[PROOF]

COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON

ELECTORAL MATTERS

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

SYDNEY

Tuesday, 20 May 1997

OFFICIAL HANSARD REPORT

CONDITION OF DISTRIBUTION

This is an uncorrected proof of evidence taken before the Committee
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CANBERRA

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Members:

Mr Nairn (Chair)

Senator Abetz
Senator Conroy
Senator Minchin
Senator Murray

Mr Cobb
Mr Laurie Ferguson
Mr Griffin
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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WITNESSES

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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Role of the Australian Electoral Commission in conducting industrial elections

SYDNEY

Tuesday, 20 May 1997

Present

Mr Nairn (Chair)

Senator Conroy	Mr Cobb
Senator Minchin	Mr Laurie Ferguson
	Mr McDougall
	Mr McClelland

The committee met at 10.16 a.m.

Mr Nairn took the chair.

BOHN, Mr David Anthony, Director, Organisations, Sanctions and Industrial Chemicals Unit, Legal Services Group, Department of Industrial Relations, GPO Box 9879, Canberra, Australian Capital Territory 2601

PARKIN, Mr Gregory Frank, Assistant Secretary (Projects), Legal Services Group, Department of Industrial Relations, GPO Box 9879, Canberra, Australian Capital Territory 2601

CHAIR—I declare open this fourth public hearing of the inquiry into the role of Australian Electoral Commission in conducting industrial elections and welcome the witnesses and others in attendance. We will be taking evidence today from the Department of Industrial Relations, Dr Amy McGrath, Mr Paul Sheehan and Mr Quentin Cook. We have received a submission dated 16 May 1997 from the Department of Industrial Relations.

Resolved (on motion by Mr Cobb):

That the submission from the Department of Industrial Relations be authorised for publication.

The submission is now a public document and can be made available to anyone. I welcome the witnesses from the Department of Industrial Relations. I remind you that proceedings here today are legal proceedings of the parliament and warrant the same respect as proceedings in the Senate and the House of Representatives. 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 which, as I just said, is now publicly available. Are there any corrections or amendments to that submission?

Mr Parkin—No.

CHAIR—Would you like to make a brief opening statement before we proceed to questions.

Mr Parkin—Yes. I would like to put our submission in perspective and explain the role that this department has and, therefore, the perspective that we bring to this exercise. We do not have any administrative role under the provisions. I note that the committee has already heard from the Australian Electoral Commission and the Australian Industrial Registry, which share the administrative responsibilities under the act. The AEC, of course, conducts the elections; the Industrial Registry grants exemptions from requirements of the act. We have no role there so we have no direct experience of administering the provisions but, as part of our general responsibilities to our minister, whose act these provisions are contained in, we do try to keep abreast of significant

developments in interpretation and application of the provisions. We bring that sort of experience to the committee.

We have a particular interest in ensuring that the provisions are as effective as possible in discouraging, and allowing proper enforcement of, fraud—to use the term loosley—in organisations' elections. We have addressed, in our submission, the recent judgment of Justice Moore in the Industrial Relations Court, which was an example of that sort of situation. Although we keep a broader perspective of the sorts of issues that the AEC in particular have addressed, we do bring a perspective on that aspect of discouraging fraud and making sure that the enforcement mechanisms there are as effective as possible.

In that framework, we have addressed two broad issues in our submission. The first is how elections should be conducted and what actual rules apply. The second is what measures are available at the enforcement level when it is alleged those rules have not been followed. We have addressed issues of standardisation, not in the broad terms that some other submissions have but focusing on what can be done to standardise rules to improve the integrity of elections. We focus on enhancing the relevant objects of the act, being those to make organisations representative of and accountable to their members and, also, an object of encouraging democratic control of organisations.

As a second aspect of how elections are conducted, we have looked at the power that the returning officers—that is, officers of the Electoral Commission—already have under section 215 of the act. We can discuss that in more detail if the committee wishes. We see that, to some extent, as an alternative to what might otherwise be a more widespread standardisation of rules: that the returning officer has the power to override rules when that is necessary to ensure the integrity of particular elections.

On the second broad issue of enforcement of the provisions, we have proposals in our submission about the system for prosecution of offences under the act. We note that the current penalty levels are inadequate and we also address the problem of the time limit for prosecutions which, at the moment, is 12 months. This was something that was made very clear by the sequence of events in the case that I have mentioned: the Communications Workers Union election and the election inquiry by Justice Moore. It is clear from the judgment that there was widespread electoral fraud but the timing was such that there was no scope to pursue the criminal penalties that would otherwise be available. As Justice Moore's judgment demonstrates, sometimes the facts in these cases can emerge long after the current 12-month limit. So we certainly see that as a problem that it would be appropriate to remedy.

We also address a number of aspects of the regime for court inquiries into elections; not the prosecution regime but the quite separate regime to have the result of an election put aside and the incorrect process corrected by a new election when the court thinks that is appropriate. We address some proposals that the AEC have made in that

regard. Again, I can go into more detail if the committee wishes.

CHAIR—On that aspect of the time limit for prosecution, in the example you mentioned that the 12 months had long gone even by the time that Justice Moore brought down his findings. Do you think that the act should look at provisions whereby a new time limit might come into force if there was some sort of inquiry, judicial court action or something like that rather than the standard period from the time when the election took place?

Mr Parkin—That would be a possibility. We have tried to work through the practicalities of that internally and we thought there may be some potential for challenge if we linked it to a particular event in the process of the election inquiry. It might be difficult to actually align the prosecution process to what is happening in the court proceedings. For example, you could not say the end of the election inquiry proceedings because sometimes they are left open on the books in a quite formal way. Justice Moore has now made at least four published decisions in that case as various things come up. He makes some broad findings of irregularity and then he lets the parties make submissions as to what should be done; then he makes formal orders. To try to pin it to any particular event and say that from that finding you have six months or 12 months might actually encourage more litigation and challenges.

We also note that there are two separate issues, as we see it. The general inadequacy of the current penalty levels for the main offence provision, which is section 315, which would cover such things as happened in the case that Justice Moore addressed where some individuals coerced other voters to hand across their voting papers and some individuals filled out other people's ballot papers in multiple forms. Both of those actions would be offences under 315, and the current maximum penalty is six months imprisonment or $500. We regard that as inadequate, quite apart from the question of the time limit.

If that were raised to 12 months or some equivalent monetary level, that would automatically overcome the problem with the time limit. Because the problem with the time limit stems from a policy that is reflected in section 15B of the Crimes Act, which essentially is that crimes which carry a maximum penalty of six months or less are considered less important and there should be some protection against being prosecuted years after the event, whereas for more serious crimes which carry a higher penalty there is no statutory limitation—you can be prosecuted years into the future. So, if it were considered appropriate, as we suggest it would be, to raise the penalty level for these sorts of offences to 12 months or more, plus some alternative monetary level, then the time limit problem solves itself.

CHAIR—So, in the example that you gave, that would have been overcome: if that penalty had been 12 months or longer, charges could have been laid at the completion of Moore's inquiry?

Mr Parkin—Charges could have been laid, and we would not need to devise what would necessarily be a fairly complicated halfway house—a limit that was longer than the 12 months but not forever, tied to some—

Mr COBB—Could you explain how that fits in? You say applications for election inquiry should be reduced from six months down to 30 days?

Mr Parkin—We agree with the AEC's proposal on that, yes. But we make the point that there should be some avenue for the court to grant an extension in particular circumstances. Otherwise, some alleged fraud will go untested, quite wrongly.

Mr COBB—Have you any idea precisely how that extension could work? You are setting a rule on one hand, and having an extension under certain circumstances on the other.

Mr Parkin—We had in mind a formula where the applicant would have to persuade the court—I am not sure of the exact test—in the interests of justice, that there was a good reason for postponing—

Mr McCLELLAND—Something along the lines of the Administrative Appeals Tribunal extension of time to file an application—that sort of thing?

Mr Parkin—Something like that, addressing the purpose of ensuring that electoral fraud is addressed. At the moment, people know that they have six months and they can take all that time and bring the application and they do not have to justify anything. We can see no reason why the facts should be allowed to go that stale. But, people can come to the court and say, 'I have very good reasons why I only found about this last week' or whatever 'and it is particularly serious fraud.' We are conscious of competing objectives here and we recognise that an absolute limit of 30 days could mean that some quite horrendous allegations—that might, on the face of it, be very sustainable—cannot be entertained because they are brought two days late. We are trying to overcome that sort of problem.

Mr LAURIE FERGUSON—It would seem a fairly extreme variation—six months down to 30 days. There was evidence yesterday by a returning officer who had conducted ballots that, on the surface, there were no problems in the middle of a ballot but things emerged later. In the case of one Telecom union when people put up the concept of workplace voting, there is a figure there today of at least 1,500 work sites. In my experience, these kinds of issues can emerge a significant period after the ballot. People start talking. People get knowledge. People become aware that people did not get ballot papers. People become aware that there was collection. Unless there is a fair leeway in people getting access to overcome this 30-day period, a real problem is going to emerge—people might not be aware of those kinds of problems in 30 days.

Senator CONROY—It is fairly difficult to have a thorough examination of the voting roll to determine a whole series of things, and that is one of the ways in which fraud is uncovered. You know a range of people did not vote, yet their ballot papers have been returned. And 30 days is a fairly short time, particularly if it is a large election with many thousands of returned votes. Scrutiny of the roll is a fairly complex process. It can be fairly hard obtaining the roll followed up by then going through the details.

Mr Parkin—I can only retreat to the opening comments: we bring no particular experience of administering these exercises. The AEC recommended the 30 days in its submission. We saw no reason to object to it, but there is nothing magic about 30 days.

Mr LAURIE FERGUSON—That might be good for the AEC but it might not be good for rank and file members of trade unions who have an interest in having democratic ballots. It might reduce the options for protests and that might be comforting to some people, but the experience I put to you is that in a large number of ballots the revelations have come out a significant period after the actual voting.

Mr Parkin—All I can say is that we see six months as too long and 30 days seemed a reasonable time. As I said, there is nothing magic about 30 days, but we certainly would want the proviso; we see that as important.

Senator MINCHIN—What is the public policy problem with six months? Is it just this doubt hanging over the heads of the electoral officials?

Mr Parkin—That it contributes to the problems with prosecutions, I suppose, occurring a long time afterwards, but also a general issue of staleness. Although the processes are not legally linked, it seems that in practice it is the findings, the particular development of the evidence that emerges in the election inquiry, that provides the basis for possible prosecutions—although theoretically, of course, people could pursue the prosecution avenue from day one. If the whole process is starting six months late, it is that much later by the time you get a finding by Justice Moore or whoever that might provide the basis for going off to court.

Senator MINCHIN—So if it was three months or two months that might be an appropriate compromise between the problems.

