



**COMMONWEALTH OF AUSTRALIA**

**JOINT STANDING COMMITTEE ON  
ELECTORAL MATTERS**

**Reference: Role of the Australian Electoral Commission in conducting industrial  
elections**

**MELBOURNE**

**Tuesday, 1 July 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

## JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Members:

Mr Nairn (Chair)

Senator Abetz	Mr Cobb
Senator Conroy	Mr Laurie Ferguson
Senator Minchin	Mr Griffin
Senator Murray	Mr McDougall

Matter referred:

the role of the Australian Electoral Commission (AEC) in conducting industrial elections under Part IX of the Industrial Relations Act 1988, including but not limited to:

- . Whether there should be some standardisation of the rules governing the conduct of industrial elections;
- . Mechanisms for the review of the conduct and integrity of industrial elections;
- . The cost of conducting industrial elections, including the impact on the resourcing of the AEC; and
- . The capacity of the AEC to provide assistance to organisations on a fee-for-service basis.

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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

*Role of the Australian Electoral Commission in conducting industrial elections*

MELBOURNE

Tuesday, 1 July 1997

Present

Mr Nairn (Chair)

Senator Conroy

Senator Minchin

Mr Cobb

Mr McClelland

Mr McDougall

The committee met at 10.00 a.m.

Mr Nairn took the chair.

[10.01 a.m.]

**PERNA, Mr Sal, Group Manager, Security and Investigation Service Group,  
Australia Post, 321 Exhibition Street, Melbourne, Victoria**

**RYAN, Mr Gerald Patrick, Corporate Secretary, Australia Post 321 Exhibition  
Street, Melbourne, Victoria**

**TAYLOR, Mr Terry, Deputy General Manager, Australia Post, 219-241 Cleveland  
Street, Strawberry Hills, New South Wales 1420**

**CHAIR**—I declare open the fifth public hearing of the inquiry into the role of the Australian Electoral Commission in conducting industrial elections. I welcome the witnesses and others in attendance. We will be taking evidence today from Australia Post and the Australian Council of Trade Unions.

I remind you that the proceedings today are legal proceedings of the parliament and warrant the same respect as proceedings in the Senate and the House. The deliberate misleading of the committee may be regarded as a contempt of the parliament. The committee prefers that all evidence be given in public, but should you at any stage wish to give evidence in private you may ask to do so and the committee will give consideration to your request. We have received your submission, and it has been made publicly available. Are there any corrections or amendments?

**Mr Ryan**—No, Mr Chairman.

**CHAIR**—Would you like to make an opening statement before we proceed to questions?

**Mr Ryan**—Yes, I would like to make a brief opening statement. We have sought to put a submission to this committee and to appear before it on our mail security policies and practices, and in particular those relating to postal ballots. Our submission has presented you with an overview of our security policies and practices. It has outlined as an example our process steps in the handling of the outgoing and incoming postal ballots in the 1996 CEPU New South Wales branch election, to review the increasing use of postal ballots and to deal with some other issues which, although not central, warrant comment and correction advice.

The thrust of our submission to the committee is that we work closely with the Australian Electoral Commission. Whilst the AEC has overall responsibility for the conduct of elections, we confer with them on postal handling arrangements for postal ballots, and we implement measures to satisfy the commission's requirements. Secondly, we have a strong mail security ethic amongst our management and staff. Thirdly, we have indicated in our submission that we have developed a wide range of security policies to

minimise security risk. These policies are supported by the application of a full-time specialised professional security and investigations service group.

We have developed thorough processes for the handling of postal ballots within the postal service to facilitate their integrity. We also operate high standard surveillance equipment. There is evidence of wider confidence in the integrity of the postal service for election purposes through the growth in this form of voting in municipal elections. Finally, Mr Chairman, we extend an invitation to you and the committee to inspect our security facilities should you judge that it would assist you in your considerations. Thank you. That concludes our opening statement.

**CHAIR**—In that regard, we have spoken with the secretary of the committee about the possibility of doing that. That was okayed by Australia Post, and after today's hearing we may determine other inquiries that we may have to make to finalise this inquiry. Maybe in that time period we will visit one of your locations. Is there a choice of location at which it might be easier to explain and demonstrate the system?

**Mr Ryan**—We could do it in one of a number of cities. We did have Sydney in mind because of the evidence that has preceded our appearance. We would be very happy to organise an inspection there if that suited your needs.

**CHAIR**—In your submission you have gone into some detail about your procedures of incoming and outgoing ballot papers. I understand from the submission that you were describing the procedures that were in place for the 1996 CEPU election. How did that differ from the 1994 election? Did it differ in a very fundamental change overall, or is it just in a minor way in some specific areas. Given the comments from Justice Moore out of his inquiry in 1994, was it a total revamp of the way in which you handled it?

**Mr Ryan**—It was not a total revamp. Certainly there were some additional steps and provisions taken as a result. Justice Moore made certain decisions and suggested proposals for the handling of the 1996 election. I think Mr Taylor, who is our deputy general manager for New South Wales, is probably the best placed person amongst us to identify and explain the procedures to you.

**Mr Taylor**—The difference between 1994 and 1996 is probably best described in that during Justice Moore's hearing we did look to make sure that we had accountable steps along the way with the handling of CEPU ballot papers. The introduction of the ballot papers to the postal network never changed in that arrangements were made with the Australian Electoral Commission on the format that the election could take. Meetings were held with the Australian Electoral Commission about how the election would be conducted. Ballot papers were counted and reconciled with the Australian Electoral Commission when they entered our mail processing system.

The main difference between 1994 and 1996 is that, instead of injecting them into the mail system and letting them flow through the system with other mail—for example, in New South Wales we processed between 12 and 14 million articles every day—they were held aside and sent separately. They were validated at each step along the way. In other words, when they left the original mail centre to go to what we call a terminating mail centre, the numbers of ballot papers were counted and reconciled with advice that they received, and they said there would be 300 or 2,000 or whatever it happens to be.

The next stage in the processing stage—when they are stored at the terminating mail centre—they are then sent to a delivery centre, which is the next level down the chain. They would then be validated again against a pre-advice number so you knew that they had been received. In that way we could be sure that the system was working and that people were not interfering with ballot papers.

**Mr COBB**—This is only for the CEPU ballot?

**Mr Taylor**—Yes.

**Mr COBB**—You do not do it for any others?

**Mr Taylor**—No.

**CHAIR**—Did you do any analysis of what that might have cost you to treat it as a special case—basically treating those ballot papers with kid gloves as they went through the system?

**Mr Taylor**—It cost us a bit of money. I do not have an exact figure, but you can imagine that if you introduce a separate system there is a cost involved.

**Mr COBB**—Are you keen to do it again in the future?

**Mr Taylor**—For the CEPU election?

**Mr COBB**—Yes.

**Mr Taylor**—A CEPU election finished yesterday. It has been running for a month. We followed the same procedures we set up in 1996 for the 1997 election.

**Senator MINCHIN**—Are you saying in 1994 that it was just treated as though it was normal mail? How were these ballot papers treated in 1994 as opposed to 1996? Were they just treated as normal mail with no special treatment at all?

**Mr Taylor**—They were treated for the service that they paid for, which was normal mail. They were paid for as normal mail and they were treated the same as the 12

million other articles that flow through the system each day.

**Senator MINCHIN**—How does what you did in 1996 compared with 1994 eliminate the possibility of the rounding up of ballot papers at various centres where workers have as their address for the delivery of the postal ballot their workplace? How does that prevent the thuggery, the intimidation and the rounding up that clearly went on in 1994?

**Mr Taylor**—It was alleged to have gone on in 1994.

**Senator MINCHIN**—Did the judge not find that?

**Mr Taylor**—We have no evidence that that took place in mail processing facilities. In fact, the vast majority of votes go to residential addresses. Only a very small number are addressed care of a mail centre.

**CHAIR**—Do you know what percentage that is?

**Mr Taylor**—It would be less than five per cent.

**Senator MINCHIN**—In the CEPU?

**Mr Taylor**—Yes. The majority of members of the CEPU in 1994 were from the Telecom side. They never came near Australia Post care of an Australian Post address. I cannot validate what people do after we deliver the ballot papers to them.

**Mr COBB**—Can you explain how you know that percentage?

**Mr Taylor**—We know the number of ballots that are posted, and the AEC advised us how many of those ballot papers would go to a mail processing centre where they were handed out by the manager to make sure the staff have got the ballot paper. That was the agreed procedure with the Australian Electoral Commission and people received their ballot papers.

**Senator MINCHIN**—Justice Moore found about 1,000 that were basically fraudulent. Do we know how many of them were addressed to the residence or to the workplace?

**Mr Taylor**—No.

**Senator MINCHIN**—That was never determined?

**Mr Taylor**—No. People received an advice from their Electoral Commission that they were to receive a ballot paper. If they did not get the ballot paper, there was a



process that they could go through to obtain a duplicate ballot paper and declare that they had not received a ballot paper.

**Mr COBB**—When did you first get a sniff that perhaps something was going wrong in 1994?

**Mr Taylor**—In 1994 I did not get a sniff of what was going on. Elections are fairly volatile in the way that candidates like to present themselves. There is various advertising material that goes around which we restrict from the workplace but which enters the workplace illegally and over which I have little control. For example, if you wanted to construct a smear sheet about somebody, the way you would enter it into the network is merely to drop a thousand of them into various street posting boxes across Sydney or anywhere. That is collected in a bag and our driver brings it in. It is tipped into a machine and then you have introduced smear sheets into the facility.

The standing instruction for our managers is to remove them and destroy them. I have noticed in the transcript comments concerning the 1996 election and smear sheets. Most of those smear sheets that were circulated in 1996 were done by direct mail means. They were put in envelopes and addressed to individual people at their home addresses and a 45c stamp was affixed, and they were posted in the normal course of mail. Very few of them entered mail centres illegally, although some did, but nobody here knows of any that took place in 1994.

**Mr Ryan**—The procedures that were implemented in the 1996 CEPU New South Wales branch election are known throughout our organisation and the state. To some extent they will be a template for the handling of other postal ballots in consultation with the Electoral Commission. It will be a matter of judgment of potential risk as to the types of detailed measures that would be implemented. Certainly a template is there for reference purposes.

You also asked about other steps that we took to limit the sort of behaviour that apparently went on either within the mail centre or, in our view, largely outside the mail centre. That is addressed on page 12 of our submission. Certainly we had a much stronger APSIS presence in the receiving mail centre. They were also rostered on at other mail centres. Staff were reminded through staff information bulletins of their obligations. We reminded them of the intended use of video recording. They were reminded that unauthorised material such as smear sheets should not be placed in the system. Where we did find an individual who did that, that individual was warned and counselled.

**Senator MINCHIN**—What did this authorised union representative do? What was the offence?

**Mr Taylor**—At a mail processing facility in Sydney an authorised union representative or an accredited union representative was handing out election material.

**CHAIR**—Unauthorised?

**Mr Taylor**—Yes, unauthorised election material. He was told to desist. He then proceeded with counselling under our code of employee standards.

**Mr Ryan**—The third point I wished to make was that these detailed procedures and these supporting activities in our view and our judgment led to a clean bill of health in relation to the 1996 election and should give confidence about the way in which we will handle future ballots, particularly those where any discerned risk is identified. In the case of the current CEPU ballot that concluded yesterday, we have had no indication of any problem.

**CHAIR**—How are you going to make that decision as to whether you should implement those stricter guidelines given Mr Taylor's comment that he had no sniff of any problem in 1994 and given the subsequent court actions that took place, similar sorts of things could have been going on for years? In fact, there has been a Queensland inquiry going back in the 1970s and 1980s that suggests that in virtually every union ballot there is that sort of problem. How are you going to decide upon at which point you introduce the higher risk operative?

**Mr Ryan**—It is difficult for me to give a definitive response in advance of particular issues confronting us. I think what we can assure the committee of is that we would err on the side of safety in discussion with the Electoral Commission. Where they require the application of these sorts of procedures, we will certainly do so. We are not going to put at risk the integrity of postal ballots.

**Senator MINCHIN**—Would you do it for all CEPU ballots from now on as a matter of policy?

**Mr Ryan**—Taking into account the experience of the past, I expect we would.

**Senator MINCHIN**—I think there is a particular issue relating to postal worker union ballots being conducted in this way that raises concerns that might not necessarily arise from most other unions.

**Mr McCLELLAND**—Leaving aside 1996, if I understand your evidence, in 1994 there were nonetheless security provisions in place. There was the code of conduct, there was surveillance and I gather there was video surveillance occurring in 1994. Or was it just 1996?

**Mr Taylor**—Video surveillance of not just election material but our general operations took place after 1994.

**Mr McCLELLAND**—Did APSIS have a presence in 1994 in the system? They go

back about 100 years, do they not?

**Mr Taylor**—Yes. They were involved. We involved them to a greater level in 1996.

**Mr McCLELLAND**—If an employee was found in 1994 to be tampering with the mail, I think at the end of your submission there is reference to various sections of the Crimes Act. Were pretty serious penalties attached to those offences?

**Mr Taylor**—Yes.

**Mr McCLELLAND**—What sorts of penalties are we talking about?

**Mr Taylor**—People have been sent to gaol.

**Mr McCLELLAND**—For tampering with the mail?

**Mr Taylor**—Yes.

**Mr McCLELLAND**—If you had seen or had substantial grounds to believe someone had been tampering with the mail, what is your prosecution policy? Is it discretionary or is it mandatory in terms of referring them to the DPP?

