR—I do not think so. We did discuss this as a committee, but my feeling is that the committee was not talking about making sure that everybody overseas who may have lived overseas for 40 years—

Mr Gray—Can still vote.

CHAIR—can still vote. I do not think we particularly wanted to extend it to that.

Mr Dacey—The other issue picked up following recommendations from the last committee was also extending the rights to enrol from overseas. There are some restrictions on that. I think currently you have to enrol within two months of leaving.

CHAIR—We made recommendations about extending that. That has not been dealt with in legislation yet—has it?—or is it in some of the legislation that has not gone through?

Mr Dacey—No, that went through last year.

CHAIR—That was the bit that went through. There have been so many bills that it has been hard to keep track of the ones that got up and the ones that have not.

Mr Gray—That one actually went through.

Mr Dacey—The provision to be able to actually enrol from overseas has been expanded. Whether you want to consider an expansion even further to that to allow some more flexibility. But, as Mr Gray says, someone will always miss out and there will be someone disaffected.

CHAIR—Finally, section 44 of the constitution: do you think there is anything else the AEC can do to make sure potential candidates are fully aware of that part of the constitution?

Mr Gray—Mr Chairman, this was put to us in 1996 and we did move to ensure that within the candidate handbooks it was made very clear what the obligations and responsibilities of candidates were in respect of section 44. The committee accepted that it was not for us to give legal advice, and I think we have done as much as we possibly can. I think now the next step is a serious consideration as to whether the constitution ought to be amended and a referendum held in order to achieve that. That is as much as we can do and have done administratively. I really do not know what additional effort can be made to draw to the attention of candidates their obligation and their responsibilities.

CHAIR—You can only go so far.

Mr Gray—I think you can. If it is a continuing difficulty, I think the only remedy is one of saying, 'Is it now appropriate to be part of our constitution?' Clearly, there is sufficient debate within the public domain at this point to warrant serious consideration for a referendum.

Mr Hallett—If I can add to what Mr Gray said: in addition, we provided every candidate with a kit which contained, amongst the candidate's handbook and other items, an Electoral Backgrounder that our Director of Parliamentary Litigation Section had prepared based on advice both internal and external. So we did our best to ensure that every person who fronted up either standing for the House of Representatives or for the Senate was provided with what we believed was the best advice as to their options.

Mr Longland—In addition, we are working very closely with the political parties, particularly the larger ones, who nominate for most federal divisions and for Senate tickets. We do not see very many of those candidates any more. In fact, it is the exception rather than the rule. So we do not get them face to face to talk to them about nomination processes. It is through the parties that extra work is done by the AEC to bring these things to the attention of the party organisers, particularly registered officers.

CHAIR—Good. Thank you very much for your time today. As that is the last lot of matters, we will be a bit closer to finalising the report. At the moment we look like tabling the report not until early next year. If there are any other matters that we need to clarify, we will just drop you a line direct. Thank you very much for appearing today.

Resolved (on motion by **Senator Murray**):

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

Committee adjourned at 1.46 p.m.