Mr Parkin—Oh, yes. I am not wedded to 30 days. But, in terms of practical experience as to how reasonable it is to expect the people involved to realise that there is fraud within the 30 days or 60 days, there is really not any expertise we can contribute on that.

Mr McCLELLAND—Do you think there is any justification for the Australian Electoral Commission, for instance, when they file their declaration of the poll, to file a more fulsome document indicating things such as the number of returned envelopes,

whether they sensed anything awry—things of that nature. Perhaps the time could start running from the date that the Australian Electoral Commission filed such a document. Is there any justification for imposing that sort of procedure on the Australian Electoral Commission?

Mr Parkin—I see no difficulty with requiring them to state particular factual matters, that X number of ballot papers went out and only Y came back. Once we require them to start to speculate as to whether things went awry, we might start to move into slightly awkward territory.

Senator MINCHIN—You are referring to the sort of report that Cooke in his inquiry suggested should be made.

Mr McCLELLAND—Something along those lines.

Senator MINCHIN—You are presumably familiar with the sorts of things Marshall Cooke said should be included by the returning officer, that sort of report. The completion of that report was then the trigger for the start of the appeal period.

Mr Parkin—I am not sure in practice how long it would take after the declaration of the poll to generate that sort of report, but to the extent that some irregularities would be sourced from that as distinct from what the individuals know themselves I suppose it is reasonable. It is not something we have addressed. I do not know whether there are particular administrative or other difficulties that the AEC might have with that.

In terms of the AEC seeing things going awry, we certainly recognise the force of the AEC's submission to you that they should have the power themselves to initiate an election inquiry, although we do draw attention in our submission to some possible downsides: that is, everyone will pressure the AEC to initiate the inquiry rather than do it themselves, which would be more expensive. At the end of the day we do not object to what the AEC propose there because it would be intolerable, I think, for the AEC to know or strongly suspect that there was a serious problem with an election and not itself be able to initiate the court process to overcome that.

Mr COBB—On another point, the accuracy of the membership rolls and who may vote, you make the distinction between members and financial members, with financial members only being eligible to vote, and you make some suggestion that there may be room for some standardisation of rules so that this somewhat grey area can be cleared up. Can you expand on your submission there?

Mr Parkin—We understand that the question of financial membership is one that causes particular difficulty in that there are some particularly confusing rules out there. I think the AEC may have mentioned it in their submission, that they get these sorts of questions and they can go off and get legal advice and address it. From what I understand,

there are variations that create a lot of confusion as to how recently someone has to have been financial, for how long they have to have been financial, and perhaps there is no particular reason or policy why the unions have adopted different rules. It is just an historical exercise. But we are in the area where there is a balancing again between the union's right to make up its own rules and the importance of having a system that is as fraud-proof as possible, not that financial matters go particularly to fraud.

Mr COBB—Given the complexity of it, and you have groups like itinerant workers who come in and come out, do you think it is possible to standardise it so everybody can be confident that the roll is fairly accurate or are we going to have to face up to the reality that it is going to be too difficult with a certain percentage of people?

Mr Parkin—The sort of standardising that we had in mind was that the same requirements apply—and I am not here to put a figure because that would be a matter of consultation—but that if you have been unfinancial for one month or three months or whatever you then lose your right to vote. Making sure that that common rule—whatever level it is—flows through to making sure that the rolls are actually correct is a different problem, I suppose. For itinerant workers, it is always going to be an administrative problem to make sure that you are up to date as to their current status.

Mr COBB—Who should have final authority to check the accuracy of the roll? Should it be left to the union solely or should the AEC or the returning officer have some authority in this area?

Mr Parkin—It is not something that we have really addressed. As I understand it at the moment, the Electoral Commission will pick up obvious defects or defects that are apparent on the face of the exercise. But usually you would only find out by going through the whole process. I am not sure that I can see any practical alternative to relying on the union putting together the document.

Senator CONROY—An officer of the AEC often goes down to the union office to be there while the roll is being prepared, printed off or whatever. Particularly for large unions of 100,000 or more, to ask the AEC to verify the roll, even if you said pick one in 10 and check it out somehow, would be a fairly substantive cost and time delay.

Mr Parkin—I do not want to duck too many questions, but we do not have any sense of how the administrative burden would balance against the particular benefit there. To a large extent, on quite a few of these issues, we recognise that there are issues where imposing additional requirements on unions would increase integrity, although we do rely heavily on the AEC to identify what sorts of issues they are. Whether that sort of example is one where the cost—which it seems to me would be quite significant—of sending in an officer of the AEC to, in effect, audit the entire membership roll and check all the union records is worth the benefit is not something that I am really able to access.

Mr McCLELLAND—Just on that, I think Justice Gray said, did he not, in Pullen's case that, if you cast a positive obligation on the Electoral Commission, there is a risk that you are inevitably going to raise an issue as to the adequacy of that check which itself could become the source of an electoral challenge?

Mr Parkin—That would be one issue. I was focusing on the administrative side a bit more which I think would need to be worked through with the AEC as to the sort of burden that would impose. It seems to me that it would be quite a heavy burden.

Senator MINCHIN—On the accuracy and compilation of the roll, one of the things that occurs in the Liberal Party is that a candidate can appeal against the accuracy of the roll prior to the election being conducted if they have reason to believe that the roll is inaccurate. Do you think section 215 is wide enough to allow the AEC returning officer to be able to receive submissions in relation to the accuracy of the roll prior to the ballot being completed and, if prima facie there is evidence that the roll is inaccurate, to take whatever action he or she believes is necessary to correct the roll or halt the election or have a new election or whatever?

Mr Parkin—In my view, yes. But I am not aware of it ever being tested; that is just my reading of the section.

Senator CONROY—What has tended to happen in a range of cases and issues have been raised by, if you like, the opposing team to an incumbent is that they have gone to a returning officer and said, 'The roll is dodgy or it is not complete or there are not enough addresses on it.' What you have tended to find is that the returning officer will just say, 'That's not really my area. If you want to lodge an election inquiry after the ballot is completed, this gives you lots of evidence to mount an election inquiry.' So they have tended to want to handpass it rather than get involved in an argument over, 'Does that person live at that address and how am I going to find those 30 people listed at that workplace who aren't going to get a ballot paper?'

Mr Parkin—I do not think I can really comment on how the AEC administer things or how they should administer things.

Senator MINCHIN—It is a question of whether we put any mandatory obligations on the returning officer within that section or adjacent to that section so that, if the returning officer is made aware of deficiencies in the roll which will potentially affect the outcome of the election, they have to act rather than washing their hands of it. Maybe that is something we need to look at.

Mr Parkin—The generality of the language in 215, I think, would encompass that, but it would also encompass lots of other things. I suppose the issue is whether the returning officer should be obliged to act rather than merely allowed to when applied to other things as well. Whether you would single out the one aspect, I am not sure.

Mr McCLELLAND—I suppose that is right. It may not have to be mandatory. If you gave them the power to apply for an inquiry, they could themselves go to the court and say, 'This doesn't look in order.'

Mr Parkin—They could go to the court or under 251 they could take their own steps. But, as I said, I recognise—

Senator MINCHIN—They do not do that. They wait until after the ballot.

Mr Parkin—They may have good administrative reasons for not getting bogged down in a complete audit.

Senator CONROY—It does not necessarily stop someone going to the court anyway. They go ahead and do the big integrity test on the roll and then someone goes and challenges on the basis of the roll anyway.

Senator MINCHIN—Prior to the completion of it.

Senator CONROY—Yes, or straight afterwards.

Mr McCLELLAND—The public policy considerations in favour of the Electoral Commission acting perhaps early in the piece might be to avoid the cost of a ballot. I know of candidates in union elections who will say, 'We think we're going to win. We'll let it go through, but we'll keep it there as an insurance policy. If we go down, it's grounds to mount a challenge.' If that occurs, obviously you have quite significant cost in this day and age of the big unions going out the window if there is not an early intervention to tidy up the roll. So, again, that might be an argument for the Electoral Commission having the power to go and seek clarification or assistance from the court as to what they should do.

Mr Parkin—Certainly, yes.

Mr McCLELLAND—In addition to sections 315 and around there about penalties in elections, there are also other penalty provisions—for instance, the ability for an employee to take action against his employer or indeed an organisation if that employer or the organisation has taken action to intimidate or victimise or indeed take any action to the detriment of that member. I think it used to be around 346 or thereabouts. Are you aware of those sections?

Mr Parkin—General protection of freedom of association provisions, we now have more extensive sections—

Mr McCLELLAND—But there was always something in there that enabled someone who had been victimised by their employer to take action against their employer

if they had been victimised as a result of participating or not participating in a ballot.

Mr Bohn—Are you thinking of the previous section 334 or 334A?

Mr McCLELLAND—Around there; I have not got it in front of me.

Mr Bohn—Those provisions have now been replaced by the freedom of association provisions, which are much more extensive in that regard.

Mr McCLELLAND—But those sorts of things always existed even in the 1988 act?

Mr Parkin—Certainly, yes. To put it in general terms, employers cannot penalise employees for taking part in their union processes.

Mr McCLELLAND—There was a reverse onus provision in there as well where the employer had to prove that he did not take action because of that fact. Can you recall—

Mr Parkin—Yes. But there is nothing specific about union elections. I am not sure whether I am missing your point.

Mr McCLELLAND—I think there is. Anyway the sections will speak for themselves, won't they, in the former act.

Mr Bohn—I also point out that the freedom of association provisions are actually civil penalties as opposed to offences.

Mr McCLELLAND—Finally, I understand that filing fees have been introduced now in the Federal Court for proceedings under the Workplace Relations Act—indeed, quite substantial filing fees—except in the case of unfair dismissal where it is limited to $50. Do you think the imposition of a filing fee with respect to an election inquiry is an impediment, perhaps, to a democratic review of a trade union election?

Mr Parkin—That is not really something I can comment on.

CHAIR—I think that really is a matter of policy, which officers of the department should not be required to comment on.

Mr McDOUGALL—I would like to go a little further in relation to the integrity of the roll with regard to union membership. Under section 268 of the act there is a requirement that all organisations keep a register of members, showing the name and postal address of each member. You go on down in 4.15 to say that at present membership rolls of registered organisations, unions especially, are virtually impossible to audit.

We discussed today and yesterday in Brisbane the fact that there have obviously been cases where the accusation of fraud has been around on the basis that people vote for other people because the rolls are not in order in relation to postal addresses. How do you see the act being adjusted or audited in a system to ensure that we get a better result than we currently seem to be getting in the case of some larger unions?

Mr Parkin—The particular difficulty that we address in paragraph 4.15, to which you refer, is that the members themselves are not volunteering the information. No easy remedy occurs to me as to how you do that, short of contacting each of them and saying, 'Are you still at the same address?' which does not seem practicable. The obligation is, as it should be, on the organisation to keep its records up to date. If it is suggested that the organisation is not properly reflecting what its members are telling it as to their addresses, that is something that can be addressed, although there are current provisions.