**Mr Perna**—Perhaps I could address that. In terms of both your questions, the first is that we have legislation dealing with that—both the Commonwealth Crimes Act for offences dealing with illegally handling with mail and the Australia Postal Corporation Act. The Australia Postal Corporation Act has a penalty of two years for unauthorised tampering with mail. The prosecution policy is mandatory. We have no discretion at all. All matters are referred and the judgment is made by the DPP, not by us.

**Mr McCLELLAND**—Did that apply in 1994 as well as 1996?

**Mr Perna**—Yes.

**Mr McCLELLAND**—Was any incident referred to the DPP in 1994 with regard to mail tampering?

**Mr Perna**—Not that I am aware of.

**Mr Taylor**—During the 1994 election or during calendar year 1994?

**Mr McCLELLAND**—During the course of the 1994 CEPU election?

**Mr Taylor**—To the best of my knowledge, no.

**CHAIR**—On that point, in your submission you said there have been 56 briefs in three years passed on to the DPP. Can you tell me how many successful prosecutions have been initiated by APSIS in the last three years or in the last five years?

**Mr Perna**—I cannot answer that at the moment. We do not have that available, but I would suggest clearly the majority of those would be successful prosecutions.

**CHAIR**—Do you think the majority of those 56 that were referred to the DPP were successful?

**Mr Perna**—Yes. The standard that is used is the normal standard applied to any criminal investigation looking for the elements of proof. As I say, I would be guessing that the clear majority of those would be prosecuted.

**CHAIR**—Can you provide the committee at some stage with some sort of summary of the briefs that have gone to the DPP each year going back a few years and the outcome of those?

**Mr Ryan**—Certainly.

**Mr McCLELLAND**—Do you think we should clarify whether they are employees or outside people?

**CHAIR**—Yes, if we could. Presumably they are initiated on employees and others. Could you break that up between employers and others?

**Mr Ryan**—Certainly.

**Mr COBB**—How long have these fairly stringent rules been in place?

**Mr Perna**—With respect to which ones?

**Mr COBB**—Security with tampering with mail.

**Mr Perna**—The Commonwealth Crimes Act offences have been there for years. They specifically have a section in the Commonwealth Crimes Act that deals with postal offences. With the enactment of the postal corporation act and its amendments following 1989, they included what they call prohibited conduct so that was opening, examining, unauthorised tampering and those sorts of issues.

**Mr COBB**—I remember back in the eighties in Dubbo there was a woman making constant complaints that one or more characters in the central post office was tampering with mail on a regular daily basis to a large degree, and that never seemed to go anywhere. In fact, she ended up being persecuted out of the work force. Are you aware of

that example?

**Mr Perna**—No, I am not sure of the details. The policy is a strict policy. As has been outlined, we do not allow ourselves the discretion. We do not want the discretion of deciding. That goes to the extent of looking at the character of the person that is accused.

**Mr COBB**—How many complaints of a reasonably substantive nature do you get in the course of a year for tampering with mail?

**Mr Perna**—I do not know those figures.

**Mr Ryan**—We can get those figures for you.

**Mr COBB**—What about the delivery of mail? For example, I have heard a number of members say on a regular basis with household and news letters, for example, that they are either delivered in the wrong areas or someone reports that piles have been left in garbage bins and these types of things. Is this a frequent complaint?

**Mr Perna**—I do not think we have those figures.

**Mr Ryan**—In the area that I manage, I get corporate complaints. Occasionally, and I would say very rarely, I get a complaint of that nature. I would like to go back a step. Where we get allegations of tampering, we treat that very seriously. I do not know about the particular case you spoke of in New South Wales, but it is not in our interests not to treat it seriously. The integrity of the mail is absolutely essential to the success of our business. Where we get allegations of tampering, they are investigated and they would normally be investigated by security. Where any evidence is gathered that suggests there may be a criminal offence, it is automatically sent to the DPP. I do not want to leave any suggestion that we do not take tampering very seriously. We act on it. I am afraid that I cannot comment on the particular case.

**Mr McDOUGALL**—When you give us those figures in relation to the number of tampering cases that you have, is it possible to give us a couple of years before the introduction of the TV and then after? Is it evident to you that you have been able to pick up more cases since the introduction of the surveillance or have you not seen an increase?

**Mr Perna**—I think it would be difficult to try to show the effect of the CCTV, the policy and the actual installation because we would have to look at each individual mail centre where those complaints had gone through. It would be difficult to look and say, from this point onwards, it made a difference. It certainly has made a huge difference in the culture and staff awareness issues, because the CCTV is not covert. It is evident, and it would certainly contribute to the perception people have of whether there is surveillance going on or not?

**Mr McDOUGALL**—When the TV is operational, it is obviously operational right throughout the working hours of the mail centre. Is that monitored by a permanent personnel or is that reviewed at a later date? If it is reviewed, is it all reviewed or is just a sample reviewed?

**Mr Perna**—It depends on the circumstances, whether we are running an operation or whether we have a particular project going on at the time. In most cases, if there is an operation, it will be under constant monitoring by our own people. If it is part of an ongoing process, it will be reviewed at a later stage?

**Mr McDOUGALL**—Are all the tapes always reviewed or just a sample?

**Mr Perna**—No, not necessarily reviewed unless we have some reason to review those.

**Mr McDOUGALL**—I note that you have a staff of 78 and that 27 of them are in New South Wales.

**Mr Perna**—Yes.

**Mr McDOUGALL**—Right throughout the state do they go round all of the facilities, or do they concentrate in certain areas because of what you perceive as known problems?

**Mr Perna**—In New South Wales, for example, we have two officers—one in the Sydney central business district and one in Canberra. They work both on pro-active and reactive roles. If we have problem areas, we will tackle those problem areas but we do not restrict it to those. We also use the managers of the units and the facilities to administer security procedures and measures in their own facilities to pass that message on.

**Mr McDOUGALL**—I would like to go back to the procedure that you have in place in relation to handling outgoing ballots. You have said that you do not plan to follow that procedure all the time. What would happen if a set of moral rules was put in place and the AEC required you to do that?

**Mr Taylor**—For all elections?

**Mr McDOUGALL**—For all elections.

**Mr Taylor**—I think we would have to review how much we would charge to handle those products.

**Mr Ryan**—If that was put in the AEC rules, we would abide by it absolutely. As Mr Taylor has indicated, there may be a cost issue between us and the commission. There

would be no doubt that it would be implemented.

**CHAIR**—Earlier we were talking about high risk ballots and the fact that you might implement stronger rules. If the AEC came to you and said, ‘We are going to conduct a ballot for a particular union and we have certain reasons to believe that we need absolute security and surveillance,’ you would negotiate with the AEC if you believe that the requirement they were asking you to implement was a fairly costly procedure. You would be negotiating with them over the cost; is that right?

**Mr Ryan**—Yes, we would. The underlying issue is that the security of postal ballots would be paramount. We would have a commercial negotiation on the rate. As in all commercial negotiations, the rate is eventually set. I doubt very much that we would find a situation where we would refuse to implement any procedure required by the Electoral Commission because of a dispute over cost.

**Mr McCLELLAND**—I go back to the 1996 election of the CEPU where you fully met the requirements of the AEC, or the AEC were happy with what you had put in place. Which came first: did you meet the AEC’s requirements; or did the AEC have a look at what you were prepared to do and was it happy to tick off on that?

**Mr Ryan**—I think Mr Taylor may be able to answer that question better than I can. I understand that there were quite a range of discussions between us and the AEC, and then the approach was agreed between us.

**Mr Taylor**—The changes we introduced in 1996 were ones suggested by Australia Post. We discussed those with the AEC, and they accepted those arrangements to stand in place of the previous ones.

**Senator MINCHIN**—Did they suggest anything additional that you felt you either could not or would not do?

**Mr Taylor**—From memory, no.

**Senator MINCHIN**—If we were to suggest that the sort of procedures you had in place for that election should apply to all trade union elections conducted by post, what would be the consequences, the issues that would arise? Is it simply cost? Is it mechanically and physically possible for you to do that for all union elections, as far as you are aware? Is the only issue cost?

**Mr Taylor**—Yes, we could certainly do it, although my understanding is that there are a fair number of elections that take place.

**Senator MINCHIN**—I appreciate that. That is why I am asking the question: given that there are a lot of elections that take place.

**Mr McCLELLAND**—Just on that, reference has been made to the Cook inquiry. It is a long time since I have seen the terms of reference, but I think they related to Queensland state unions. But even there I am not sure that it was found that election irregularities resulted through the mailing system. I am just trying to get a handle on how dramatic we need to be in addressing mailing issues. You fellows, if I can say this, may be in the best position to give an indication of that.

How many other elections are you aware of where there have been irregularities found? I should not use that terminology, because I am not even sure that Moore found that irregularities had occurred as a result of the mailing system as opposed to people collecting votes, whether from the individual's hands or picked up elsewhere; I am not sure that he necessarily made that finding. But, leaving aside the 1994 election—and Moore's decision will speak for itself as to what he found—are you aware of any other election where it has been found that an irregularity has occurred as a result of an irregularity or problem with the mailing system?

**Mr Ryan**—Personally, I am not aware of any other case. Recently, we asked the AEC to give us an ad hoc number of industrial elections they conducted recently, and the number about which they had complaints relating to the postal ballot system and the handling of postal ballots. We could only find one in that instance.

**Mr McCLELLAND**—Was that in 1994?

**Mr Ryan**—That was in 1994. There may have been one or two others. But, if we are looking at proportions, it is a very small proportion. I will go back to one point I made before about risk elections. Really, that is a matter, in our judgement, for the Electoral Commission to make an assessment on. Once having done that, we then talk about the arrangements that might be put in place to meet that risk.

**Mr McCLELLAND**—I have done a bit of an Internet search and I have not found one. The closest I have got is a South Australian election where it was found that the returning officer had not taken the appropriate steps to ascertain the whereabouts of unaddressed mail. But that was not seen to be an irregularity with the mailing system; it was more directed to the returning officer's lack of diligence. That is the closest I have got. Would your understanding be consistent with that?

**Mr Ryan**—Yes.

**CHAIR**—With the security measures, is there any different system used during federal elections as far as postal ballots are concerned, or would they just be processed in exactly the same way as any other postal ballot system?

**Mr Ryan**—Not that I am personally aware of. What we have to realise within post is that every letter that goes through our system is valuable; it deserves to have integrity



placed on it; it is an important document. That is the attitude we apply to all the mail that goes through our system.

In the case of the 1996 election, I think in our submission we included a copy of a staff information bulletin which was issued. This is done as a normal thing in elections of this sort.

**CHAIR**—In the 1996 federal election?

**Mr Ryan**—Yes. This bulletin emphasises that post adopts a neutral position. Obviously, it has an important role to play in relation to postal ballots. Staff are reminded that we adopt a neutral position, and they are reminded of other interests that members or other people who are going for election may have in getting information about electoral boundaries and such. Apart from reminding staff of those obligations and ensuring that they are ready to assist candidates, then I am not aware of any special provisions that were or are taken for federal elections. Mr Taylor may be able to add to that.

**Mr Taylor**—No.

**Mr McDOUGALL**—You are getting more and more involved in postal ballots, particularly in local government elections in Tasmania, Victoria and South Australia. The last Tasmanian local government election I believe was this year. Was there any complaint or irregularity in regard to that election?

**Mr Ryan**—None that I am aware of. We appeared in front of another committee recently in relation to the Constitutional Convention. In preparation for that, we had reports from each of our states who have been involved in municipal elections, and we certainly had no negative report from Tasmania or complaint about the handling of postal votes.

**Mr McDOUGALL**—You have not found that as too big a task at times?

**Mr Ryan**—No, certainly not. Indeed, the Electoral Commission in each state has commended the efforts of our local managements and staff in terms of processing postal votes.

**Mr McDOUGALL**—I notice in your comments that you say postal ballots were established and they are growing, even in general elections; it seems that, every time there is a general election, more postal ballots are cast. But you also say that they are a cost effective way of conducting a ballot. What is your evidence for saying that they are cost effective?

**Mr Ryan**—I guess the simplest example I can give you is that, in the recent appearance before the Constitutional Convention, the AEC estimated the attendance ballot

was of the order of 40 million or 45 million. I think the others here might know the figure precisely, but it was a considerable sum. The postal ballot, however, certainly in terms of our costs to the commission, was in the range of \$9 million to \$12 million, depending on the size of the envelope used. In some states, I think the size of the envelope may have been larger than the standard letter. That is the best indicator I can give you. But probably the commission is better informed and would give you a total overview. I am talking only postal costs.

**Senator MINCHIN**—Just on that issue, as you may have seen, a number of federal parliamentarians in the recent debate on the convention bill made what I thought were somewhat derogatory comments about the security of postal balloting for the convention. They suggested that it was an unacceptable method for electing delegates to the convention because of worries about security of postal ballots. Would you like to take this opportunity to respond to that sort of comment that has been made?

**Mr Ryan**—To be honest, I did not read those comments.

**Senator MINCHIN**—Do you have complete confidence in the capacity of Australia Post to guarantee or ensure maximum security for postal balloting for something like a convention?