I do not see any way of overcoming that particular problem. Again, perhaps the Electoral Commission may have some expertise. I know the Commonwealth does have spot audits, or whatever they call them, but obviously you have practical difficulties in doing that for unions.

Mr McDOUGALL—We have a case at the moment of an election taking place with the AWU. It is in the process of taking place. On Sunday in a newspaper article one member of the AWU accused the other member of certain things but at the same time said that over 30 per cent of the members in the union were listed in the membership records with no addresses. Wouldn't an audit under the act as required have picked that up at some earlier stage?

Mr Parkin—The obligation is to list a postal address. If there is no address, that union is not complying with the obligations of section 268.

Senator CONROY—I thought there was an obligation on a union member to supply an address when he joins a union.

Mr McDOUGALL—How do we know then at the end of the election that we have a valid election?

Senator CONROY—Joining is voluntary, so you cannot force a union member to give you their address, as much as a union would want to get the address so the union can communicate with the member.

Senator MINCHIN—You could make it a condition of voting that they are able to give an address.

Mr Parkin—I simply do not know whether under the current act a union can refuse to take someone as a member if they do not give their address. I just do not know

the answer to that. Section 268 requires that the address be included on the organisation's records. Maybe it is an adequate answer to that to say that that member did not give me—

CHAIR—So the Workplace Relations Act has a requirement that, as far as the union role is concerned, there should be an address?

Mr Parkin—Each organisation is required to keep records that include the address. But Senator Conroy's point, as I understand it, is that sometimes the union has no power to insist on that. I just do not know the answer. Maybe a union is able to insist and is able to—

CHAIR—If that is the case, there is actually a discrepancy there, isn't there?

Senator MINCHIN—Under that requirement would the work address be sufficient if they just gave their place of work?

Mr Parkin—Yes, and some do. I understand that that is quite common, that some people quite deliberately do not want their home address on the records.

Mr McDOUGALL—It was put to us yesterday by a returning officer who gave evidence—he is actually the returning officer conducting this election—that the 30 per cent might have been a bit out and that out of 57,000 there are about 9,000 with no addresses and about 3,000 at the moment that he cannot find. Some of this is put down to the fact that, within the union and in the liquor trade side of it, there are a fair number of itinerant workers moving around. I will just quote from yesterday's paper in a follow-up story where one of the officers of the union said:

A review of the membership print-out indicated that anything between one-third and 50 per cent of the members listed the AWU does not have an address for. The membership of the AWU is not that transient.

Mr LAURIE FERGUSON—Just a minor point, it was not an officer, was it? It was a person campaigning against the officers, wasn't it?

Mr McDOUGALL—He is a candidate. At the end of day, we are asking the taxpayer to pay the bill for the conduct of industrial elections. That is the current format. If under the Australian Electoral Act, which we have in our normal federal elections, you are required to put down an address, why isn't it the case that for industrial elections those registered on a roll should be made to give an address or not be eligible to vote?

Mr Parkin—Off the top of my head I simply cannot commit to whether that is a requirement. I can see a respectable argument that it would be a requirement, that as part of the union's obligations under 268 to record the address the union be expected to not take people on who do not provide addresses. But whether in law that is the case I simply

would not want to say off the top of my head. I accept the point that if someone does not have any address registered it is difficult for them to properly participate in the electoral process.

Senator CONROY—When I knocked on doors as a former union activist, there were many examples of union members saying, ‘Look, the union is something about me at work. I don’t want any union business at home. I don’t want to supply a home address to the union. I just want to give a work address.’

Mr Parkin—I understood the point to be that there was no address at all. I am not suggesting they should give a home address. I can accept that there are privacy or other considerations there. I do not know what the AEC does in practice in those situations. Maybe they default to a work address. In some situations it may be possible to work out where these people work by what branch of the organisation they are in. Absent that, there is nowhere the AEC could send the ballot papers. So maybe those people do not get to participate.

Mr LAURIE FERGUSON—Would you like to add anything to point 4.16? You say:

Questions about eligibility to vote may be clarified by establishing a standard provision regulating when a member is considered to be ‘financial’ for those purposes.

That is a bit of a throwaway line. Do you have any ideas of what you would like to see on financial status standardisation?

Mr Parkin—We understand that the confusion arises from different provisions as to how recently someone has to have been financial and for how long someone has to have been financial. We understand that it causes particular confusion. But I do not have in mind that we say it is six months or three months or that you have been unfinancial for three weeks or whatever. If this option were to be adopted, the actual content of the standard rule would be an appropriate matter for consultation, and organisations would have views as to whether a long period or a short period was appropriate. Certainly, as you say, it could be seen as a throwaway line. It is not one of our major recommendations. It occurs to us, from what we know of the system, that it is a problem that could be addressed.

Senator MINCHIN—I just want to touch on funding of elections. I learnt from your submission that in 1959 the Commonwealth accepted some responsibility for funding elections on the basis of funding the differential between the costs that the organisation would have incurred if it had conducted the election itself and the total cost, which ran for some 14 years. What statistics do we have from that and evidence of its workability or otherwise? Was it relatively simple for the Commonwealth to be able to administer that sort of proposal? What, on average, was the proportion of costs that was borne by the

organisation and the Commonwealth in particular elections?

Mr Parkin—I personally have no information on that at all. Whether departmentally we have any, I am not at all sure. This part of the submission is simply drawn from our perusing the statute book. So we have just gone through the legislation.

Senator MINCHIN—On the face of it, it is not an unreasonable arrangement that the Commonwealth incur whatever additional costs are imposed by them being brought under the requirement that they be conducted by the AEC. Incurring only those costs that are in addition to whatever the organisation would have had to expend itself if it had done it itself does not seem a bad principle. It was wiped out by the Whitlam government in 1973 when it said to just take it out of the whole cost.

I would be very interested in whatever information is available from the department about the administration of that arrangement—presumably there must be some information; it went for 14 years—and any statistics from it on the proportion of costs, on average, that was borne by each party to that arrangement. It would be very interesting because I think it is something worth considering. You say somewhere that you see some merit in subjecting the cost of elections to reasonable limits. Propositions 59 to 73 would not be a bad way of doing that, but what else did you have in mind? Do you put a cap on it? Do you put a limit on the amount per voter for whom the Commonwealth will subsidise elections? How would you set limits?

Mr Parkin—The reference to reasonable limits I think was in the context of the AEC's proposal about advertising costs, which is one aspect that the AEC has expressed concern about. I do not think it has happened in practice but, theoretically, a union could demand quite extravagant advertising at Commonwealth expense.

On the general issue of costs, we see this as the other side of the coin to the question of integrity. A lot of the proposals that seem to be before the committee are about standardisation, not particularly allocated to a particular purpose. We are focusing much more on standardisation, where that is appropriate, as a matter of increasing integrity. We see a lot of scope for imposing those requirements. We draw attention in particular to the International Labour Organisation jurisprudence. That, as we understand it, would not be an impediment to reasonable measures that were to promote integrity.

But, to the extent that standardisation is sought not to improve the integrity of the process but because of cost efficiencies, we see that perhaps the appropriate answer is not to insist on standardisation—to insist on a union doing it in a certain way but that the union pay the difference.

So, if a union is to insist on a particularly complicated way of carrying out whatever the particular procedure is, it does not seem to us a particularly dramatic extension of the current scheme to say, 'If you take the standard recommended AEC

package that would cost this, or some variation of it that does not cost any more, that is fine, but we cost your extras which we think are unreasonable as X and you pay X dollars.' That is the sort of perspective that we have on costs. Then the emphasis on standardisation can be solely for the purpose of improving the integrity of the elections.

Senator MINCHIN—That would provide some incentive to adopt the model rather than it stick.

Mr Parkin—In terms of the legal advice, we note Dr Parry's advice of counsel, which the AEC provided to you, that it would be contrary, in her view, to the International Labor Organisation convention to charge people who do not use the standard form and only those people. But as I read that, she is talking about something where anyone who departs from the AEC offered version is charged something to discourage them from doing that.

I had in mind a different proposal, where you do not automatically charge people who depart from the standard version. You charge them if and only if and to the extent that the departure actually costs more money. My reading of the legal advice that is before you is that that would be quite consistent with the ILO obligation. But that is quite different of course to the idea of charging only the extra than what it would cost the organisation itself.

Although I have no experience at all as to how that was administered, we can try to find out. I am not sure that we can find a lot, but we can try to find how it was administered between 1959 and 1973. On the face of it, it occurs to me that there is some fairly fruitful room for debate as to how much it would have cost an organisation to run the election itself. Presumably, the accountants would have evidence to put as to what it would have cost. There are views that organisations can run elections a lot cheaper by using their own staff. They cannot have a staff member as a returning officer. That has to be someone independent of the union. But they presumably can, I think, engage members of their staff in doing some of the administrative exercises under the supervision of a returning officer who came from outside the organisation.

In one sense, that saves them an awful lot of money. But there is of course an opportunity cost in that, if union staff are doing that, they are not doing other things. How would you factor in those sorts of notional costs? I can see lots of room for debate. But we will see what we can find out about how it worked for 14 years.

Senator MINCHIN—I would appreciate that. Do you see any objection to a rule preventing a union using union resources in an election campaign?

Mr Parkin—I do not have the citations with me, but the current well-established case law of the general provisions about what a union can use its funds for have clearly established that and I am not aware of any of them being challenged. The Federal Court—

its predecessors—have interpreted the general provisions about a union only using its resources for proper union purposes.

Mr McCLELLAND—They are the Scott and Jess cases and a line following there, aren't they?

Senator CONROY—And Tanner's case as well, I think.

Mr Parkin—Yes. We see no need to express that in the act, given it is the existing law.

Mr McCLELLAND—But those cases related to using the resources of the union to promote a particular candidate's campaign as opposed to using the resources of a union to conduct a ballot.

Mr Parkin—Sorry, I took that to be the question from Senator Minchin.

Senator MINCHIN—Yes. That was the question.

Mr Parkin—There is no problem with the standard provision saying that everyone gets a mail-out of up to X dollars or whatever.

Mr LAURIE FERGUSON—I have just two other quick points. Are there any other prohibitions on external interference in the conduct of the ballot and financial assistance? Is there anything in the act that covers that?

Mr Parkin—External interference, donations—

Mr LAURIE FERGUSON—Are there any prohibitions on funding of campaigns—that type of thing?

Mr Parkin—I do not think so.

Mr LAURIE FERGUSON—Nothing at all?

Mr Parkin—I do not think there are any prohibitions on use of money.