**Mr Ryan**—Certainly we do, and we put that view strongly to the committee that was examining that Constitutional Convention issue. We are talking here of security within the postal service.

**Senator CONROY**—Is there a known republican movement inside postal offices? Are there any organised republican meetings?

**Mr Ryan**—We are a very diverse organisation; I am sure that some people have those views.

**Senator MINCHIN**—This raises the issue of the identification of material as being postal ballot material. I asked Mr Cook about this when he appeared. On the face of it, it appeared to me that, if postal ballot material is not obviously marked in any way, then presumably with it going through the mail system it ought to be secured. But he suggested that very experienced mail handlers are able to tell whether an envelope is postal ballot material, whether for a parliamentary election or any other election; therefore, it is exposed to potential for tampering. Is that a fair comment?

**Mr Ryan**—No, I do not think it is. The evidence of the 1996 election shows that that assertion is not true. We validated at each point of the outgoing process the number of ballot papers that were being handled at each point. There were no discrepancies. That does not suggest to me that there was much scope for a postal delivery officer or others to extract those ballots from the system.

**Senator CONROY**—I think the point Senator Minchin is trying to get to is not necessarily the act but the identification. I have been a member of a number of unions and I have seen many ballot papers and envelopes, and they are fairly standard in terms of colour and size. They have a return post office box, which is fairly easy to identify as coming back to the AEC, as opposed to the majority of other mail that goes through. It is an unusual size, colour and format of envelope. If you were just standing there and pouring a bin onto the conveyor belt, you could probably see that it is 10 or 15 or whatever of that type of envelope. Whether you then have the capacity to do anything about it is a separate issue.

**Mr Ryan**—I think that is the issue: whether one has the capacity to do anything about it. Certainly, as Mr Taylor says, we would handle—and that means double handle—some envelopes. We would handle something like 12 million to 14 million articles a day in New South Wales alone. That is a hell of a lot of articles, and there is not a lot of staff. They are handling massive amounts of mail, and all sorts of envelopes are coming through that have their own peculiarities. So there is a blur of material coming through. Much of it is handled through OCRs; it is not manually handled as much.

**Senator CONROY**—Given that it is a standard envelope, if it is returned in an envelope that is not standard, you would not have the same identification problem. Most of it would hit the conveyor belt and go through the computer just as it came back in.

**Mr Ryan**—Perhaps Mr Taylor might like to explain the system of how an incoming ballot paper comes through the mail centre and is processed.

**Mr Taylor**—Have you seen the security arrangements that are in place for ballot papers for the Australian Electoral Commission; have you actually seen the envelopes, the tamper proof envelopes? I guess if you posted a ballot paper in a street posting box, it would go into a bag and that bag would be cleared by a driver, along with many hundreds of other articles. It would then be conveyed to a mail processing plant, with many bags from many street posting boxes.

Those bags then are tipped into a processing line; that is a machine that faces envelopes up all the right way, puts a stamp in the right area and cancels a stamp. I am talking about hundreds of thousands of these going through these machines. Then they are taken from that machine in trays and put through an OCR machine. That is a machine that electronically reads the address on an article. It sends a message back to a computer and says that this is the destination, this is the postcode, and asks whether they match, and the computer says yes. It does that at the rate of around 35,000 articles an hour.

That article is then directed to a stacker on this OCR, or it is placed in a tray. Then a label is put on the tray as to where it is going. It is taken to a dock, it is consolidated with other product going to that destination, and it is put onto a truck. It is taken in that process, along with millions of other articles. It is mixed; it does not stand out in isolation

from people posting many different types and shapes of articles. It is generally of a standard size.

**CHAIR**—With what I would call the sort of kid gloves operation of the 1996 CEPU, how did you identify all those ballot papers to give them the special treatment?

**Mr Taylor**—We did that from when they were lodged. The ballot papers are brought to us by the Australian Electoral Commission. They say that there are 20,000 ballot papers or 20,000 articles they wish to send. We then count those articles by the machine; we put them through an OCR machine and—

**CHAIR**—These are the ballot papers going out from the individual—

**Mr Taylor**—That is right. Throughout the mail centre where we process these articles, for example, there are three OCR machines. We pick a machine, and we sort them on that machine. The machine tells us how many articles have gone through, and it will say that there were 20,102, or whatever. The Electoral Commission will say, ‘We’re lodging 20,102’—and that is a validation. Once it goes through that machine, those articles are broken up into where they are to go; in other words, what we call a terminating facility. That may well be another Sydney mail centre; it may well be a country mail centre.

Those articles are then taken from the machine into the bag. We secure them on the dock to the destination where they are to go. The receiving centre which is to receive them is told, ‘You will receive, at this time, this despatch with this number of articles in it for your region.’ A member of our security service watches those articles until they are despatched. They are then put on trucks where they go through our network.

When they are received at a terminating mail processing facility, those articles are in a secure cage. They are taken out of that and run through the OCR machine at the terminating facility where the number that they were to receive—say, 2,000—was then validated to say, ‘Yes, there are 2,000 there.’ When they come out of that machine, they are separated into the delivery groups. So we are breaking this process down all the way. There might be 200 for this group, or 10 for this one, or 50 for this one. It depends on where people live.

**Senator CONROY**—I know that we have just finished a national AWU election and the Victorian Metal Workers election. Is it possible for the committee to come and view this process? I understand that there are a couple of elections coming up in the next six or eight weeks. We might be able to watch it all get dropped off, and then watch the incoming mail, especially for the few first days afterwards.

**Mr Taylor**—Yes.

**Senator MINCHIN**—Do the staff that are handling that special treatment mail all the way through know what it is they are handling; do they know that in this case it is a CEPU—

**Mr Taylor**—Yes.

**Senator MINCHIN**—They are not specially selected staff; presumably, they are just the normal staff who would be on. Is that right?

**Mr Taylor**—They are oversighted by security staff.

**Senator MINCHIN**—There are people from the security service at each stage.

**Mr Taylor**—Yes, particularly in the mail centre where you have a large concentration of the product moving. Then it gets down to delivery groups.

**Senator MINCHIN**—Is the security overt or covert?

**Mr Taylor**—Both.

**Mr COBB**—Of the several hundred postal ballot elections that are conducted every year, how many is Australia Post notified of in advance?

**Mr Taylor**—With the Australian Electoral Commission for industrial elections?

**Mr COBB**—Yes.

**Mr Taylor**—Mainly the CEPU. No special arrangements are put in place for other elections. They enter the mail stream, the mail system, as a lodgment. If you lodge 30,000 articles, they are just treated exactly the same as other articles entering the system. You may well issue cheques worth \$2 billion to go through the system; but it is the same process.

**Mr McDOUGALL**—You do not know necessarily that there is an election.

**Mr Taylor**—No.

**Senator MINCHIN**—From your point of view, if mail is not treated in the way the CEPU mail is treated, would it enhance security if all efforts were made to achieve anonymity of the mail—that is, if there were the least possible identifying characteristic? That at least would reduce the possibility of tampering based on an awareness that a mail item might well be a valid—

**Mr Taylor**—The Australian Election Commission do change the format of the

envelopes.

**Senator MINCHIN**—Deliberately?

**Mr Taylor**—Yes.

**Senator MINCHIN**—But in terms of return to sender, what about an anonymous sort of box that does not indicate it is the AEC?

**Mr Taylor**—This is an undelivered mail piece?

**Senator MINCHIN**—I have not seen an envelope, but presumably they have a return to sender address. Is that identified as the AEC?

**Mr Taylor**—I think it is addressed to the returning officer. I am not sure of the AEC. I think it says the returning officer.

**Senator MINCHIN**—That is a very bald statement, but it is something to do in an election, is it not? I am just wondering whether—and this is a bit beyond your bailiwick—from your point of view, it would be better if every effort were made to ensure the least identification of mail possible where it has anything to do with elections when they are handled in the general mail.

**Mr Taylor**—I think you are talking about two things here. One is the return of an undeliverable piece of mail. Is that what you are talking about, or are you talking about the return of the ballot paper itself?

**Senator MINCHIN**—Who it is from on the front of the envelope and then a return to sender address on the back. If you are trying to minimise the extent to which there is the potential for people to recognise that it is something to do with an election and then be tempted to tamper with it, presumably you would want to eliminate as much as possible any identification of that envelope either on the front or the back if it had anything to do with an election.

**Mr Taylor**—If they wanted to do that, they could lease a private box at different locations and put a different return address on the back of each article. That is up to them.

**Senator CONROY**—From the point of view of security, it would be simpler and cheaper to have them all coming back to the one point. It involves a greater stress in terms of potential for getting out large numbers. But if you put them into 10 or 20 different PO boxes around the state, to come back to another point, you leave yourself 10 or 20 points to cover. However, if they are all coming back to the one point, the one PO box, then you can at least concentrate your security efforts on the one spot.

**Senator MINCHIN**—If you put the returning officer, you immediately signal that this has something to do with an election. If you just state the box number, you are eliminating it. From your view in terms of trying to ensure that people within Australia Post are not tempted to tamper with mail, the anonymity of it would enhance your operation.

**Mr Ryan**—You are quite right. Anonymity would reduce an already minuscule risk.

**CHAIR**—I thought we had evidence from the AEC that the bulk of their mail, including things for ballots, go out in standard AEC envelopes and you would not know whether it was a letter telling somebody that they should have changed their enrolment. There are all sorts of correspondence. Thousands of letters must go out of the AEC virtually every day that have nothing to do with ballots. I would have thought there would be value in the fact that that sort of correspondence from the AEC should not be separately identified to ballots for that reason.

**Senator CONROY**—The outgoing is a standard AEC. It is the incoming return to the Electoral Commission which is a much more easily identifiable envelope at the moment, notwithstanding that we suggested earlier, I think, that they change their format. I have seen just a standard one over the years, and they are much more easy to identify with, as you say, the returning officer coming through on them. With the outgoing stuff, certainly you could be knocking off the electoral letter of 200 people saying, ‘You’re off the roll,’ as opposed to 200 completed ballot papers. A completed ballot paper coming back is probably an easier one to identify than the outgoing one.

**Mr Taylor**—With completed ballot papers coming back, we allocate a separate postcode so that we can monitor and undertake security to ensure that those items come through the system. Given that the format of these articles enables us to process them by mechanisation through OCRs, they can go back to a particular postcode.

**Senator MINCHIN**—Did you explain to us what happened with the CEPU mail coming back in, in 1996? You explained to us the going out.

**Mr Taylor**—If you recall, I explained to you, if you took a completed ballot paper and placed it in a street posting box, what the process would be. I went through that system.

**Mr Ryan**—They arrive randomly, and are sorted through OCRs. In that particular case, they were sorted through a specific postcode in a specific part of the OCR, which was monitored continuously by APSIS.

**Mr Taylor**—That is completed ballot papers.

**Mr COBB**—Moving on to Quentin Cook’s dismissal, about which Judicial Registrar Locke made some critical comments: with the benefit of hindsight, what would Australia Post have done differently in handling that matter?

**Mr Ryan**—As distinct from the benefit of hindsight, what we have done as a result of that decision and a number of other influences is to initiate a review of our code of conduct processes by an external company to establish whether we need to modify those processes in any way to get to best practice in the way in which we handle the code of conduct. I guess you could say that, in particular, some of the processes applied in that case were found wanting. I am speaking now of the way in which the investigation occurred and the inquiry proceeded. So we are acting on that; we are not sitting on our hands. We have a group, an external company, to advise us, and we are likely to get that report in July.

**Mr McCLELLAND**—That is in terms of procedural fairness, and so forth, is it?

**Mr Ryan**—Yes.

**Mr McCLELLAND**—This, as you are aware, has been an issue of some controversy. I have a copy of the findings of Judicial Registrar Locke in front of me. On page 46 of her decision, she refers to Mr King, who I gather was counsel for Mr Cook, submitting that it was open to the court to find that Mr Cook’s employment was terminated on the ‘grounds of partly for political beliefs’. On page 47 of the judgment, she analyses the evidence and, while she refers to a comment made by Mr Gray, comes to the conclusion:

Thus, I cannot be satisfied that this had any foundation on the evidence.

That is, on my reading of her finding, she expressly found that Mr Cook was not dismissed on ‘grounds of partly for political beliefs’. Is that your understanding of the findings?

**Mr Ryan**—That is certainly our understanding. For the record, we want to assure this committee, firstly, that there was no external political influence on post in relation to that matter. It was a disciplinary matter from start to finish; that is all it was. There was no internal political coercion, which I think is an assertion that has been made by a previous witness before you. Mr Roach, who I think was the initial person who complained of Mr Cook’s behaviour, was not involved in the decision to terminate Mr Cook, nor was he involved in the inquiry leading to Mr Cook’s dismissal. We believe, quite strongly, that the decision of Judicial Registrar Locke clearly indicates that she was not satisfied that there was any political motivation behind his dismissal. She also makes the point that what Mr Roach thought—because there was some controversy about some comments he had made to Mr Cook—was not evidence against others; and, after all, it was others who conducted the inquiry and took the decision; nor has any corroboration



been found in the findings of Justice Moore.

**Mr McCLELLAND**—Just on that, at least one journalist—and, indeed, one journalist has given evidence before this inquiry or committee—pinned himself very heavily on a sentence obtained on page 47 of the judgment where Judicial Registrar Locke said:

In passing, His Honour—

that is Justice Moore—

did remark that it was difficult to understand how these matters—

and I circled these words—

had occurred without the knowledge of management.

That is perhaps an unsatisfactory sentence with respect to the judge, because these matters could mean the matter of individual workers handing over their envelope, once they have received it in their hand at the conclusion of the postal process; or it could mean a reference to voting papers en bloc being signed.

I can ask this question in these two steps. How do you respond to that comment? In particular, do you understand that reference to these matters necessarily implies that Justice Moore found that mail had been waylaid in the mailing process? That is the first issue.

Secondly, if it is in any event a finding or a reference by Justice Moore to ballot papers being handed over by an individual once it is founded, how do you respond to that imputation that Australia Post management may well have seen employees handing over their ballot paper to a union official? Is it the role of Australia Post to prevent an employee handing over their envelope to a third person, once they have received it at the end of the mailing process?

**Mr Ryan**—I will answer the second issue first. It is not enough for us simply to say that mail needs to be secure in our mail centres. If we become aware of the potential for that sort of behaviour to occur—votes being collected—there is an onus on us to do something about that. When we became aware of that out of Moore's decision, we took steps in the 1996 election to remind our staff that that action was illegal. We also had more extensive CCT coverage of the 1996 election. I guess that could have been a disincentive to collection on site. To the extent that we might have contributed to that lessening, I think that was a positive step by us.

As to the first question, I think you were asking whether we felt that Justice Moore

was talking about a finding that some mail had been misappropriated within the mail system. Firstly, he did make some comments in the course of his judgment but he made no formal finding to that extent. I think he indicated that it was unclear to him largely whether these votes had been 'collected' or whether they had been stolen, although in our judgment far more were collected than stolen. To the extent that he did suggest that this 'could not have occurred without the knowledge of management or it is difficult to understand', to be honest, we have not yet found that comment. That comment is not contained in any of his decisions that we have been through. I think there were some 4,000 pages of transcript and that may have been a side comment made on the way through, but we have had evidence from Mr Taylor that we certainly had an operation but we did not get an indication that that was occurring. Had we had an indication, we would have acted.

**Mr McCLELLAND**—If you found a manager who was aware of mail tampering and did not act, would your mandatory prosecution policy come into play against that manager? By that I mean would your mandatory referral to the DPP come into play against that manager?

**Mr Ryan**—There would be an inquiry to establish the facts. If that inquiry gave an indication that there could have been a criminal offence, it would be mandatory that we refer him to the DPP.

**Mr McCLELLAND**—Turning a blind eye, if you established that manager positively had knowledge of tampering, would that be a very serious matter?

**Mr Ryan**—It would be a very serious matter. I am not a lawyer, and I am not sure if that technically constituted an offence under the Crimes Act. In the course of examining such an issue, we would take legal advice. If the evidence was such that it suggested there was a prime facie case, under our mandatory system we would refer that to the DPP.

**Mr McCLELLAND**—Would that same view have applied in 1994?

**Mr Ryan**—Yes, those conditions would have all applied.

**Senator MINCHIN**—You said that your assessment of what occurred in 1994 was that fraudulent results were a result more of collection than of theft. I presume you have given some thought to what did happen or what might have happened. I accept that that is your view,;that many people were persuaded to hand over their ballot papers to somebody else to complete for them. But you said that only five per cent presumably of the members list their workplace as their address.

**Mr Taylor**—Less than five per cent.

**Senator MINCHIN**—Where do you think the 'collection' occurred? Were people

visited at their homes or were they asked to bring a ballot paper back from home or bring it to the workplace? Do you have a sense of how this may have occurred?

**Mr Taylor**—We are unaware of people handing over ballot papers in the workplace. That leaves the home, the street or the club or wherever people congregate.

**Senator CONROY**—Do you have supervision or surveillance in the tea room?

**Mr Taylor**—No, we do not other than that supervisors use the same meal rooms for their own tea breaks, and there is no reporting by supervisory staff that this was going on.

**Senator MINCHIN**—Do you take any steps to advise members to desist from that sort of behaviour? What do you say to your members about this whole issue, if anything?

**Mr Taylor**—Employees.

**Senator MINCHIN**—Sorry.

**Mr Taylor**—We issue a staff information bulletin advising people of the correct procedure and that they should not hand over papers. We generally issue a staff information bulletin before each CEPU election, for example, outlining what we consider to be appropriate—that is, things like handing over ballot papers and things that should not take place.

**Senator MINCHIN**—Do you remind them of the offence provisions relating to intimidation in relation to—

**Mr Taylor**—There are posters displayed at each workplace outlining those procedures.

**Senator CONROY**—Is it an offence to ask for assistance if you do not understand your ballot papers?

**Mr Taylor**—I am not a technical expert on the AEC rules relating to postal ballots.

**Senator MINCHIN**—There is reference throughout all of this about Vietnamese and Filipino workers who lack the English skills or who are easily persuaded. Do you as management take any steps in this regard or with the AEC in terms of interpreter services? Is there any way of particularly helping those with very little English skills in regard to CEPU elections?

**Mr Taylor**—The criteria for the people we employ are that their employment

relates to their understanding and speaking of English. I do not believe that is a major issue, although the posters put out by the Australian Electoral Commission are multi-language.

**Senator MINCHIN**—So you have minimum English requirements.

**Mr Taylor**—People have to be able to speak English. How can you sort a letter if you cannot read?

**Senator MINCHIN**—It would be difficult. What do you understand by the reference through reports of all this about particular ethnic groups and the extent to which they were particularly influenced?

**Senator CONROY**—That is an allegation.

**Mr Taylor**—Rather than use English skills or a limited knowledge of English, it might be better to say that it is something to do with their culture. It may well be explained that you may hand over a ballot paper because that is the way you have done things in the past or you respect somebody and that is what you do.

**Senator MINCHIN**—Is it your assessment that there is a particular problem in terms of the handing over of ballot papers in particular ethnic groups within employees?

**Mr Taylor**—We are a very cosmopolitan business. We employ people from a wide range of ethnic backgrounds. There are some peculiarities with different groups, but I do not know of any group that is singled out and that says they hand ballot papers against somebody else.

**Mr Ryan**—The real test is the 1996 election and the federal election just completed. We have had no allegations that that has occurred.

**Senator CONROY**—Given the increased security, there seems to be general acceptance both from Sheehan and from Cook before the committee that 1996 seemed to have been fairly straightforward. Would you have a comment on that, given that there was an increased participation in the 1996 ballot and an increased margin to the victorious team? How does that reflect on the allegations of coercion and handing over of ballot papers?

**Mr Ryan**—I really could not comment directly on that. Our job was to absolutely minimise risk, and I think the results show that we did.

**Senator MINCHIN**—Did you do more between 1994 and 1996 about alerting staff that, firstly, it is illegal to wrongfully obtain ballot papers or, secondly, that they should resist that sort of intimidation or even 'request'. Was there a difference between 1994 and

1996 in the way you dealt with it?

**Mr Taylor**—I think before the last meeting of this committee there was some comment made in relation to the amount of publicity that was going on, so I would say that people would be much more aware. In 1994, as we did in 1996, we issued instructions to our staff on what behaviour they were allowed to and not allowed to undertake in mail processing facilities.

**Senator MINCHIN**—So from management's point of view, what you did in 1994 was the same as 1996.

**Mr Taylor**—No, I did not say that. Certainly there was more presence of our security people in the facilities that was not evident in 1994. By heightening the awareness of what we were undertaking, I can see what you are saying is that people were much more aware of the consequences of undertaking illegal actions.

**CHAIR**—Mr McClelland mentioned before a submission from a journalist Mr Paul Sheehan. He says in his submission that Australia Post has threatened defamation action against his newspaper. Is Australia Post pursuing that defamation action?

**Mr Ryan**—Can I just check some notes. My notes indicate that we wrote to the *Sydney Morning Herald* requesting a retraction and an apology for an article in the *Sydney Morning Herald*. We reserved our right to seek damages for defamation, but that action is not under foot.

**CHAIR**—They did not issue an apology or a retraction, as I understand it. So you have taken no further action.

**Mr Ryan**—That is correct.

**CHAIR**—Briefly on the security aspect, you mentioned before that the AEC does not necessarily notify you when there is a ballot taking place. Do you think there would be some value in you knowing that, from a security-management point of view?

**Mr Ryan**—If the AEC, for whatever reason, assessed a particular postal ballot as being at risk, it would make sense for them to alert us to that so we could discuss supplementary measures if they thought any were necessary.

**Mr Taylor**—I would like to add to what Mr Ryan has said. The AEC have not come back to us and said they are concerned or worried about previous ballots.

**Mr McCLELLAND**—Previous or subsequent to the 1996 election.

**Mr Taylor**—Yes.

**CHAIR**—In regard to the video surveillance that you undertake, we had some questions before about reviewing them. How long are those tapes kept for?

**Mr Perna**—I am not sure, but we will not keep tapes if we do not feel that they are going to be of any evidentiary purpose. They are re-used. I can take advice on that and find out how long they are kept, but I am not sure offhand.

**Senator CONROY**—It might be an idea to match it to the time limit of lodging an election inquiry. I think that is six months. Once the six months is gone, obviously there is no query about such a ballot and you would not need to keep them.

**CHAIR**—Surely from Australia Post's point of view video surveillance is broader than postal ballots. There must be some standardisation of how long they are kept. At some stage something could occur which Australian Federal Police or whoever might relate back to a mail operation of some sort.

**Mr Perna**—I will certainly take advice on that and forward the answer to the committee.

**Senator MINCHIN**—In relation to the security personnel, are they union members? Are they not meant to be union members?

**Mr Perna**—I do not know offhand. I would suggest that the majority are not, but I do not know offhand.

**Senator MINCHIN**—Would they be members of another union covering security?

**Mr Perna**—No. The only union they would be members of if they are in a union is the CEPU or the CPSU. Security staff are full-time Australia Post employees.

**CHAIR**—They are not subcontractors?

**Mr Perna**—No. We are internal AP staff with the mandate to work in the security investigation field.

**Mr COBB**—How many staff are involved roughly?

**Mr Perna**—Seventy-eight nationally. There is an office in each of the capital cities. Most offices reflect the one organisation structure. For example, we have a security arm, an investigative arm and an intelligence arm, and that is reflected.

**Senator MINCHIN**—Is it a condition of their employment that they not seek office in the union?

**Mr Perna**—No.

**Senator MINCHIN**—If one did, presumably they would not perform security functions during the conduct of an election for which they are a candidate?

**Mr Perna**—That has never occurred so we have never had to turn our minds to that.

**Senator CONROY**—Is the career structure you work with like a conveyor belt where you then move into security or is it separate recruiting?

**Mr Perna**—It could be both. We have staff who, for the lack of better description, are ex-operational staff from post plus those who are recruited from outside. We do not particularly target anybody. We are looking at the skills rather than the backgrounds.

**Senator MINCHIN**—Are they regularly and randomly checked in a security sense? Do they have to undertake character tests?

**Mr Perna**—Yes. All our staff undergo the normal character checking for postal staff plus additional checking right through to secret classifications that ASIO employ.

**CHAIR**—Off the top of your head, do you know what percentage of your employees are members of the CEPU?

**Mr Perna**—No, I do not.

**Senator MINCHIN**—Australia Post totally?

**Mr Taylor**—No.

**Senator MINCHIN**—It is genuinely an open shop now?

**Mr Taylor**—Yes. It is not something we keep tabs on.

**CHAIR**—I thought you may have had a feeling of what the percentage was.

**Mr McCLELLAND**—In terms of any conflict of interest on a security officer, the penalties would be very severe, would they not, for a conspiracy to tamper with the mail? They would really have to want office in a union desperately to partake in any conspiracy, would they not?

**Mr Ryan**—It is a hypothetical situation, but I suspect if we had such a situation the security officer would not be involved in any activities related to postal votes.

**Senator MINCHIN**—I thought that was prudent.

**Mr McDOUGALL**—I have a totally different question. I am interested in the fact that your mail as a communications system continues to grow at about 5.7 per cent in 1995-96. Would it be fair to say that the growth in your mail communication has a lot to do with bulk mailing rather than parcels or individual mail?

**Mr Ryan**—Certainly the growth is in bulk mail and advertising mail. Business for business mail is coming down a little. Business to consumer mail is rising. Person to person mail is declining. Bulk mail is a very important segment.

**Mr McDOUGALL**—With organisation postal votes, whether they are union or general elections, you would see them as a pretty lucrative opportunity for you in the future if they were to grow that way?

**Mr Ryan**—Bear in mind that nationally we handle a very large number of mail items a day. I am not sure how much postal ballots represent as a percentage of total mail handled.

**Mr Taylor**—We are always looking for opportunities.

**Mr Ryan**—They would still be very low and we make a marginal profit on it.

**Mr McDOUGALL**—So it is in the interests of Australia Post to go out and advocate that postal balloting in any sort of election. It is a positive for you and you would go out and actively seek further business in this area.

**Mr Ryan**—Yes, you are right but only if we do the job.

**Mr McDOUGALL**—So that is why you are concentrating on upgrading your systems to be able to handle that?

**Mr Ryan**—Are you talking about postal ballots?

**Mr McDOUGALL**—I am not meaning just industrially.

**Mr Ryan**—As I said before, we have a very high standard of mail security for all mail, and that includes postal ballots. We have made special provisions where a risk has been identified, but generally the standards we apply to postal ballots would be the same as a \$2 million cheque or the letter to Aunt Edna.