Mr LAURIE FERGUSON—The other point is that in 1973, as Senator Minchin indicated, there is a change in the deal on financing these campaigns. In 1976 there was mandatory postal ballots. Between 1959 and 1973, was there an evolution of postal ballots? What was basically the situation between 1959 and 1973? Were there any court cases that led to a wider introduction of postal votes, or that type of thing that led to the 1976—

Mr Parkin—I do not know. We would have to take that on notice.

Mr LAURIE FERGUSON—Would you come back to us on that?

Mr Parkin—We would have to examine the legislation on these points.

Mr LAURIE FERGUSON—Basically, what was the set-up in the conduct of ballots in that period, 1959 to 1973? Was it essentially because of court cases or other reasons that postal ballots evolved a lot more widely?

Senator MINCHIN—I am just not clear on the extent to which you believe that the recommendations you have made would have either prevented or led to the early detection of the fraudulent activity which was uncovered by Justice Moore in the CPU case. Do you believe that what you have recommended would have made a very significant difference to either preventing or detecting that fraudulent activity? It is obviously a prime example and a measure against which we can put a lot of these propositions. Would they have enabled in that case the prevention or detection of that fraud?

The only material thing I see is the use of standard declaration envelopes. Okay, that would have made a difference, but do you really think your recommendations go far enough to ensure we have as little possibility as we can of a repeat of that case?

Mr Parkin—A more effective enforcement regime, prosecutions being allowable for a longer time and with a higher penalty, would have some deterrent effect. The court found in that case that some 930 ballot papers were fraudulently filled out—filled out by some inordinate number of people.

Senator CONROY—It was actually more than that.

Mr Parkin—It was not established just where those had come from. Some of the standardisation I would see as improving the chances of detecting that sort of activity—if people have to fill out on the back of a security envelope their name, address and a signature in a way that lets it be checked against other records. It may be that the individual who is filling out the 900 ballot papers or some proportion of them is going to be exposed earlier in the process and things can be corrected or is going to be perhaps discouraged from doing that because it is going to be easier to establish.

The other element of fraud that Justice Moore found though was coercion of members to hand across their ballot papers. I do not think he established how many of the 900—

Senator CONROY—I do not think he established anything of the case. I think there was one person who came to court and said they were asked but also said they did not hand it over. That was it. I have the ruling in my bag if you want to pull up the page.

There were lots of allegations that it happened, but only one person fronted the case. Other witnesses will testify on this, but that person indicated that, despite them being asked, they did not hand the ballot paper over. I am not aware of one person who stood up and said, 'I handed my ballot paper over.'

Mr McCLELLAND—I have a passage on page 60 where Justice Moore said:

Ratnavirawatana then said it was up to her in a tone that was perceived by Yanten as threatening.

I think that is the strongest he gets in saying there was some coercion. Do you know of any other passage where he suggests coercion?

Senator CONROY—Did any other witness turn up and say they handed over the ballot paper?

Mr Parkin—I haven't got particular texts or passages to point to, no.

Mr McCLELLAND—You might refer us to those passages where he found coercion, if you believe he did.

Mr Parkin—I think you are referring me to a passage where the person who was coerced did not hand across the—

Senator CONROY—How could they be coerced if they didn't? It was an attempt at coercion. I am not a lawyer, but I presume coercion is successfully getting the ballot paper.

Senator MINCHIN—I think you are splitting hairs, Senator Conroy.

Senator CONROY—No, I am asking Mr Parkin to substantiate his statement that the judge found that ballot papers had been handed over.

Senator MINCHIN—No, that there was coercion.

Senator CONROY—That there was attempted coercion.

Mr Parkin—I did not mean to suggest that ballot papers were handed over.

Senator CONROY—I thought you actually said that in your introductory statement as well as now. It was certainly an implication—not even an implication. I thought it was a clear statement by you.

Mr Parkin—The judge found that there was coercion, and I think the passage you referred me to is the indication of that. Whether the coercion was successful or not

depends on how robust the recipient of that is. The attempted coercion would itself be an offence, which was the basis for what I was saying about the possibility of prosecutions arising out of that case had the time limit not expired.

We can talk about coercion being different to attempted coercion, but in terms of the act that constitutes the criminal offence the act that Justice Moore found—whether you call it coercion, attempted coercion, successful coercion or unsuccessful coercion—would be an offence under the act.

Senator MINCHIN—You have said in your summary of it, attachment B:

His Honour found that members had been approached by other members to hand over their uncompleted ballot material. In at least one instance the person collecting the ballot papers was able to exert at least some direct influence over those approached . . .

Mr Parkin—As you say, we only say that people were approached. Whether people handed across their ballot papers, I do not recall him making any finding on that. In terms of whether an offence occurred, I do not myself see that as particularly significant.

Mr McCLELLAND—Just on that, I do not think he found an offence occurred; he said to use the language of the definition of irregularity, the non-penal provisions. He found as a result of those requests and even aggressive language, on page 66, 'An act by means of which a free recording of votes by persons entitled to vote is attempted to be prevented.' He certainly found that that had occurred: there was an attempt to prevent the free recording of votes.

Mr Parkin—That was the compass of his inquiry. He had no scope to find in terms of an offence. The point I was trying to make, perhaps not very well, is that the conduct he found to have occurred for the purposes of his inquiry would, subject to the usual processes had a trial been brought and the criminal standard of proof and so forth, but if a criminal court found the same conduct to have occurred and could identify the individual who had engaged in that conduct—

Senator MINCHIN—And that is contrary to the act.

Mr Parkin—that would have been a basis for a prosecution under the act.

Senator MINCHIN—In other words, it is an offence to attempt to get somebody else's ballot paper.

Mr Parkin—Yes, whether or not they stand up to the coercion.

Senator CONROY—You are making these comments in the light of a question

about how to stop ballot papers being handed over.

Senator MINCHIN—My question was about whether we are going far enough and you were talking about your recommendations in relation to this case. You were, I think, trying to suggest that at the end of the day it is difficult, even though people know they are breaking the law, to stop that sort of thing happening. Is that what you were suggesting?

Mr Parkin—I am not suggesting that the standardisation methods that we suggest would stop people coercing other people into handing over ballot papers. There are possibilities. You could insist on the ballot papers being sent to a home address, though that has the problems we have already discussed. That might discourage that, though there could be coercion to bring your ballot paper in from home and hand it across. When ballot papers are distributed at the workplace there is somewhat more potential for coercion. But I would not suggest that what we are recommending would overcome coercion. I would simply rely on the criminal regime as the answer to that.

Senator MINCHIN—Is that covered by your proposition that penalties for that offence be increased?

Mr Parkin—Yes. The current maximum penalty for that offence is six months imprisonment or $500. That is part of what we say is the inadequate penalty regime at the moment.

Mr McCLELLAND—But even there I think you are talking about section 315:

A person shall not, without lawful authority or excuse, in relation to an election for an office or a branch of an organisation, obtain or have possession of a ballot paper.

That is subparagraph (h). So I suppose it comes down to what 'without lawful authority or excuse' means. Aside from filling it out for someone else, which is clearly an offence under another subsection there, it may be that someone filled out a ballot paper and then gave it to someone and said, 'Post this for me.' I am not sure that would necessarily constitute an offence but I am not asking you to give a legal opinion on that.

Senator CONROY—What would happen if I wanted someone to assist me in filling out a ballot paper: would that constitute an offence? If I asked Rob here to give me a hand in filling out the ballot paper because I was confused and did not understand the instructions, what happens in that case under the existing legislation?

Senator MINCHIN—Subsection 315(2) says you are not allowed to induce 'any vote or omission to vote, any support or opposition to any candidate or any promise of any vote, omission, support or opposition'.

Senator CONROY—So if I asked somebody to help me fill my ballot paper out it

would not constitute an offence.

Senator MINCHIN—It would be similar to any election where you can have assistance.

Senator CONROY—I was just seeking clarification in terms of the fine hair-splitting you were talking about before.

Senator MINCHIN—Because of language difficulties—all sorts of things. Those sorts of things would be covered.

Mr Parkin—I think there would be a question about whether that was lawful authority or excuse. I do not understand that to be the sort of situation that the court case we have discussed was addressing.

CHAIR—Thank you very much for your attendance today.

[11.15 a.m.]

McGRATH, Dr Amy Gladys, Convenor, H.S. Chapman Society, Box 737, Kensington, New South Wales

CHAIR—In what capacity do you appear?

Dr McGrath—I appear in my own right.

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 your submission, which is now publicly available. Are there any corrections or amendments that you would like to make to that submission?

Dr McGrath—No.

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

Dr McGrath—Yes, I would. Thank you for asking me to appear. Gentlemen, I have read the submissions. I have heard the last witness. I absolutely failed to hear anybody mention the common worker, the blue-collar worker. They say that he can go to court and get a lawyer's opinion, that he can go to court and conduct an inquiry, that the AUC can do nothing and must leave it to him to go to court. I have heard it said that he has to get his material read in 30 days, which is anathema to the situation of parliamentary elections.

I have heard it said that he may not be able to get the advantage of the discretion of the returning officer, which he now has, on wrongful dismissal. He risks losing a day's pay. He risks bankruptcy. He risks intimidation from sitting officials. He risks sitting officials asking employers to sack him, as happened in the TWU—sack a candidate. The ILO is silent on this. They have further restrictions they wish to impose under the guise of privacy, despite this being exposed as a logical fallacy in the hearings when the AUC officials appeared.

I would like to read a statement a little longer than usual because I am proposing a more original course with the rights of the workers in mind. Is a federal court inquiry the best means of hearing union election disputes? Marshall Cooke QC in 1992 said that it 'has not proved an effective method either to detect or deter ballot regularities' after a 2½ year investigation. He said it does not perform any inquisitorial role other than perhaps to

examine the ballot papers. Its machinery to investigate complaints of other irregularities is ineffective. The remedy provided by present legislation is inadequate. Its adversarial proceedings rely solely on opposing parties to produce evidence.

The Federal Industrial Court began to hear such disputes in 1949 to allow rank and file members an alternative arena for complaint. In choosing a legal court, the Chifley government was merely following common practice in disputed parliamentary elections. No-one recalled that the latter had been decided by other preferred means for many years. It is timely to do so now.

From 1856 onwards courts of disputed returns were non-party parliamentary committees of experienced politicians, among them lawyers. They persisted until well into this century, owing to support from men like Sir Henry Parkes, Sir Samuel Griffith, Sir John Quick, Billy Hughes, Jack Lang and Sir Percy Spender. Why? Because they had resolved disputes justly, quickly and without cost, onus of proof or narrow legalism.

As Sir John Quick pointed out, such a court was a tribunal, which was required to deal mainly with facts, as very few points of law arise in elections. It decided the substantial merit of each case in real justice and good conscience. Despite opposition, particularly from Labor politicians, they had disappeared by World War II.