**CHAIR**—On page 6 of your submission you talk about the 78 specialist personnel with an operating budget for 1996-96 of \$6 million. The submission states:



Additionally, surveillance and related equipment is generally funded by business groups in 1996-97 as amounted to \$4.5 million.

Can you explain what that means?

**Mr Perna**—The \$6 million is the budget allocated specifically for each of our units to maintain an operational role. The additional money is money that is spent by other business units—non-security investigation units.

**CHAIR**—Business units within Australia Post?

**Mr Perna**—Yes, on security related issues.

**CHAIR**—If you could come back with a supplementary submission to the inquiry on all those matters that were raised, I would appreciate that.

**Mr Ryan**—We will do that, and we will talk with your secretariat about arrangements for inspections should you wish to do that.

**CHAIR**—Yes. I think the committee members will discuss that at the end of this hearing. I think we will find it quite valuable to go to one of the centres and see how it operates. Thank you for that offer and thank you for your attendance.

[11.30 a.m.]

**PALLAS, Mr Timothy Hugh, Assistant Secretary, Australian Council of Trade Unions, 393-397 Swanston Street, Melbourne, Victoria 3000**

**CHAIR**—Welcome. I remind you that the proceedings here today are legal proceedings of the parliament and warrant the same respect as proceedings in the Senate and the House. The deliberate misleading of the committee may be regarded as a contempt of the parliament. The committee prefers that all evidence be given in public. But, should you at any stage wish to give evidence in private, you may ask to do so, and the committee will give consideration to your request. We have received a submission from the ACTU, and it is now publicly available. Are there any corrections or amendments you would like to make?

**Mr Pallas**—It appears that you have the last amended version of the submission. There are no amendments I seek to make.

**CHAIR**—Would you like to make an opening statement before we proceed to questions?

**Mr Pallas**—No, I do not see the need to do so. I think the material that I have put in front of you adequately reflects the views that I wish to put before the committee. Let me say, however, that if the committee would prefer me to in some way summarise the views that are encapsulated within that report, I am happy do so. Otherwise, I am at the committee's disposal.

**Senator MINCHIN**—Perhaps you could give us a quick summary in the sense of what, if any, changes you would suggest we make. The general impression was that you were not suggesting any change whatsoever. Would you like to pull together what changes you think the ACTU would support in relation to the conduct of general rules or legislation governing the conduct of union elections?

**Mr Pallas**—I think it is true to say that the ACTU does not see there being a need for substantial change to the way the legislation operates. It is also true to say, if you look at our submissions, that we believe that the way the legislation stipulates how union elections are to be conducted is, and has been, consistently identified by the union movement as being unnecessarily onerous and creates a difficulty in terms of facilitating unions making judgments by rules that they adopt as to how best they should be governed and by whom. This is a view that we put and, as I identify in my submission, a view that was put by the ACTU to the Hancock inquiry. It is a view that I think substantially that has not been addressed.

In terms of changes that the ACTU believes are appropriate, we do not see that, over and beyond the concern about the restrictive nature of the electoral processes so far

as they effect union rules, there is a need for a general wholesale review of the operation of procedures. That is essentially borne out of satisfaction with the way that the election processes operate. I say that not by reference to the multitude of cases where unions, as clients of the AEC, are happy with the service. But rather, in a statistical sense, I think the figures that we provided you with indicate that at no stage do court complaints of ballots ever go above two per cent.

But I think the AEC's figures in their submission to you actually say that it runs at about 1½ per cent, which is an exceedingly low, in my view, level of concern. Indeed, the only concerns that seem to have been picked up in those courts proceedings, when you look at them, tend to be issues relating to either fraud—and I am certainly not here to make any excuse or apology for fraud—or interpretation as to eligibility to stand for office, which tends to be a relatively hotly contested issue in union elections.

That aside, I think the system does work exceedingly well. There is a high degree of support for the role and the function of the AEC amongst affiliates. That is borne out by what we believe to be a level of professionalism and independence that provides a level of integrity to the election processes. This, we feel, has been of critical importance to the standing of the trade union movement in the community, and perhaps equally importantly in the minds of its membership.

There was one particular item that we did identify in our report on which we believed perhaps some progress could be made. This deals with the issue of union rules, and the suggestion that there should be some form of standardisation in respect of the rules. The first point we take up in our submission is that we do not believe that standardisation is an object that should be pursued simply for the sake of administrative ease. The point we make is that elections, after all, are not about necessarily administrative ease but an accurate and democratic reflection of the views of the constituency involved in that process.

To the extent that those views would be supplanted or that there would be seeking to incorporate a criteria for office or the running of elections for office that are extraneous to the organisations themselves, we see that as being counterproductive to the basic principle of democracy: that people who constitute the constituency for any organisation should have the right to determine how that organisation is effective and effectively run.

But we do make the point that the union movement would be prepared to participate in the process of standardisation of rules where it was seen as essentially being a function of the Australian Electoral Commission seeking to encourage the facilitation of such rules—not standardisation for standardisation's sake as such, but rather a recognition that in picking up standard rules there are a set of rules or a series of rule options that organisations pick up which would minimise the exposure to litigation of those organisations. We see that as being desirable and something that the ACTU would, of course, itself support.

We are certainly not of the view that there should be in any way a legislatively imposed set of standard rules. That destroys a basic principle of democratic diversity, which is something that the trade union movement considers to be particularly important.

There were a number of legislative amendments that were suggested by the AEC in their recommendations to you, some of which I have had the opportunity to look at. Certainly, some of those amendments that are proposed we either support or do not support. I am happy to give you an understanding of what the ACTU's views on those proposals are.

**Senator MINCHIN**—That would be useful. Have you seen the additional four or so that they have supplied?

**Mr Pallas**—No, I have not.

**Senator MINCHIN**—We might raise them with you too.

**Mr McCLELLAND**—Just before going to those, in terms of having standard rules put out by the Australian Electoral Commission as a guide, do you think that would be of some use to lawyers or other draftsmen in a referencing point as to what the Australian Electoral Commission puts together as their best practice, if you like? The lawyers or the particular union draftsmen could have regard to those as a guide, to modify them or incorporate them, as they see fit. You do not think that would be an unhelpful situation?

**Mr Pallas**—Certainly not. In fact, we see it as being a particularly desirable process. I have to say that, with the structuring of union rules, the assistance that the union movement has received from the industrial registry has been immeasurable in many respects. It would be our view that the industrial registry organisations branch would need necessarily to work closely in cooperation with the Australian Electoral Commission in the drafting and development of any such rules.

There is a process already in place and available to organisations registered under the act to approach the industrial organisations branch of the industrial registry with proposed rules, and advice will be given to organisations about whether or not those rules comply with the current legislation. It would be, I think, only a minor administrative addition to require the industrial organisations branch to also take into account an encouragement of standardisation in any advice that they give. Particularly, this is important with processes of amalgamation and perhaps even disamalgamation in the current environment.

**Mr McCLELLAND**—From that, is it the case that the desire to have union rules in accordance with the act and in accordance with relevant principles in case law would, in itself, be probably sufficient incentive for unions to adopt rules which are at least consistent with those guidelines?

**Mr Pallas**—Entirely so. Unions do not wish effectively to subject their organisations to protracted processes of litigation which are time consuming and, in many cases, distractive of the organisations principal objective. So we do see it as particularly important that, to the extent that advice can be offered, the ACTU would encourage it being taken up. Importantly, I think that there need to be administrative procedures and dialogue between the AEC and the industrial registry to ensure that the utility of that advice is maximised.

**Senator CONROY**—With ILO convention No. 87, surely there are a number of breaches of that now. The electoral laws require certain things that would not be contained in all the union's rules currently. Would that be a fair statement?

**Mr Pallas**—I think it is arguable that there is an imposition inconsistent with article 3 of convention 87, in respect of the manner in which union rules are to be structured. I take the view, however, that article 3 is all about indicating that the principal focus for the development of organisation's rules must be mainly and principally the responsibility of those organisations. To the extent that there could be an arguable breach in the current environment, I would say that it is a breach that is not substantively of concern to the trade union movement.

The reason I say that is, firstly, it is not clear whether it is or is not. Secondly, there has been a degree of complicity in some respect with the union movement in enabling those changes and those obligations to be imported. The quid pro quo for that, of course, is the conduct of elections by the Australian Electoral Commission. As you will see in my submission, there has been quite a considerable recognition ever since the introduction in the early 1970s of a funded system of electoral processes within the union movement for the union movement generally to accept that there are obligations attaching to that entitlement. Those are obligations that we remain committed to.

**CHAIR**—We will work through some of these recommendations. I think questions may grow out of that as well, which may be a useful thing. Just in front of you there are the additional submissions in which there are some additional recommendations. We will work through the ones in the AEC's submission.

**Mr Pallas**—The first recommendation relates to 315(4) and 317(4) of the Workplace Relations Act being reviewed, with a view to increasing penalties in relation to election and ballot offences. Essentially, the ACTU opposes this, and we oppose it on two grounds. Firstly, the proposition seeks essentially to extend a period of imprisonment from six months to 12 months. The practical effect of that would be also to have an extension on the statute of limitations attaching to the offence. It seems somewhat contradictory that, in the AEC's report, it indicates that the period for complaints, a subsequent recommendation, should be reduced, whilst at the same time the statute of limitations for offences should be extended.

It is our view that matters of electoral import are of a considerable amount of importance, but they should be dealt with in a time frame that is contemporaneous with the electoral process itself. Organisations or, indeed, persons charged with office under organisations should not be subjected to a prolonged period of answerability under the provisions in the Workplace Relations Act.

So we do not support the extension in the period of offence from six months to 12 months. We say that also on the basis that there are few, if any, examples of incarceration being a consequence of these provisions. So we can assume that the only point behind the extension is in respect of the statute of limitations for the process. If the courts had identified any prohibition or any inadequacy in the sentencing available to them, then certainly there is no indication to us that they have availed themselves to the full extent of the law as it is currently available.

The flow-on position that we put in respect of statute of limitations is that we would oppose it, simply because we think electoral matters are matters that should be dealt with quickly and effectively. To any degree, we will subsequently be indicating support for a restriction in terms of complaints that may well facilitate the existing statute of limitations being adequate to the needs of review.

**CHAIR**—Has not the situation arisen—and I guess the 1994 CEPU is the classic example—where those time limits have possibly prevented prosecution, where prosecution could well have been warranted? The penalty aspect of it is—if I can just take the other side of it—often more there to deter potential offenders more than anything, particularly in this type of activity.

**Mr Pallas**—I cannot address the specific circumstances of any union election, although I have increased my knowledge base substantially by reading papers that this committee has received in respect of individual organisation elections. So I cannot give you any expert or considered advice in respect of the circumstances attaching to the CEPU.

I can say that, from experience, there would be considerable difficulties if inquiries were to extend for some inordinate period whilst at the same time requiring particular officers, by virtue of the office that they hold, who are under scrutiny to continue to perform a function. The view that we hold is that the capacity to prosecute under the legislation could be facilitated by bringing forward the time frame for the complaints to be lodged rather than enabling that process to be too delayed and therefore pushing it beyond the 12-month statute of limitation provisions.

Beyond that, we do not see that it is desirable that there would be uncertainty about an elected officer. It is pretty much well accepted in a parliamentary sense, for example, that, if there are questions about the authenticity of an officer and any suggestions of fraud in the conduct of those processes, those matters should be dealt with

expeditiously in terms of the laying of charges and the completion of the prosecution.

**Mr McCLELLAND**—Is there another issue in proceedings where there is a competing civil cause of action or civil related proceedings on the one hand and on the other a criminal prosecution? Is it not the case that it is frequently argued that those civil proceedings should be adjourned or deferred until after the criminal proceedings take their course so as not to cause witnesses to incriminate themselves and so forth in the course of those criminal proceedings? Is there not a risk that, if the criminal issues were not determined expeditiously, civil election inquiry provisions contained under the Workplace Regulations Act could be deferred until an indefinite period and hence affect the stability of the organisation or result in someone who had a legitimate grievance about electoral processes not having their case heard?

**Mr Pallas**—Certainly I think those points you raise are of critical importance and they go to the stability of organisations. It is our view that, if there is any suggestion of impropriety in the way that elections are conducted, they should be dealt with immediately. If there is a suggestion of fraud, for example, in an election it is an issue of considerable public importance. I think we send exactly the wrong message to the community that these things can be dragged out by way of investigation and the impact they have upon civil proceedings you are right to point out is if they essentially are put on hold until criminal proceedings have been concluded.

**Senator CONROY**—Just to further expand your ever growing knowledge in the CEPU instance, as far as I am aware even up until today, despite the hoopla, there have been no charges laid by the police against any individual whatsoever. Do you see the concern that some members of the committee have that it can take six months or in some cases much longer for the investigations to take place, perhaps taking you past the statute of limitations? So the concern is that an inquiry could lead to potential charges but, because of the legal processes, they take so long that it is impossible to bring anybody to justice if that is what the findings are?

**Mr Pallas**—I do not want to be seen to be arguing a proposition that says a statute of limitations can become an effective defence to identified malpractice in terms of union elections. The concern we have is more in the principled sense: we do not believe it is desirable that the message that is sent out that is these matters can be delayed for a substantially longer period. I do not know what the alternative statute of limitations would be—perhaps five to seven years for matters of a criminal nature. These matters could be dragged out for such a considerable period.

Certainly our view would be that the current statute of limitations requires some pretty firm decisions to be made. If those decisions cannot be made within a 12-month period after an election, the question we would have to ask is how much taxpayers' money is going to be spent in pursuing these issues in being able to identify whether or not a charge should ultimately ever be laid. I would be greatly concerned about the impact that

would have upon the stability and the coherence of leadership within the organisations subjected to that sort of elongated processes of dispute as to legitimacy of the office bearers.

**CHAIR**—Recommendation 2 states:

The AEC recommends that the definition of the term "postal ballot" in section 4 of the Workplace Relations Act be amended to include provision that all postal ballots be by a standard form of declaration determined by the AEC.

**Mr Pallas**—I think I know what this is referring to, and that is essentially the declaration attaching to the ballot paper itself. That being the case, I do not think we would have any difficulty with that amendment. Indeed, we would see there is perhaps some value in such an amendment.

**Senator CONROY**—So that would be attached to the envelope rather than the ballot paper.

**Mr Pallas**—Yes. There has been a particular problem in at least one ballot that I am aware of where declarations or identification of voters were attached to the envelope, including the ballot paper itself. That was one of the few occasions where the AEC was required to hold the vote again. I know that because it was my old organisation in the amalgamation ballot.

**Mr McCLELLAND**—Because it affected the secret ballot provisions; is that the reason?

**Mr Pallas**—Yes.

**CHAIR**—That was a recommendation that this committee made in the inquiry into last year's election in relation to postal ballots and double envelopes and those sorts of things. There was a standardisation that flowed to industrial elections as well. Would you support that?

**Mr Pallas**—Yes, we would have no difficulty with that proposal.

**CHAIR**—Recommendation 3 states:

The AEC recommends that section 215(4) of the Workplace Relations Act be amended to limit the extent to which an organisation may advertise at public expense.

**Mr Pallas**—We have no difficulty with that either. It does transgress into that grey area of the capacity of the act to limit organisation rules, but this is all contingent upon a basic principle that I espoused earlier in my submission to you. That is, we accept there is some responsibility for rules of organisations subject to there being some recognition that



the costs of elections and electoral processes are borne by the community at large.

That being the case, I think it would be entirely unreasonable of us to say that, whatever disproportionate amount of advertising organisations saw as being appropriate for the public to bear, then so it should be. We do believe that some degree of reasonableness should attach to the level. The question is: what is a reasonable level? I would be more than happy to make at some stage some substantive submission if you were to pick up this recommendation. At this stage we simply say that we would support that recommendation.

**CHAIR**—Recommendation 4 states:

The AEC recommends that Regulation 62 of the Workplace Relations Act be amended to reduce the time for an application to be made for an inquiry from 6 months to 30 days.

**Mr Pallas**—We support that. Whether it be 30 or 40 days, we are not particularly fussed. I think 40 days is the federal parliamentary requirement.

**CHAIR**—Is it 40 days or 45 days?

**Senator MINCHIN**—It is 40 days.

**Mr Pallas**—In any event, we think that six months is an inordinately high period to attach to elections.

**CHAIR**—Do you think 30 days is a bit too tight?

**Mr Pallas**—We have no difficulty with 30 days. We believe between 30 and 40 days would be a reasonable period.

**Mr McCLELLAND**—In a subsequent recommendation the Electoral Commissioner is recommending that the Electoral Commissioner itself lodge a return—a summary of the ballot—as they do with an amalgamation ballot. Would it be appropriate that the time limit run from the point that they issue that summary statement; that is, 30 days from that period of time?

**Mr Pallas**—Yes, that would probably pick up the 10 days. It generally takes more than a week, but the returning officer would go through that process and then people who wanted to make a complaint would make a complaint once the returning officer had issued the statement. That seems sensible.

**CHAIR**—Recommendation 5 states:

The AEC recommends that section 218 of the Workplace Relations Act be amended to enable the AEC to make an application for an inquiry before the Federal Court.

**Mr Pallas**—I have anguished about this one. I do not know what my position or the ACTU's position would be, but I suspect that we would probably support it. Our concern is the capacity for an organisation to go off on a tangent of its own. Were it any other body other than the AEC, I suspect that our response would be substantially a different one. However, given the integrity with which the AEC conducts itself during the course of union elections, we do not have any great principled opposition to the recommendation as put.

**Mr McCLELLAND**—If that occurs, do you think there should be a mechanism whereby the Australian Electoral Commission could obtain orders validating some sort of procedure? In other words, if the electoral roll was in such a mess that people had not been allocated to a particular division of the union and there was no way to unscramble the egg, do you think there should be a mechanism whereby the Australian Electoral Commission could say, 'Look, these are the facts. Can you give us an order which validates what we have done to attempt to unscramble the egg as well as we possibly can?'

**Mr Pallas**—Is this in a preliminary sense effectively referring the question of law to the Federal Court about the nature of the roll to be the subject of a ballot?

**Mr McCLELLAND**—Yes, in that sense in particular I have in mind where the union gives the Electoral Commission the roll and they shake their head and say, 'How do we work out who is who in the zoo?' At that point it might save expense if they are able to go to the court before the cost of the mailing is incurred to pay the declaration as to the appropriate steps they should follow.

**Mr Pallas**—Certainly we would see that would be a valuable suggestion, not in terms of a post facto validation but in terms of a ruling of law pre-ballot which would no doubt save a lot of litigation about who should and should not have participated in the ballot. The view we have in respect of this nature is very much that union membership has improved over the years, particularly with the advent of computerisation. You will still find that generally the smaller unions go on a card system of union membership. That means that their membership records are in a sorry state of affairs.

Nonetheless, I think it is important prior to a ballot taking place that the AEC clarify exactly who is constituting the constituency for any such ballot. If there are any preliminary arguments as to eligibility, it should be determined. Quite often we have the case where the Electoral Commission forms a view about who can and cannot stand for office. Immediately we have applications for injunctory relief in the Federal Court proceeding where simply a determination by the court prior to the AEC commencing ballot processes would add a fair degree of certainty to the election.

**Mr COBB**—Do you have a general rule for who may stand or does it tend to vary?

**Mr Pallas**—It tends to vary. For example, some unions have requirements that you have had to have been a member for six months or 12 months—in some special circumstances even three years based on the nature of the industry. What tends to happen is that the courts look at the nature of the industry and determine whether it is appropriate that those limitations on access to stand for office can be importable in the rules. So there is no magical formula.

**Senator CONROY**—It varies for each position as well. Usually for the senior office bearers it is more stringent and not so stringent for the lesser positions. With financial membership you just have to be financial to stand for some positions, but you have to have a two- or three-year membership.

**Mr COBB**—When they have been challenged, have the courts set any restrictions on two years?

**Mr Pallas**—Yes. I think without doubt that requirements over three years invariably fall foul. Requirements at three years need to demonstrate a pretty compelling case why the three-year period has been set based on the nature of the industry, and therefore why it is appropriate that certain categories of members are prohibited from holding certain categories of office.

**Mr COBB**—What about at the other end? Are there some unions in which you can join up and stand for office straightaway?

**Mr Pallas**—For most unions that is the case. Most unions require a period of about 12 months financial membership for you to vote or to stand for office.

**Senator CONROY**—Not to have a vote.

**Mr Pallas**—I think the majority of unions would have a requirement for a period of financial membership. Whether it is 12 months or three months would depend union the union. I have not gone through each particular union's views so Senator Conroy could be right in that there is a difference in terms of your obligations in terms of financial membership to stand for office. That would invariably be longer and generally at a minimum of 12 months as opposed to a right to vote which would generally be at least for one-quarter in most organisations—that is, a three-month period.

**Mr McCLELLAND**—Is there a rationale to avoid stacking of an outside organisation?

**Mr Pallas**—I think that is one of the rationales. I think the other rationale would be that the capacity to keep coherent membership lists on such a fluctuating category of membership may be unnecessarily onerous upon the organisation itself. Indeed there may be people who are casual employees in and out of a job for a matter of weeks only who

do not wish to have to participate in union elections. It is generally seen that some reasonable period of membership should constitute the basis under which you have the right to vote.

**CHAIR**—There is no compulsion.

**Mr Pallas**—To vote?

**CHAIR**—Yes.

**Mr Pallas**—There is no compulsion to vote in any union.

**Senator MINCHIN**—Very enlightened of the union.

**CHAIR**—You made the statement that some people who are voting casually do not feel that they want to vote. No matter how casual or how permanent they are, there is no compulsion.

**Mr Pallas**—Quite often the perceptions about what obligations are attached to elections differ. We may well know as practitioners that obligation does not exist to participate when a pretty formal looking ballot paper comes your way. The views of the individual, however, may vary. All I am saying is that in, certain circumstances when somebody has worked for a short period of time, they might find it difficult to understand why they have been provided with a ballot paper, perhaps in many cases given the time frame or the period you are on the roll and the time the ballot takes place.

**Mr McDOUGALL**—Mr Chairman, can I take that a little further. Mr Pallas, in your submission you felt the conduct of the union elections by the AEC has had a significant effect of raising membership participation in the electoral process. When I looked further into your submission I found a table where you had a continual decrease in ballot papers issued. That is over a period from 1991 to 1995.

**Senator CONROY**—Which page?

**Mr McDOUGALL**—Page 31 of the submission has the table on it. The first one was in the introduction on the first page. I saw that as a bit of a discrepancy.

**Senator CONROY**—That is because there are less unions.

**Mr McDOUGALL**—No, I am talking about ballot papers issued.

**Mr Pallas**—I think the AEC address this point in their submission, and that appears that in the AEC's submission on page 25. They have done a cost per ballot paper, and they have drawn to your attention that there are a number of substantial problems

associating with amortising fixed costs over a larger number of ballot papers. The reasons identified in those cost assessments and which I think we would support are that, in many cases, elections are not held and that varies from year to year. You may have a situation where there are in any given year a wide fluctuation in terms of the number of people who actually seek office. That requires a ballot.

The second point would be that the amalgamation process has rationalised the number of offices such that you do not have the necessity for a wide number of elections for minor officers. In many cases those officers have coalesced and the organisations themselves do not see the need for a number of elections for a wide variety of officers. By concentrating the number of officers and in many cases there being no need for election because of the number of applicants reducing, that may have a direct impact upon the number of ballot papers issued in any given year.

With regard to the concern about union numbers, I think union membership levels have remained relatively static at around about 2.6 million to 2.7 million. We are down to about 2.3 million at the moment. Some members of the community would take the view that, because of the reducing density of union membership in the work force as a function of the work force, that means there are less union members. It is true to say in an absolute sense there has been a reduction from about the mid-70s of about 2.7 million down to 2.3 million, but nothing too consistent with the sort of erosion in the ballot papers that are identified here.

The reality is that you have to look over a much broader period of the electoral cycle to determine—much broader than 1990, I would suggest—to see whether there is still a considerable pick-up. In any event—and I think this is continually the case in terms of the evidence of people who look at trade union participation rates in elections—that Australia still has a considerably higher level of turnout than any other union elections in the world. That is directly a consequence of the conduct of those ballots by the Australian Electoral Commission.

**Mr McDOUGALL**—I acknowledge your comment about amalgamations and the fact that there are less elections held. How frequently elections are held are purely a discretion of the individual union under its own rules. Therefore, if it had the appropriate amendments through it could adjust the time frame in which elections are held. Would you not think that—

**Mr Pallas**—Can I just pick you up on that point before you go on to develop it because I think you may be basing your question on a false assumption. Firstly, it is not open to the unions to have rules that provide for elections of offices any longer than four years in office.

**Mr McDOUGALL**—That is under the industrial relations—

**Mr Pallas**—That is under the Workplace Relations Act. Under provisions relating to amalgamations, when you had a situation where a union had just completed its electoral cycle and was going into amalgamation with an organisation that had elections due, there was an obligation for no office holder to hold office longer than a set period of six years as a consequence of the amalgamation. It did not allow any organisation to avoid the idea of cyclical elections. The point that you make that the period of election between one and four years is entirely in the discretion of the organisation based on its rules is correct. Any suggestion that it is in excess of four years I would dispute.

**CHAIR**—Recommendation 6 states:

The AEC recommends that consideration be given to the establishment of an alternative, two-tiered mechanism of external review which allows for review at the primary level, followed by judicial review, as required.

I think we need that in context.

**Mr COBB**—The non-judicial stuff can be handled pretty simply at a lower level.

**Mr McCLELLAND**—I think the recommendation is in relation to the review of industrial elections per se and the current judicial system of industrial elections.

**Mr Pallas**—If the proposition is, as boldly stated, that there can be a review at a primary level that is non-judicial followed by a review that is judicial either in whole or in part of that primary review, we would oppose it because we think one of the greatest safeguards against abuse of an electoral process is that people can be brought before a court and held to account for their conduct. To put in place some positive judicial or tribunal type process will water down the effectiveness of the sanctions that the legislation provides for in appropriate conduct.

**Mr McCLELLAND**—Is it your assessment that these preliminary issues, even though they may involve the construction of a rule are often quite complicated and intensely fought, particularly if it is a vigorous election campaign. Both sides will often have senior counsel and there is a particular speciality of law that is developed whereby the industrial division judges of the Federal Court have considerable experience and someone who does not have that depth of experience may be out of their depth in dealing with the often intense submissions by often senior counsel.