The same issues are true of hearings in industrial elections awarded to the Industrial Court in 1949. It proved as useless in delivering ‘real’ electoral justice, as Sir Percy Spender, shadow Attorney-General, warned in 1948. He said:

> It is unlikely an individual unionist will challenge the result of the ballot . . . If he becomes aware of an irregularity in a ballot he must show first that the irregularity took place and secondly that it was of such a nature that it went to the root of the ballot, and that, had the ballot been conducted properly, the result would have been different . . . Except in the rare case in which a man is prepared to put his future and his small fortune to the touch, no irregularity, however serious, will be challenged in court.

That was in 1948. Cases in the federal Industrial Court were to prove as rare as Sir Percy Spender said they would be—real justice buried under a Russian roulette of costs, legalisms, wrangles and delays in a happy hunting ground for lawyers. Challenges were so rare and electoral crimes so rarely dragged before the court, that they were free to flourish unchecked. They were perpetrated so boldly, it was common knowledge they were occurring. Yet Marshall Cooke QC’s 1990 inquiry was the only one held in all those years, apart from the royal commission of Justice Lowe in Victoria in 1950. Both exposed corrupt practice in union elections. Marshall Cooke believed ‘Ballot-rigging in Queensland and throughout Australia is much more widespread than generally supposed and has gone undetected for years’.

In those rare cases where elections are challenged serious problems exist, in founding a petition on ‘circumstances’ in the electoral process rather than the mere

interference with ballot papers, with the word 'irregularity' under section 4 of the Industrial Relations Act. Judges have differed as to whether the two stated definitions of what constitutes an 'irregularity' should be seen as expansive, not exhaustive.

Mr Justice Fitzgerald, in his landmark judgment on the TWU Queensland branch election of 1983, construed it as expansive—as did the High Court in another case—saying:

Conduct which may not meet either description may also be an irregularity. For example, conduct which misleads voters and thereby causes them to alter their votes, but not to refrain from voting may not properly be described as conduct which prevents or hinders the full and free recording of votes.

But he allowed it to be. This expansive view of irregularities is crucial to any judge finding that the result of an election could have been affected by circumstances in which fraud could occur, as Mr Justice Moore did in deciding to void the 1994 CEPU election.

My conclusion is that the Australian Electoral Commission asserts 1.5 per cent of challenges in courts proves there are no more than 1.5 per cent of dubious elections. This is arrant nonsense. It would equally prove the AEC and courts have failed to deliver the justice to rank and file union members that was their hope in 1949; further, that cost efficiency of the AEC has been at serious cost to members. We are left with two irreconcilable assertions: that of the AEC that all is well in the state of Denmark, and that of Marshall Cooke that all is rotten.

I have six recommendations, which I can work into evidence.

CHAIR—Are the recommendations in your submission or are they separate to the submission?

Dr McGrath—They might be slightly different. I have been in the UK; I have just got back.

Senator MINCHIN—Can I ask you to enlighten us about your recommendation for overcoming what you have highlighted in your opening statement.

Dr McGrath—To abandon the federal Industrial Court altogether?

Senator MINCHIN—Abandon the court in relation to disputes over election results?

Dr McGrath—Apart from anything else, in my view sitting union officials who have been entrenched for a long time can become too cosy with the judges. You need an independent court that is seen to be independent—a tribunal. I am using the word

'tribunal' because that was the word of Sir John Quick.

CHAIR—Something like the AAT—the Administrative Appeals Tribunal?

Dr McGrath—I am not totally familiar with that. The ball goes back to you on that one. But it would be more like the medical tribunal and police tribunal.

Senator MINCHIN—The AEC in their submission, which you might have read, suggested a two-tier thing. At the first level there would be an administrative mechanism to establish the facts and then, ultimately, if there appeared to be a prima facie case, it becomes a matter for the court.

Dr McGrath—You are still in the arena of legal courts, which have been condemned by so many eminent legal people throughout 150 years. But suggesting registrars is a ridiculous suggestion. Electoral law is very complex and those people are not trained or equipped for the complexities.

Senator MINCHIN—So there should be a specialist tribunal that you could complain to and that would undertake an inquisitorial role rather than an adversarial role?

Dr McGrath—Yes, that is right. As Sir Samuel Griffith pointed out, in Scottish law hearsay evidence is allowed. He set up a judge in the parliamentary tribunal in Queensland in 1886 and the judge advised. He allowed hearsay evidence, which is excluded in all these types of inquiries.

Senator MINCHIN—The powers of that tribunal, presumably, would be to order a new election or whatever. It would not presumably find individuals guilty of offences. Presumably only a court could do that. But this tribunal would have wide powers in relation to the election that was challenged.

Dr McGrath—It would have more the powers of a royal commission, more the powers of inquiry that are excluded. For example, I quote the case which has just been finalised of TWU and New South Wales concerning the 1994-95 branch election where there is discretion of the judge only to select the issues he wants to hear. Justice Madgwick chose to hear about the fraudulent ballot papers and excluded the irregularities. He would not hear them. He called them improprieties. I can read you six or seven of them to see whether you think they were improprieties or irregularities. I have the list here. So yes, I think the royal commission powers would enable them to initiate areas of inquiry—

Senator MINCHIN—And order new elections or whatever. But the prosecution of anybody they believe guilty of committing electoral offences could be done only by a court.

Dr McGrath—Not necessarily. That would have to be built into it. Do you say that because these are crimes?

Senator MINCHIN—Yes.

Dr McGrath—I do not see any problem with having penalties attached to tribunals. If parliamentary committees resolved that, it might be worth looking at that.

CHAIR—Would you like to submit the recommendations that you have there formally to this inquiry?

Dr McGrath—Now?

CHAIR—If you can.

Dr McGrath—They resolve an absolutely stalemate situation that now exists. If you go to the returning officer, if you are not happy with the conduct of an election—actually I was surprised the previous witness did not seem to be fully aware of the discretionary powers of a returning officer—he can actually declare a member financial, although he might have been technically unfinancial for a while. He can also initiate proceedings, which they rarely do. They prefer to refer them or defer them which then puts the candidate into all these mountains of clusts.

Mr McCLELLAND—Is that true, though? Is a returning officer able to bestow financiality on an unfinancial member?

Dr McGrath—I understand so.

Mr McCLELLAND—That is your understanding. Is it also your understanding that the Federal Court, in determining election inquiries, is bound by the rules of evidence?

Dr McGrath—That would be an instance, wouldn't it?

Mr McCLELLAND—No. Is that your understanding or not?

Dr McGrath—Is it bound by the rules of evidence?

Mr McCLELLAND—Yes. Is the Federal Court, in conducting—

Dr McGrath—They are, technically. You are quite right raising this. It is a very good point. The Courts of Disputed Returns, both the Federal Court and the Supreme Court, actually have wider powers than they do in other jurisdictions. But whether they use them is another matter.

Mr McCLELLAND—But doesn't the federal act specifically say the Federal Court is not bound by the rules of evidence in the conduct of election inquiries?

Dr McGrath—Let me go back to what was said in relation to all the parliamentary committees, because I know you are a lawyer.

Mr McCLELLAND—How do you know?

Dr McGrath—I made inquiries.

Mr McCLELLAND—That is a separate point.

Dr McGrath—Can I finish the answer?

Mr McCLELLAND—You can in a minute. Just to cut you off, didn't Justice Moore, for instance, in the CEPU case specifically say, 'I am not bound by the rules of evidence in conducting this inquiry'?

Dr McGrath—That is quite true. If you would let me give the answer, I will explain it. In 1928, when parliamentary committees were abolished, all the Labor members voted against their abolition. What was said by everybody from Sir Henry Parkes to Jack Lang, and in the Commonwealth area, was that when you brought lawyers into the picture they would inevitably drift into narrow legalism as a matter of habit and practice. That is what they said. I think that is what in fact happens, Mr McClelland.

Mr McCLELLAND—You have said that the judges have a discretion as to whether or not to hear matters concerning an irregularity. Have there not been High Court cases where the High Court has issued writs of mandamus against federal judges compelling them to conduct an inquiry as a result of the High Court determining that a certain allegation constituted an irregularity?

Dr McGrath—I am not here to have a legal contest with you about High Court cases I do not know about.

Mr McCLELLAND—I am just testing your evidence. One of the reasons why you have criticised the judge is that you say the judges conducting these inquiries have an absolute discretion. That is not right, is it?

Dr McGrath—No. How have I criticised a judge—by saying that they tend towards narrow legalism?

Mr McCLELLAND—I have my note. You said one criticism was that the judge has an ultimate discretion as to whether he hears a matter which is an irregularity and you referred to Justice Madgwick. That is not true, is it? He does not have a discretion.

Dr McGrath—Yes, it is true. I do not think there is time for me to dig it out. I will show it to you when we adjourn. Madgwick said that he was not going to bother disturbing sitting officials by subjecting them to all having to deal with a lot of improprieties, so he decided to look at the forensic evidence.

Mr McCLELLAND—Wouldn't the High Court—

Dr McGrath—It is a question of what you select to hear. You might say it is a matter for the idiosyncrasy of the judge and how far—

Senator CONROY—Could Mr McClelland be allowed to finish his questions? You have interrupted on four separate occasions.

CHAIR—Excuse me, Senator Conroy. I am chairing this meeting, not you.

Senator CONROY—Well do it.

CHAIR—And Dr McGrath, three or four times, has tried to finish an answer and was interrupted as well. So could all members ask a question and wait for the answer. That would be a lot easier.

Dr McGrath—My impression is that Mr McClelland is trying to nail me on material which he knows I would know nothing about.

CHAIR—Finish your answer, and then Mr McClelland can ask another question if he wants.

Dr McGrath—Thank you.

Mr McCLELLAND—You have mentioned that you believe union officials are too cosy with some Federal Court judges. Can you name one Federal Court judge who you believe has been too cosy with a union official?

Dr McGrath—I said the tendency is that judges would become too familiar with these officials.

Mr McCLELLAND—Do you know of one instance where that has occurred? That is a very serious allegation against judges of the Federal Court.

Senator MINCHIN—I did not interpret it that way. I interpreted it as talking about the problem with specialist courts, that you develop a club atmosphere.

Dr McGrath—Specialist courts could be seen to be more isolated.

Senator MINCHIN—I was not taking it as a personal allegation in relation to any judge but that a club atmosphere does develop with specialists courts. It is a well-known observation.

Dr McGrath—And I meant to add, and the AEC becomes too close to sitting officials too.

Mr McCLELLAND—You would not regard the Federal Court of Australia as a specialist court, would you?

Dr McGrath—No, but let me explain other reasons, if I may, to add to what I am saying—and I think your points are very good ones. The other reason for isolating from the Industrial Court is that electoral law is a difficult area. I have spoken to people who have sat in the Supreme Court on electoral law. They have a lot of other distractions in other areas of law. The act is this big. They are expected to be specialists on the whole lot. Perhaps you could get one man, say, who is available like an ombudsman, who is seen to specialise on electoral law to set up a database—I have not actually spelt out all the things I would suggest—on the law which would enable me, as a member of the public, to clock into law, because, Mr McClelland, I do have a problem getting transcripts. I tried to get a transcript of the 1983 case of Edward St John in regard to postal workers and I just could not do so because it had not been made available to the public. It was a very important case because it is the only one before now in which postal officials were convicted of collecting postal votes, but I could not get it.