**Mr Pallas**—I find it difficult to answer the question because I do not know what is being contemplated as a primary point of review, but let me take a best case scenario from the union's point of view. Even if these issues were heard by the Industrial Relations Commission, we would have grave concerns about it. You are right, Mr McClelland, to suggest that this is a very specialised area of law and a lot rides on it in respect of people's capacity to stand and hold office. We would certainly be concerned if a

suggestion was that a quasi-judicial body—even one as highly regarded as the Industrial Relations Commission—were to determine these issues, because they are determining issues that go towards people's capacity to work in their chosen industries.

**CHAIR**—What they argue is that the majority of inquiries have dealt with technical issues such as interpretation of laws and disputes about eligibility. That is why they have put forward this proposal. They are suggesting that the mechanism for the jurisdiction of inquiries involving purely technical issues would be vested in judicial registrars of the Federal Court or the Industrial Relations Commission. They go on to say that proceedings involving electoral fraud constituting criminal activity would remain with the court. In addition, you would have the right of appeal to the court anyway. They are saying that, instead of tying up courts at square one, the very technical aspect could be sorted out in this way. If it was argued to a point where it became far more judicial, then you would have the right of appeal anyway.

**Mr Pallas**—Let me assure you, under that scenario if you go to the commission or to a judicial registrar on what is described as a technical matter, whether you could constitute a candidate for office, these matters would inevitably be appealed. Without question, they would be appealed.

**CHAIR**—So you are saying that you could be wasting—

**Mr Pallas**—Both time and money.

**Mr McCLELLAND**—A few industrial barristers may have extra trips to Paris if that double whammy situation applied.

**Mr Pallas**—One thing I do not want to encourage is the opportunity for these matters to be litigated ad nauseam. It seems to me that what we do need is a process, as I suggested earlier, of referral of questions of law in a preliminary sense to the Federal Court. Single members sitting alone can deal with these matters and deal with them reasonably expeditiously on past form. I think that is a much more appropriate process.

**CHAIR**—Maybe the recommendation could suggest that no lawyers be involved in the first two stages.

**Mr McCLELLAND**—From my experience, it is frequently the case that big money is spent on these issues as to eligibility and the construction of rules. Mr Pallas, is that your experience?

**Mr Pallas**—Yes, the most highly litigated area of industrial relations, I would hazard a guess, bar none.

**CHAIR**—I want to move to the additional recommendations. I know that you are

seeing these for the first time. Recommendation 7 states:

That Section 91A(3) of the Commonwealth Electoral Act be amended to include 'Elections and ballots conducted under the Workplace Relations Act'.

**Mr McCLELLAND**—That was in the context of enabling the Australian Electoral Commission to cross-reference the Commonwealth electoral roll to chase up unknown addresses. They have said, 'There is already a degree of cross-referencing from different sources,' but on balance they think it may provide some assistance if they can cross-reference into the Commonwealth electoral roll.

**Mr Pallas**—Does the cross-referencing go both ways or only one way? Does it enable the Commonwealth electoral roll to be updated on the basis of union membership lists?

**CHAIR**—No.

**Mr Pallas**—That being the case, you would have an individual identified in a suburb but no address. If you were seeking to clarify what that address was, you would go to the electoral roll. I would not have any problem with that.

**CHAIR**—That fits quite well with the recommendation that was supported by all of the committee in relation to the inquiry into last year's election where we talked about data matching to improve the integrity of the electoral roll. Recommendation 8 states:

That the Workplace Relations Regulations be amended to include a Regulation enabling members of an organisation to view or copy a roll of voters for an election. Such a Regulation would use identical wording to that contained in Regulations 81 and 98 O.

**Senator CONROY**—Would that be at any stage or just in the process of an election?

**CHAIR**—The officer from the AEC will clarify that for us.

**Senator MINCHIN**—It says that AEC policy is that returning officers will make a membership list available to a member of an organisation but they are not required to do so. They are simply saying that they would be happy for it to be a requirement because that is what they do now anyway.

**Mr McCLELLAND**—Is there a risk if that were extended to members generally as opposed to a candidate in an election?

**Mr Pallas**—I have concerns about questions of the sanctity of membership being accessed if the membership roll is broadly available. I also have concerns that people may access membership lists for purposes other than the election itself.



**Mr McCLELLAND**—I can imagine members of parliament and senators less moral than those at this table prevailing upon a union member to get the list so they can use it in a mail-out to those members. Do you think that leaves it open for such ulterior purposes?

**Mr Pallas**—I do. I think the practical arrangement that currently exists—and I know that there is some debate about whether it is available to members or to candidates for office—is that it is available to candidates for office. If it is available to anybody other than candidates for office, you have to question why it is.

I can understand why it is an important thing that people who are not part of the administration of an organisation, like an incumbent office holder, have access to membership lists so that they can mail out election material to a constituency. I would question whether or not there is any value at all in making a membership list broadly available to people other than candidates in an election.

**Senator MINCHIN**—But the AEC is only recommending that what now is required in relation to amalgamation ballots—and disamalgamation, or whatever you call it—be applied to election of office bearers. Of course, it is the arrangement in relation to Commonwealth elections that the roll is currently available.

**CHAIR**—I ask the officer from the AEC to come forward.

[12.37 p.m.]

**KERSLAKE, Mr David Arthur, Assistant Commissioner Industrial Elections,  
Australian Electoral Commission, West Block, Parkes, Australian Capital Territory**

**Mr Kerlake**—The point that we were drawing attention to there was simply that there is an anomaly in the act; that there are circumstances where these provisions are available to members of an organisation—for example, amalgamation ballots—and other circumstances where they are not. It seemed to us that that was probably an oversight one way or another in the drafting of the legislation. There is no apparent reason why they should be different. You could argue whether you ought to withdraw it from one or add it to the other. At the moment, it is simply an anomaly that should be addressed.

**Senator CONROY**—With the rules at the moment, you are only seeking for an election period—not so that any member can walk up to their union office at any time and say, ‘Give me the full list of the members’.

**Mr Kerlake**—As I understand it—and I would need to check the act to be absolutely thorough on that—it would be available for an election period to make it consistent with an amalgamation ballot situation.

**Senator CONROY**—I now move you to after an election. Let us say that I was unhappy with the conduct of a ballot, in my mind, and I wanted to get a copy of who voted in a roll. What would be the process there, and does that affect what you are doing?

**Mr Kerlake**—To the best of my recollection, there are provisions in one section of the act—I think it is 288, but I am not certain—which enable people to apply to the commission for certain information. People can go on a fishing expedition to get information from our records.

**Senator CONROY**—On what basis do I have access to that information?

**Mr Kerlake**—I think you simply apply, and you would be granted access.

**Senator CONROY**—Do I have to sign any document? Is it a conditional access? Am I allowed to do anything I want with that information? Am I allowed to disseminate it? Is that in breach of the act?

**Mr Kerlake**—I am not certain on that. I would have to see what our procedures say.

**Senator CONROY**—I thought I had to sign a document that says, ‘I will use this only for the purposes of investigating whether I believe there were any breaches.’ There is some document I have to sign at the moment?

**Mr Kerslake**—I would want to check on this.

**Senator CONROY**—Please take it on notice, and get back to us.

**Mr Kerslake**—I do not want to mislead the committee. My off-the-head reaction is that we do require people to sign things saying that they will not disseminate more widely. But I am not sure whether we are doing that under a provision of the act, or as a general administrative matter.

**Senator CONROY**—If a voters roll ended up in the office of an MP, even that of the Prime Minister, that would be an unusual dissemination if I had been conducting an investigation of potential fraud. If I had sought it on the basis of ‘I think there is electoral fraud, and I want to investigate it’ and all of a sudden the roll popped up in an MP’s office, that would perhaps be in breach of that commitment that I had signed.

**Mr Kerslake**—Yes, it would seem unusual, and I think that could be covered in the draft of the legislation or regulations.

**CHAIR**—It could possibly be covered in a similar way to the electoral act, just as members of parliament and candidates in political parties have access to a roll and not even use it, I would have thought. That is just an idea.

**Mr Pallas**—I think it is very important that we understand that union elections are not elections to public office. Consequently, the electoral roll is not a document of public record in many material respects. There are a couple of points that I would make.

Firstly, with the access to any such material where it is stated before an election, we would see that there is perhaps some value in making that material and having a consistent regulation that says that material is available for the purposes of the ballot period.

**Mr McCLELLAND**—With two candidates.

**Mr Pallas**—Two candidates, yes. I would be very concerned about material being available post facto, as it were, for people saying, ‘We just wanted to satisfy ourselves that there was no fraud involved in this election.’ Essentially, the obligation is upon the AEC to satisfy themselves about the processes of the election as a returning officer and, ultimately, for a court where matters of substance are put before them.

The second issue I would say is: to whom does such an obligation attach? If the obligation is upon the AEC to provide such a membership list, that is one thing. It would be an entirely onerous and preposterous suggestion that organisations could be required to provide their entire membership list to whoever happened to be a member and just wanted a list simply during an election period. We are talking hundreds of thousands of members

in some cases.

The final proposition I will put to you is that the current act, the Workplace Relations Act, places particular emphasis upon the sanctity of union membership and the need to maintain and preserve its privacy. Section 291, I think from memory, actually puts in place a process whereby you can seek a certificate from the industrial registrar as to membership but not provide the name of the individual so you can satisfy that the union actually has members.

It would be entirely inconsistent with that process and the safeguards that the legislation puts in place—safeguards, I must say, that the union movement supported when they were put in place—to then provide a surreptitious means that would be open to abuse where membership lists could become generally available for purposes other than candidates seeking to extol their virtues to their potential constituency.

**CHAIR**—Recommendation 9 says:

The AEC recommends that there be a new Workplace Relations Regulation, for industrial elections, whereby Returning Officers be required to sign and date a certificate showing the particulars of an election.

That has come out of what? Has that come out of amalgamation ballots?

**Mr Pallas**—That seems sensible, I must say, particularly if you are talking about restricting a period by which complaints can be made, particularly if you are talking about building on from that your time limit for complaints—for there to be some clear instrument that kicks off that time limit. We would have no difficulty in supporting, indeed we do support, that proposal.

**CHAIR**—The final recommendation states:

The AEC recommends that there be new Workplace Relations Regulations for industrial elections, which provide for the formal scrutiny of ballots and for the rights and obligations of scrutineers.

**Senator MINCHIN**—Again, this is like amalgamations.

**Mr Pallas**—The only concern I have there is that many union rules actually do provide for the manner by which scrutineers are to perform their function and who can actually constitute a scrutineer. So we would have a concern with a regulation that would seek simply to subvert an existing rule.

It may be that many rules do not actually provide for scrutineers. So, in the absence of a union rule, we would see there being no difficulty with a regulation having some work to do, but only in circumstances where the union's rules do not make express alternative provisions.

**CHAIR**—So you would support it, as long as it did not contravene existing union rules that allowed or did not allow for it.

**Mr Pallas**—I think we need to break down what it is that is being sought. If essentially what is being sought is simply to say that there can be scrutineers and here are the scrutineers, we have no difficulty with that at all. If you are saying that the obligations of a scrutineer in a ballot conducted by the AEC should be as follows: they should not touch or interfere with ballot papers, I see that as being something entirely within the responsibility and ambit of the legislation.

**Mr McCLELLAND**—So, for instance, section 195 sets out a number of requirements that rules should have about the powers and duties of committees and the manner of summoning meetings and so forth. They do not prescribe the rules, but they say the trade union rules should provide for a whole feast and host of things, including auditing, and so forth. I take it from what you say that you would not take offence to an additional subparagraph being put in there as to the manner of appointment of scrutineers and the method of scrutineering, or something of that nature.

**Mr Pallas**—Duties and responsibilities of scrutineers. We would have no difficulty with that. Indeed, I would go even further and say that we would have no difficulty with a standard regulation which would have operation in the absence of laws dealing with scrutineers. I think that there probably would be quite a number of union rules that do not currently pick up who and how you go about identifying scrutineers.

A final point I would make is that, in so far as regulations sought to place obligations on scrutineers, when the AEC is conducting a count, I think that is something that, as a matter of right, as the body responsible for the conduct of the count, the AEC could place some discipline upon—obligation not to touch or handle or interfere with ballot papers, being something that comes immediately to mind.

**Mr COBB**—What is the ACTU's position on the adequacy and accuracy of the voters roll?

**Mr Pallas**—That is the union?

**Mr COBB**—Yes.

**Mr Pallas**—It varies. I have to say that, as I made earlier comment, I think they have improved substantially. In many cases, this is as a consequence of the advent of computerisation. However, membership lists do tend to be inaccurate—and I do not think there would be one membership list in the country that would be 100 per cent accurate, simply because the people data inputting on membership are largely restricted to what people have chosen to put on the membership application forms. So 'Mr M. Mouse' might find his name on quite a number of application forms and, indeed, you do see inadequate

addresses being filled out quite regularly. But, by and large, I think organisations make a particular effort to see that they do not go to wasted expense in their membership lists being out of date or inaccurate.