The other advantage I should add to it, apart from the one you are fastening on to, is that also barristers are not sufficiently familiar with electoral law—and we get back to the common worker—to defend the common worker properly. Secondly, they have to do it as pro bono work in the middle of all their other work and they cannot give it the time. I feel that if there was a specialist tribunal, a judge who made it his job to specialise in that area, because you have different judges, and they had a database on which they trained the barristers on the issues—it takes eight of you to consider the issues—

Mr McCLELLAND—Are you saying that a specialist tribunal should be a lawyer or a non-lawyer?

Dr McGrath—It should be a judge or someone of that calibre, like Marshall Cooke QC. Sir Samuel Griffith himself considered that he should add a judge to the experienced politicians. But, personally, I think experienced politicians are better at electoral law than judges, frankly.

Mr McCLELLAND—What was your concern with the Industrial Court of Australia conducting election inquiries in circumstances where they were not bound by the rules of evidence? Isn't it precisely what you were advocating before us?

Dr McGrath—I am just saying that for 100 years all the parliaments of Australia, except Tasmania, had parliamentary committees with experienced politicians and that they found them better at the job than lawyers. I know my history.

Mr McCLELLAND—We sitting here would be an adequately impartial body to conduct an election inquiry, would we?

Dr McGrath—I do not know you well enough. Laurie Ferguson, you have been a TWU organiser. You are only new to the game.

Mr McCLELLAND—And you think we would be able to bring a fair and impartial mind to these highly charged political events coming before us?

Dr McGrath—I think in another few years you could. You have just got into parliament, haven't you?

CHAIR—Dr McGrath, I will come back to my request about your six recommendations. Would you like to provide those recommendations to the committee?

Dr McGrath—Thank you. I am suggesting that there is a gap, for workers who want to challenge elections, between the returning officer who has the power to stop an election, as John Curtis did in Queensland—it is a power rarely exercised; not exercised as often as it should be—and the going to court. This area of 30 days is obviously not long enough. That area could be filled in with an ombudsman who could look at allegations. Quite rightly, I think Senator Conroy suggested there might be mischievous allegations. I think there should be a sorting process for that so only the ones that were genuine could move on. And I do agree with some of the things you have said and the previous witness has said. You then have the specialist electoral tribunal at the next stage. But I do not like your asides.

Senator CONROY—This is not the H. S. Chapman Society, and you can chair that any way you want. This is a joint committee.

Dr McGrath—It is very distracting when somebody is having asides all the time. I am in the middle of saying something and it is distracting.

CHAIR—Finish the recommendations and we will move to the other questions.

Dr McGrath—I have said already what the electoral tribunal should do. I think returning officers also have power to halt elections, and that is never done, despite the fact that postal workers irregularities have been mentioned in parliament by Senator Gietzelt and others as far back really as 1973, as mentioned by Mr Ferguson. Senator Gietzelt objected about it.

Penalties should be increased to 12 months imprisonment. You remove the limitation if you increase the penalties. Penalties be considered for improper conduct of elections by AEC returning officers. At the moment it is presumed that 100 per cent of the returning officers are honest, but if the situation should arise that they are not there are no penalties for improper conduct by them. That the role of the Australian Electoral Commission as a party in court proceedings be clearly defined in division 8 as no more than that of amicus curiae, because it does exceed that role. That irregularity be redefined in section 4. That discretion by judges towards costs to another party be looked at.

I think Marshall Cooke and others, and probably John Curtis, have dealt very well with the fact that there ought to be audited returns by returning officers who might exclude any shafts against them. That is, 'return to sender' mail and members to whom second ballots have been sent and that sort of thing. They should have an audit report. The 30 days is important for requiring the returning officer to put in standardised reports on the number of ballots sent out and printed and all those sorts of things. I am aware of my early training, when my husband was involved for seven years with the FIA, and there was rank corrupt practice by those who shall remain nameless in union elections—ballot rigging—

Senator CONROY—What were the mechanisms of balloting in that era?

Dr McGrath—In union elections?

Senator CONROY—Yes.

Dr McGrath—Conducted in the 1940s?

Senator CONROY—The ones you and your husband were working on? Were they votes—

Dr McGrath—I don't know about 'me and my husband', I married into it.

Senator CONROY—Were they workplace ballots or were they postal ballots back then? What was the form of balloting?

Dr McGrath—It was a much more coherent situation in the old days. Postal ballots go back to the days when workplaces were pretty much in shops. He was trade union secretary on the waterfront but he had been in Mortstock blacksmiths shop and they all knew each other. So the risks of fraud in postal ballots were easily uncovered. In one case, they found 200 votes posted from the Glebe Post Office or something.

CHAIR—Postal votes were used substantially?

Dr McGrath—Yes, but in this context.

Senator CONROY—Given your history, I am interested in your view on whether or not a return to workplace balloting would, potentially, be a way to—

Dr McGrath—Yes. The AEC—

Senator CONROY—Putting aside the cost problem, would you see that as a mechanism to—

Dr McGrath—It is a vexed question. Transport workers—where you work—would obviously be very dispersed. The AEC said it depended on the union, didn't they? However, I did gather—and I may be wrong—that exemptions are hard to secure. Some people said that. Perhaps they should be made easier to secure. They are bureaucratically tangled. They should be easier for the organisation to secure.

Senator CONROY—Given your experience in this area, I am interested in whether or not you think coercion and intimidation could take place on the work site?

Dr McGrath—With workplace ballots?

CHAIR—If you had workplace ballots as opposed to postal votes.

Dr McGrath—On the spot, the answer to that would be: where does the cleaning up begin? If you clean up the electoral process, that would then act as a deterrent. There has been indifference and laxity, so that people felt they could do what they like. It is the whole problem of attacking corruption in every realm of our life. That is what you are here for, isn't it—to clean up the electoral process? The cleaner it is, the less the workplace would be a risk. But the answer to that must lie with the Bus and Tramway Employees Union where they have badges they have to show.

CHAIR—In order to vote?

Dr McGrath—In order to vote, as identification.

Senator CONROY—In the trammies, from my understanding, there appear to be situations arising where entire depots vote one way or the other, which is the point I am getting to. For instance, the Brunswick depot in Melbourne votes one particular ticket all the time, despite the fact that there seems to be a flow-through of people.

Dr McGrath—Senator Conroy, in the scales of justice how do you weigh 30 per cent of excess votes in the AWU in Queensland? Marshall Cooke says, from his experience—which is longer than most people's—that, where you get much higher than average return on voluntary voting, it is always suspicious. In the scales, how do you weigh that kind of fraud against the other potential fraud? I do not know.

Senator CONROY—There have been suggestions to the committee that that may be a way to get around—

Dr McGrath—I would not be as absolute as that.

Mr COBB—Marshall Cooke made a number of recommendations regarding model rules, et cetera. Are there any of those recommendations of his that you do not agree with?

Dr McGrath—I do agree with model rules. I have talked to returning officers about them. What annoyed me when I read the submissions was that the terms of reference had suddenly become standardised rules. There is a difference I thought, and please correct me, between standardised rules and model rules because the word 'standardised' made everybody take fright, that something was being forced on them, whereas I thought the model rules were more in the category of the model rules for business associations—small associations under the New South Wales corporate act—something the recommended people adopted rather than compulsory. People were then saying, 'You would be infringing on the ILO.' That would waste a lot of the debate of this committee.

Senator MINCHIN—What is the point of having model rules if nobody adopts them? How do we encourage unions to adopt these model rules, given that nobody wants to enforce them?

Dr McGrath—How do you encourage businesses to adopt the model rules? I have been with two groups who have adopted them for commonsense, to stop fights in the association, and they are simple to understand.

Senator MINCHIN—Do you think the funding of elections should link into this adoption of model rules, that you are only funded in full if you conduct your election according to the model rules?

Dr McGrath—I think I will have to pass on that one. I do not know much about that.

Mr COBB—You must have some interesting thoughts on the integrity of the membership rolls of unions as to how that can be best put in place as to what has existed in the past.

Dr McGrath—Yes, do I ever! The TWU when the irregularities did not come into the picture. What happened there was, by getting tangled up in proven forensic evidence, you got into that ridiculous situation where, although there were 7,000 dubious names on the roll, they had won the election by 80 per cent and the amount they could prove was 2,000 and that was not the 80 per cent. So get back to irregularities—I think that is a

nonsensical proposition.

Senator CONROY—The claim was they could prove 2,000. I did not know there was a finding in this particular case.

Dr McGrath—I see. Right, fair enough. I take the point.

Mr COBB—I am interested in getting to what you think should be done to make the system so that we can have some confidence in it.

Dr McGrath—In the roll?

Mr COBB—Yes.

Dr McGrath—Say there were 7,000 names—so you accept that the Manse inquiries were correct—and some of them were in Alexandria at a place that did not exist, for example. The labels all come already filled out from the union. One step would be for the AEC itself to fill out the labels and they just get stuck on the envelopes.

Senator CONROY—It is not always the case. Many unions just supply a straight computer print-out and then the AEC take it to a computer company and produce them themselves.

Dr McGrath—It depends on the union, that is quite right, but you were saying some of the steps that might be involved with the roll. He found that 4,000 of 6,258 members were not listed correctly.

Mr COBB—Who found this?

Dr McGrath—I am sorry, Brian Procopis, the applicant that fought. It took him longer than 30 days to find that out: 4,000 of 6,258 members were listed incorrectly. There were a number of unfinancial members on the roll. What do you do about this? If the particular union has sent the labels for all those unfinancial members, they are accepted. A number of members had no location or work address. We get to the particular point that was raised by you I think—the ‘no address’. It seems to me that the ‘no address’ should be wiped out, and also postboxes. In parliamentary elections, that is found to be objectionable. Why not in union elections? To tighten up the procedures, even to list a proposed table of reference for irregularities for returning officers to tick off what they are looking for. Sometimes returning officers might be new, they might incompetent, they might be overworked—we have got to say something for them.

Mr COBB—How do we overcome this? Should it still be then left up to the trade union? Should the AEC have some input into it? Should there perhaps be some training of the trade union officers who manage the rolls?

Dr McGrath—The responsibility is with the returning officer, is it not?

Mr COBB—Yes, ultimately.

Dr McGrath—I do not know how much training they have or how overworked they are. I know that in some areas they are and in some they are not. But I think they should facilitate it with lists of irregularities that might occur as much as possible. They may not have been trained to look for them. They probably would welcome it.

CHAIR—Senator Conroy wanted to ask about a particular point on that for clarification.