**Mr COBB**—In the lead-up to an election, when should the rolls close?

**Mr Pallas**—I believe that there should be some reasonable period in advance of the poll when the ballot should close. I think it is unnecessarily onerous on the returning officer of the AEC and, indeed, the office holders of the organisation, to be required to continually add names. Without such a reasonable period for exclusion, there is a risk that organisations will be flooded for the purposes of simply being able to exercise a vote. That can be achieved one of two ways: either by placing a period by which the membership roll closes prior to the ballot; or by putting a precondition of the period of membership upon the right to exercise a vote.

**Mr COBB**—Roughly, what sorts of periods of time are you thinking of?

**Mr Pallas**—I would have thought between one and three months would be reasonable.

**Mr COBB**—When the union member's name goes on the roll, do you have a firm opinion about the address—residential address as opposed to workplace address, for example—and the difficulties with itinerant workers, and that type of thing?

**Mr Pallas**—I would be greatly concerned with a suggestion that said it must be a residential address. I think there are many union members who would prefer, for whatever reason, not to identify their residential address. I think it would be inappropriate that they be excluded from the right to vote.

I must say that most unions have a very strong preference to ensure that members specify their residential address. There is a potential, of course, that you have a cluttering of ballot papers or, indeed, internal communications from the union falling into the hands of an employer at the workplace. But, nonetheless, I think it is important that, if people choose—despite the best urgings of unions—to put their workplace address, they should not be prohibited from exercising their right in a ballot.

**Mr COBB**—So you are opposed to ballot papers being sent to workplace addresses?

**Mr Pallas**—No, quite to the contrary. I support the right of people to nominate a workplace address if that is the address they choose on their membership roll. If the question is directed at: do I think that workplace ballots are worthwhile ideas? I think the view is that they can be. Certainly there is evidence that you can increase the level of voter turnout, dependent upon the nature of the organisation that is participating in such

elections. Particularly with unions that have high membership concentration in a few workplaces, we can maximise voter turnout, and that is a valuable and important thing. So, to the extent that workplace ballots are available under consistent legislation by way of exemption, we would support the continuing preservation of that entitlement.

**Senator MINCHIN**—You have told us that, by and large, you think the electoral system for trade union elections works reasonably well; you are reasonably happy with it. I think you have also said that, by and large, your elections are conducted by voluntary postal voting. Last week in the parliament your political wing, particularly its leadership, described voluntary postal voting generally as ‘a sham, a shonk, a dreadful reflection on any organisation that conducted elections in that way that reflect on the integrity of anybody elected by that method’. Are you concerned by the reflection therefore upon all trade union elections in this country that your political wing has cast?

**Mr Pallas**—Let me say that our view about compulsory ballots for the general electorate is entirely consistent with the views expressed by the Australian Labor Party. We feel that there is a great capacity for there to be a lowering of voter turnout and a reduction in the mutual obligations that attach to democratic institutions which we all have an obligation to uphold.

In respect of union elections, I see those as being entirely separate and different by their very nature. They are, after all, voluntary organisations. We are not voluntary citizens of this country; it is something that it is our birth right. Our right to vote is not only a right, in my view, in a broader electoral sense, but it is an obligation.

In respect of union elections, the ACTU believes and supports the idea that we should maximise voter turnout. One thing that we do not want to go back to is the principle that there is some measure of compulsion attaching to your union membership that you must participate in a certain way. So in that respect, in order for unions to be attractive to membership, the level of obligation that attaches to the exercise of their rights to participate in the union should be as reasonable as possible.

So we actually see there being a fundamental difference in the nature of the institutions and, therefore, no inconsistency in the point made—despite the fact that I must make the point that the ALP is not a political arm of the ACTU. It does, however, have very close political associations with some of our affiliates.

**Mr COBB**—There could be a disincentive to join a trade union, if you knew there was an obligation to vote with the membership?

**Mr Pallas**—Indeed, and that is the point I make. Whereas people do not have a choice about whether or not they are a citizen in this country, they certainly do have a choice about whether they are a member of a union. That is a view that this government has made paramountly clear. That being the case, we do not want to see levels of

obligation attaching to what is essentially a voluntary function become too onerous.

**Mr COBB**—On average, what percentage vote voluntarily?

**Mr Pallas**—It would be upwards of 30 per cent. It depends on the nature of the organisations. For example, in white-collar organisations, it is not uncommon to get 60 and 70 per cent voter turnout; in traditionally blue-collar organisations, the voter turnout is around about one in three.

**Senator MINCHIN**—The ALP last week, when talking about the principle, said that voluntary postal balloting is a shonky process. I took that to mean that the ALP thinks trade union elections are all shonky. It was the logical conclusion to draw from what they were saying. I am talking about the reflection upon trade union elections, cast by what was said about the process in parliament last week—and we are here talking about the process of trade union elections.

**Mr Pallas**—I suppose our view would be that certainly we would like to see exactly what was the subject of criticism. I understand that there has been considerable criticism of the principle of a secret ballot by way of postal vote to the broad community, to all electors. I must say that I have similar concerns about that process, simply because of the moving away from a fundamental tenet of what we see as being an appropriate expression of democratic right, when that right is part and parcel of an obligation of citizenship.

In respect of a pejorative inference we think may have been drawn on the electoral processes that currently attach to union elections, I would take the view that I think those comments were directed towards a process of balloting that was being suggested by the government in respect of the republican convention.

**CHAIR**—The process would be exactly the same as the AEC conducts on behalf of employer and employee organisations.

**Mr Pallas**—Of course, then the criticism would be not so much at the process—and I do not know whether or not that is what the criticism was at—but at, firstly, the establishment of a principle; and, secondly, the importation of a view that a process of election for voluntary organisations should be applied automatically to a system of balloting of the entire community. I must say that I support those views. I consider that it would be an unfortunate precedent and, indeed, it certainly would not provide the same level of integrity of balloting as physical balloting.

I understand that this issue was directly raised by the AEC in their submission—the idea of physical balloting as an alternative in union elections. Whilst we do not advocate it, certainly we would say that that would be a system with greater integrity to it and it would reduce the capacity for fraud by physical voting.



**Mr McCLELLAND**—Particularly if workers were given time off to go and do it.

**Mr Pallas**—Definitely. One of the principle objectives here is to maximise voter turnout.

**Mr McCLELLAND**—What, in circumstances where they are not given time off to go and do it.

**Mr Pallas**—My position is even broader than that. If the basic object of the Workplace Relations Act is to make organisations more democratic and representative of their membership, you can do it one of two ways. You can do it through the secret balloting process which recognises that you will not get as untainted a ballot process as if you actually have physical voting. But then there are cost considerations that impact on it. The AEC in their processes said that, if you have a secret ballot—and that is by post—then that is one thing. It is about \$5 million a year to conduct on average. If have them by physical turnout, it costs in the vicinity of \$15 million to conduct the same sort of process. You can only do whatever's costs are reasonable. We would say essentially, to import that sort of process in the general community voting, would be entirely counter-productive.

**CHAIR**—As part of the ACTU, you are especially happy with the process that the AEC puts in place for postal ballots in union elections.

**Mr Pallas**—Very much so. We believe that the AEC not only conducts themselves professionally, but impartially. There are very few criticisms that I have become aware of, and none that have been sustained, in my experience, about the impartiality and integrity of AEC ballots in respect of the function of the AEC's responsibilities.

**Mr McDUGALL**—I have a follow up question to that. I am not too sure why the three unions you have mentioned in your submission were given an exemption—being the Wool Classers Association, the Maritime Union of Australia and the CFMEU mining division. In light of your answer just then, are you satisfied that those three unions are actually getting the best result out of their elections when they are not controlled by the AEC?

**Mr Pallas**—I must say that, having looked at my submission with the advice I got from the industrial registrar, and then comparing it to the AEC's submission, there seems to be at least some possibility for conflict in respect of the CFMEU mining division where they actually indicate that the CFMEU conducted a workplace ballot under the exemption processes.

So, putting that to one side, in the AEC's advice, there are high voter turnouts in CFMEU elections. Both that union and the Maritime Union, by the very nature of their work, are highly concentrated areas of union membership. Of course, a primary object that unions endorse is the maximising of voter turnout.

The second issue is the integrity of the ballots themselves. I am unaware of any criticisms of those ballots as they have been conducted. I must say that criticism of union elections from unelected candidates is not something that is short in forthcoming.

**Mr McCLELLAND**—I gather from the tone of your evidence that credibility of trade union elections is a matter of vital concern for the trade union movement. It is very much interested in the integrity of the process.

**Mr Pallas**—Very much so. I suppose we would have to say that our support for the AEC is a very strong one in that we believe they have conducted their functions effectively. If it is turning to an issue that really has not been raised with me but picked up in my submission, if there is any suggestion that there should be costs borne by organisations in the conduct of their elections, then clearly it would be our view that unions would have to make judgments about cost efficiency as opposed to electoral probity. I think that would be a very unfortunate mix of criteria for union officials and, indeed, the community to have to be subjected to.

**Mr COBB**—I note that two or three years ago it cost about \$3.50 a vote to run a ballot. On a three- or four-year term, that is about a dollar per year per membership. Roughly, what used to be the cost if you were running an election yourself or if you were employing someone to do it?

**Mr Pallas**—I think that question predates my elevation to office. I do not think I can answer the question.

**Senator MINCHIN**—One issue that goes beyond Australia Post, beyond the AEC and perhaps even beyond the parliament is the constant accusations and speculation about the so-called collecting of votes, the rounding up of votes, intimidation and all that sort of thing. As Mr McClelland said, you are no doubt quite properly concerned about union elections looking to be and being fair and above board. Do you acknowledge that that is a general concern both within the union movement and the community? Does the ACTU have any particular policy on that or any attitude to that, or do you just say that it is all rumour and that it does not exist? Is there anything that you would want to suggest to this committee about that issue?

**Mr Pallas**—I certainly would not simply discount any suggestions of impropriety in union ballots as being simply rumour. The reality is that when you are playing for big stakes, such as the control of large organisations or the holding of office which attaches with it an income for the holding of those offices, there is always a potential for there to be impropriety on behalf of the individuals participating in those ballots. That is something that needs transparent safeguards to ensure that the integrity of those elections are preserved.

I believe that in many cases criticisms and suggestions of rotting of ballots have

found their way into media long before they have been substantiated as a matter of fact—indeed long before any charges have been laid or even in the absence of any charges being laid. I see that as part and parcel of a robust democratic debate, but I do not see it as a poor reflection upon the integrity of the balloting system that is currently attracted to trade union organisation. The view that the ACTU has is that it is not our business to run union elections. It is our business to hopefully preserve a trade union movement that has some integrity and standing in the community based on both the public positions that it adopts and the manner in which the people who espouse those public positions have achieved office.

We are concerned to ensure that that process is maintained. That is why I am here today. That is why we believe it is important that views of this nature take place. The principal and driving focus should be that the elections to office of union candidates achieves not only a private good but also a public good to the organisations that the elections are above board and, to the extent that there is any suggestion of impropriety, that there are effective mechanisms for dealing with that.

**CHAIR**—The ACTU must have been quite disturbed with the comments of the commissioner in Queensland when that report was brought down.

**Senator CONROY**—Are you referring to the Cooke inquiry?

**CHAIR**—Yes. Commissioner Cooke said that ballot rigging in union elections in Queensland and throughout Australia is much more widespread than is generally supposed and has gone undetected for years. The perception that must grow out of those sorts of comments from a fairly imminent person must be disturbing to an organisation like the ACTU.

**Mr Pallas**—It is disturbing. What I found most disturbing about those comments was the use of a generalist statement rather than specific reference to a factual situation. Certainly there were a number of ballots which were the subject of inquiry where problems had been identified, but I put in mitigation of the integrity of the balloting process the views of Ron Dawson, who is perhaps the most pre-eminent academic on union elections when he said, ‘After nearly 30 years of conducting union elections, while being observed by people who would have delighted to establish bias or improper conduct, the reputation of the electoral office in this area is as good as any reputation is likely to be.’

It is important, therefore, to separate criticisms of the balloting process which may or may not be true. In many cases, they are the subject of political hyperbole for what are essentially sectional interests. Putting those to one side, the electoral office and the conduct of its function has been beyond repute in our estimation. Suggestions of impropriety in balloting by candidates or participants in the election is something that needs to be dealt with on a case by case basis. Generalist statements about improper

conduct can quite simply and appropriately be dismissed, unless it is backed up by hard and substantiated evidence.

**Mr McCLELLAND**—I think Commissioner Cooke was appointed by the Queensland state government to inquire on specific terms of reference. I recall the state clerks union, the state liquor union and the state AWU. His terms of reference did not extend beyond those Queensland unions, as I understand it. Is that the point you make in terms of him drawing generalist conclusions broader than those specific unions in the state of Queensland?

**Mr Pallas**—The statement that was drawn to my attention was about it being common knowledge. Being a lawyer, I tend to see those matters as being necessarily dependent upon proof. Simply to make such an allegation or an assertion really does not take the debate any further. An inquiry was conducted with very specific terms of reference. Impropriety was found in certain circumstances, but to make a statement more generally about ballots across Australia well and truly outside of the terms of reference seems to me to be gratuitous at the very least.

**CHAIR**—As there are no further questions, thank you very much for your attendance.

**Mr Pallas**—I apologise to members of the committee for delaying them for half an hour. There is a company seeking a wage delay which is forever in your debt.

Resolved (on motion by Mr Nairn, seconded by Mr McClelland):

That this committee authorises publication of the evidence given before it at public hearing this day.

**Committee adjourned at 1.15 p.m.**