Senator CONROY—I will come back to it.

CHAIR—But you had a couple of questions anyway.

Senator CONROY—I just wanted to firstly congratulate you on your submission. It was quite comprehensive. For me it was a real history lesson, so I quite enjoyed it.

But there were a couple of things I am surprised were not in your submission, and that is in relation to a couple of bits of evidence you had given previously to this committee but on a different inquiry. When I asked you about those pieces of evidence last time, you suggested to me that they were going to be in your submission this time, so I would like to return to them because they come to some of the matters here.

The first one was that you had suggested quite emphatically that TWU officials from the New South Wales branch—I just want to make that clear for everybody, and I am not a member of the New South Wales branch of the TWU—had entered mail centres, and you named a particular mail centre. When I asked you if you had any evidence, you said that that would be before another inquiry, which I presume is this one unless you are involved in another one. So I was just wondering whether you would like to take this opportunity to substantiate in any way that allegation.

Dr McGrath—I think I would ask for an adjournment on that. You should call Brian Procopisas as a witness before this committee.

Senator CONROY—He did not make the allegation, you did.

Dr McGrath—Okay, then I will have to adjourn it and table it. I put that in just before Christmas. I am just back from England, and I have not had enough time to brief myself.

CHAIR—In relation to that, I noticed that some of the recommendations you have made today, Dr McGrath, were on notes on your pad. I would suggest that you send the

committee a supplementary submission based on those recommendations so that we have those. You could include that additional information that Senator Conroy is talking about.

Senator CONROY—Other than the allegation that was made, you have not got any evidence—

Dr McGrath—Honestly, I am a blank on it at the moment. I have been briefing myself on other matters.

Senator CONROY—You can think about that and read the *Hansard*. The second allegation you made on that day—

Dr McGrath—Can I make an objection? This constant use of the word 'allegation' I find most offensive. Often they are just statements. The AEC, in their reply to me, put as a heading on my submission 'allegations', and most of what I had said were not allegations, so could you find another word?

Senator CONROY—I am sorry, but you have made an allegation about TWU officials. There is no proof of it, but you have made an allegation about the conduct of some TWU officials—

Dr McGrath—It seemed to be an allegation by you.

CHAIR—This is not a court of law and Senator Conroy has interpreted those things in one way. You can make the statement that you believe whatever you have said is a statement rather than an allegation, and then both sides of that evidence is there.

Senator CONROY—You also made a statement or allegation at the time that the how-to-vote cards in the 1996 CEPU ballot had been put aside. Do you stand by that statement/allegation, or do you wish to tender some evidence to support that?

Dr McGrath—I think—and I will have to check it—I have already sent a statement in to the AEC on that.

Senator CONROY—Would you like to tender it to us? I am asking you to substantiate the statement or allegation that the how-to-vote cards—

Dr McGrath—The statement was made to me by Noel Battese, who went and found the bags at that particular location. He had been tipped off by others that they had been diverted into just ordinary K-Mart type mail in an out shed at a particular place in the Riverwood area, in Leightonfield. That was told to me personally. I wrote to the Victorian post master and the head of Australia Post answered me—

Senator CONROY—So you have had a response from Australia Post?

Dr McGrath—Yes, I had a response from Australia Post.

Senator CONROY—Are you able to table that?

Dr McGrath—Because he also said it had been sent second-class mail instead of first-class mail.

Senator CONROY—Are you able to table that as well?

Dr McGrath—Yes, I can probably find that. I answered that and I sent a copy of it in, I believe. Australia Post suggested that Noel Battese had diverted the difference in money between the first-class mail and the second-class mail into his own pocket. He made a counter allegation.

Senator CONROY—I am not sure if he was directly associated—because I do not think he was eligible—but is it not true that Mr Battese's mailing house was based in Melbourne and did not supply it to the post office until after the time it was possible for it to be—

Dr McGrath—That was Australia Post's statement, but it does not concord with what Noel Battese said. I have just remembered that I wrote back to Australia Post and asked them to name the mailing house so that I could go and check, and they would not do so.

Senator CONROY—They are probably not in a position to, given that it is a commercial issue. But I would have thought Mr Battese, given that it was a mailing house with which he had some association, could have told you that even more quickly than Australia Post?

Dr McGrath—I did not ring him back on it. I do lead a busy life in other areas.

Senator CONROY—Has Mr Battese perceived this issue at all, as far as you are aware? I appreciate that you have been overseas. It is a fairly serious allegation by both yourself and Mr Battese.

Dr McGrath—I believe he did. From memory, I believe he did. But just how, I do not know.

Senator CONROY—Has he lodged an inquiry about it? The six months have expired.

Dr McGrath—I would have to—

Senator CONROY—I will save you the phone call: he has not.

Dr McGrath—He has not?

CHAIR—You are asking Dr McGrath for an opinion about somebody else's actions. Her statement was in relation to what a person told her. She has made it quite clear that that is the evidence she is providing.

Dr McGrath—My problem was that I ran into a dead end in the inquiry. When I wrote to the man in Melbourne, I said I could not understand why New South Wales post was not answering me—because it was in Leightonfield that the mail turned up—instead of getting an answer from Victoria. I did not know why and I did say that to him.

Senator CONROY—You might want to follow up with Mr Battese why he used a mailing house in the first place and, secondly, why he has not lodged anything in writing other than allowing you to come before a parliamentary committee to spread it.

Dr McGrath—At that stage I was faced with writing a paper for the Samuel Griffiths Society on courts of disputed returns for four weeks. I am a private person. I have no secretary. I have to do all this myself. You have staff; I do not.

Senator CONROY—Can I also raise with you some evidence you tendered—submission no. 69 to the previous inquiry this committee was conducting—in which you stated that Noel Battese, CWU, said an organised Left network to intercept mail was in the Redfern Mail Exchange until it was closed in favour of new regional exchanges. Could you enlighten the committee on that a little more?

Dr McGrath—Yes. In that submission, on which you kindly complimented me, I have statements in which I say that Senator Gietzelt raised the same issue in 1979 or 1981.

Senator CONROY—Senator Gietzelt was announcing a Left network in the mail centre?

Dr McGrath—Yes, Gietzelt was complaining about it.

Senator CONROY—About a Left network in the mail centre?

Dr McGrath—That is correct. It is correct. It was a Left network. It dated back to the sixties. I am on safer ground now, Senator Conroy, because it happens that Noel Battese said on *Today Tonight* that the network had been in place since the sixties. My question would be: if this network of intercepting mail in parliamentary and union elections had been in place since the 1960s, why did the Australian Electoral Commission never take any action about it nor institute any inquiry into it.

Senator CONROY—I am interested in how Mr Battese knew.

Dr McGrath—The only people who tell you the truth about elections are whistleblowers who have changed their coats.

Senator CONROY—And Mr Battese—

Dr McGrath—Had changed his coat.

Senator CONROY—Are you suggesting Mr Battese was involved? That is a fairly serious thing to say, but it is what you are implying.

Dr McGrath—I wondered how he knew and could definitely state it on the *Today Tonight* program. You can make an inference.

Senator CONROY—You could. My point is that Mr Battese, to be able to make that statement with such strength and on national television, must have had some fairly intimate knowledge?

Dr McGrath—A lot of people might have made that inference when they were watching the program.

Senator CONROY—What is the political affiliation of—

Senator MINCHIN—Mr Chairman, this line of questioning is all about what the witness knows about Mr Battese. We have not got Mr Battese. We want to know what—

Senator CONROY—It is all about evidence. How would you describe Mr Battese's current political affiliations? It is on the public record.

Dr McGrath—I think, Mr Chairman, I should be allowed not to answer.

CHAIR—We are gradually moving away from the terms of reference of this inquiry into an area which—

Senator CONROY—Mr Battese's name gets extensive coverage in two or three different—

CHAIR—But I think the political affiliations and the political happenings of somebody who has not provided any evidence to this inquiry is probably getting on the fringe—

Senator CONROY—He has made extensive submissions to the court, and the court's evidence is extensively quoted.

Senator MINCHIN—But we do not have Mr Battese in front of us. We have Dr

McGrath.

CHAIR—We cannot ask him to verify these sorts of things. I do not think it is fair to ask another witness—

Senator CONROY—If a witness comes before us and wants to make allegations or statements and then is asked on what basis are you making these and she names the individual—

CHAIR—Yes, and she has done that and she named the person who told her certain things. I think it is unreasonable to then—

Senator CONROY—Ask a question that is on the public record?

CHAIR—I think it is unreasonable to then question the witness further about aspects of the person who spoke to her which she may well not be able to help with.

Senator CONROY—She must have a relationship with Mr Battese if she chooses to believe Mr Battese enough to come before a joint parliamentary committee and repeat his allegations.

CHAIR—I think that is drawing a very long bow to make those sorts of assumptions.

Dr McGrath—May I say something at this point. I think Senator Conroy is taking my injunction that you should have a tribunal and inquisitorial proceedings too literally. In my submission I quoted cases of not only Senator Gietzelt but also the national secretary of the Miscellaneous Workers Union—in other words, it was not confined to the Postal Workers Union. The Miscellaneous Workers Union complained way back about the fact that postal mail was being intercepted. In fact, they had moved people in Australia Post interstate to assist in creating the network of diversion of mail.

Senator CONROY—I am not doubting the allegation.

Dr McGrath—I think that in *The Fixer*—the book about Graham Richardson—it is mentioned that his father was in the Postal Workers Union and that when Graham Richardson was there at that time, 1979 to 1981, there were convictions for fraud in postal mail. The New South Wales Right captured the network.

Senator CONROY—Is Senator Richardson present, on the same basis?

Dr McGrath—The New South Wales Right captured the network from the militant Left.

Senator MINCHIN—She is drawing to our attention what is in a book. She is perfectly entitled to do that.

Dr McGrath—Those politics will be well known in the Trades Hall, I am sure.

Mr LAURIE FERGUSON—Without getting into all the polemics about the communication workers, it would be fair to say that, as a previous organiser of the Redfern Mail Exchange and as a person who has been involved in the union for 20 years, Mr Battese would have a bit of knowledge of the area, wouldn't he?

Dr McGrath—I think we have already adjourned that debate.

Mr LAURIE FERGUSON—It is fair to say that he was the organiser of the Redfern—

Dr McGrath—I have come here in good faith, Mr Chairman.

Mr LAURIE FERGUSON—Fair enough. We have talked about the question of work site ballots in places like the bus employees union in New South Wales where there is a very high turnout if someone is complaining about Brunswick or something. Do you think that a combination of circumstances—the possibility of some work site ballots with postal ballots as well—would be viable where there are work units of a reasonable size?

Dr McGrath—One would think so because they can organise polling booths in there, can't they? I note that, when it comes to the people's convention, you are very keen on polling booths for security.

Mr LAURIE FERGUSON—That is what I am putting to you. I am putting to you whether you feel that it would be viable to have a combination of those, whether you are actually supporting the possibility of having some workplace ballots—

Dr McGrath—Mr Ferguson, I think I have said already that I am not equipped to make those judgments. You are the union experts. My concern has mainly been the problems with the act itself.

Mr LAURIE FERGUSON—I think the fundamental point in this is the question of postal balloting and the concern with corruption in that process. Do you have any recommendations? I have heard your recommendations in regard to the tribunals, et cetera. In the actual conduct of postal ballots, do you have any recommendations to try to make sure that this is reduced?

Dr McGrath—Yes. As I said before, we have to clean up the postal system in order to make an effective decision on that point.

Mr LAURIE FERGUSON—Absolutely. I am trying to be constructive rather than

badger you. Do you have any ideas or suggestions you can put to us specifically in regard to cleaning it up?

Dr McGrath—I am wondering where you learnt your techniques for cross-examination where you repeat the same question virtually.

CHAIR—I think Mr Ferguson is just asking for any suggestions in relation to the methodology in which postal ballots are carried out.

Mr LAURIE FERGUSON—How would you make them more secure?

Dr McGrath—I think Mr Curtis might have put the whole problem of sloppy practices to you up in Brisbane. Were you up in Brisbane? Standardisation was not the only issue. The practices and the way the elections were conducted are really what you are raising; that is, the signatures on enrolment, signatures on the declaration of vote and matching of signatures so that if anything comes by post you can see if someone picked it up on the way and filled it out.

The big thing with ballot fraud in the 1940s was that they were not auditing the number of papers issued and the number of envelopes issued. In fact, they do not audit the number of envelopes in parliamentary elections. As to where it is printed, there should be stocktaking of deliveries so that none get out because when there is loose paper flying around you get more fraud. It is really within the AEC that that has to be looked at, isn't it?

Mr LAURIE FERGUSON—Do you have any views in regard to financial status rules: whether people should be allowed to be, for instance, unfinancial for the quarter they are in at the time of the ballot or if they are two quarters out of date? Do they have to have paid exactly on the day?

Dr McGrath—I do not know much about that. But what did worry me was that, in order to stand as a candidate, they had to be financially a member. It arose with Quentin Cook. There should probably be a redefinition of that to allow for wrongful dismissal by other bodies. I know in a certain union employers are leaned on to sack people who are going to stand. In some cases they do. You have to have protection against that within the act.

Mr LAURIE FERGUSON—Your comments in regard to the returning officer in the 1994 CEPU election are that the person held information from the Australian Federal Police of 1,000 forged ballot papers 'until the statute of limitations applied'.

Dr McGrath—One can add another problem—it might be timely to use this because this is being fully debated elsewhere. You can have a problem when you are in court which is overlooked; that is, it is very easy to stall the legal process in the court

until you run out of time. That is not only done in electoral matters. There is a danger that, come the happy hunting ground for lawyers, they will do exactly that—stall it until it might be difficult for the AEC to do it. That is another factor. But you have already had the argument with others about that and probably will with Quentin Cook.

Mr LAURIE FERGUSON—You have said that the returning officer held the ballot papers 'until the statute of limitations applied'. Are you saying that returning officers do that deliberately or not?

Dr McGrath—I think that is for the AEC to decide by an internal inquiry. The point is that they had the information much earlier and they could have sent it. Some of the statements I have come across suggest that they were not in touch with the commission. They were in touch with the Australian Federal Police very quickly over the fact that Quentin Cook was a Liberal. If they were speedy about something as trivial as that, why couldn't they be speedy about sending the votes in?

Mr McDOUGALL—On pages 4 and 5 you talk about the AEC returning officers having—and you have mentioned it today—extremely wide discretion to ensure that no irregularities occur. Do you consider the AEC should have a policing role which would require it to actively seek out possible irregularities rather than just relying on complaints or information? If that policing role was there, would you think it was consistent with the duties of the AEC to conduct elections impartially?

Dr McGrath—I do not see it as inconsistent. I think it is arrant nonsense to say they do not have a policing role; that is the role of a returning officer. He is supposed to make sure it is working properly in every aspect. There are new things like saying there are technical breaches and an irregularity. That is a creative invention in these submissions. They do not exist. It is like saying 'We do not have a policing role' when the heat was on in that election; it suddenly became policy. It is too convenient for my liking. It has not been discussed and authorised. The point that John Curtis made was that that was the only way he exposed that appalling fraud in the Liquor Trades Union election in Queensland, by going out on work sites. It was used to justify not going out on work sites because they had not gone out on work sites during that election. It is a sort of back-justification, after the event.

Mr COBB—On a wider question, you say in your submission:

> Under present circumstances, the conduct of almost all union elections facilitate the greatest disadvantage to any team which dares to stand.

I have an image there that it is a daunting thing to buck the system, to stand with a fresh team, if you like. You will have covered some of the reasons already, but is there anything you want to add in that area that makes it difficult for new teams to stand?

Dr McGrath—Yes, I do, because they know perfectly well that if they lose and challenge, no matter what they say, they are going to have to find their own legal costs. The trade union is going to charge its legal costs to the members. We cannot be universal about this, but certain unions do not get approval from their members for those legal costs. They are supposed to represent all the members, not those who support the winning team.

Mr COBB—Point taken. That is after the election is over, if irregularities are alleged to have occurred. What about in the lead-up to the election itself?

Dr McGrath—I remember this was a big thing with Laurie Short in exposing irregularities in the case my husband conducted in 1950-51 when he exposed fraud on a grand scale in the FIA. That was use of a union car, broadcast facilities, union newspapers—all that sort of thing—which had been used by the Communist Party for their teams and Laurie Short had to walk. Another thing they would do is send out the organisers electioneering. I think that is a terribly invidious position for the organisers, to be sent out to electioneer for one team and not the other. They have the advantage of that manpower.

Mr COBB—Do you know if that still occurs now in some instances?

Dr McGrath—I think as long as it is not proscribed it probably does. But who proscribes it? I do not think it is in the act; someone might be able to tell me.

Mr McCLELLAND—There is case law, isn't there, with misuse of union resources, Scott and Jess and Tanner's case—

Dr McGrath—Yes, but half the problem is that nobody ever reads the case law. I want a database with it all on so I can put it up on the screen.

Senator MINCHIN—I asked the department about this, whether that was proscribed, and they said, 'Case law, and therefore you do not need to put it in the act.' But what you are putting to us is that it ought to be.

Dr McGrath—It is not available; it ought to be made available. The whole system should be transparent but it is not. To have them invoking secrecy for this or that in any area of elections is very wrong, because democracy depends on transparency of the process.

CHAIR—We are going to run out of tape in two minutes, so we are going to have to adjourn if we do not finish. Senator Conroy has one last question which may be able to tidy it up.

Senator CONROY—In your opening statement you made the statement or the

allegation that TWU officials had approached employers to sack their opponents. Do you have any evidence whatsoever you would like to tender to this committee?

Dr McGrath—I believe it is possibly Heggies of Wollongong.

Senator CONROY—Do you have any evidence you would like to tender?

Dr McGrath—I was not told I would have to bring evidence and put it on the table.

Senator CONROY—You raised the allegation.

Dr McGrath—Yes, all right. I had not been told I had to bring evidence and put it on the table. It was Heggies in Wollongong. That is one of the problems of dealing with ballot fraud, isn't it, that every time anybody says something has happened they say, 'Bring the evidence,' and that is not always easy?

CHAIR—Thank you, Dr McGrath, for coming here today.

[12.30 p.m.]

SHEEHAN, Mr Paul, Senior Writer, Sydney Morning Herald, GPO Box 506, Sydney, New South Wales 2001

CHAIR—Welcome, Mr Sheehan. 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 of Representatives. 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, which is now publicly available. Are there any corrections or amendments to that submission?

Mr Sheehan—No.

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

Mr Sheehan—I would. I would like to update the committee on events that have taken place since I wrote that submission. This matter is now in the hands of the Australian Federal Police. The Australian Federal Police advise me that they have obtained sufficient handwriting evidence in which to continue a substantive investigation. That handwriting is being analysed. On the basis of the handwriting analysis, it is quite possible that charges may be laid.

As far as I can tell—and I hope I learn today from the committee that I am wrong here—I am not aware, and I have tried to make myself aware, of a single case where a person involved in union election fraud was prosecuted over the course of the 13 years of the Labor government and in the ensuing year of Liberal government. There may have been such cases but I have not been able to find any, despite my request to the Australian Electoral Commission.

You are all very busy men. I do not pretend that you will have read 11 pages of the submission. I will just restrict myself to two aspects of it, because what I had to say has been said in the submission. I would like to say at the outset something in defence of the Australian Electoral Commission. There have been scurrilous accusations made in the publications of the CEPU that the Australian Electoral Commission is responsible for this fraud through its laxity and incompetence. That is not the case. The Australian Electoral Commission was placed in an almost impossible position.

There were restrictions on the AEC officers against any pro-active efforts to prevent election fraud. We will be talking about the infamous shit sheets fairly soon.

These are illegal documents. It is amazing to me that no-one distributing these things throughout many union elections have ever been challenged or arrested as a result of their actions.

I say in defence of the AEC that I am not here to make any unsubstantiated accusations. I will just read a brief section of my submission to the committee that is pertinent to the AEC:

During the 1994 CEPU election,—

I will restrict myself entirely to this single election and the 1996 aftermath of this election—

the AEC failed to notice that a group of people variously sought, obtained, intimidated or otherwise manipulated the votes of more than 1,000 postal employees, especially Asian workers.

When the election rort was uncovered during the inquiry conducted by Justice Moore, the AEC did not notify the Australian Federal Police that at least 930 ballots had been identified as forged or tampered with. The police had asked, in writing, to be informed of any such development. No action had been taken by the AEC by the time the statute of limitations had expired for starting proceedings under the Industrial Relations Act.

When the AEC received a suggestion from Victor Dominello, solicitor for Quentin Cook, that Federal police be allowed to go into the mail centres to warn against vote-gathering and 'shit sheet' distribution in the recent CEPU election, it reacted with outrage. The Australian Government Solicitor fired off a letter on behalf of the AEC stating, in part:

'The Court's orders did not deal with prevention by means of educational visits by AFP officers to Australia Post mail centres, but rather, by the use of multilingual pamphlets.

'Would you please advise why the AEC should take the steps suggested by you in the absence of credible information suggesting fraud is taking place in Australia Post mail centres in the present election.'

I would make an aside that I regard this response as bizarre in the extreme—this pollyanna notion by the AEC. I am sure you will find very punctilious and aggressive responses from the AEC to all your inquiries. Their position is that the system works beautifully, and they are doing a wonderful job. My investigation of this election is that the AEC is out to lunch. The submission continues:

The only evil the AEC saw or heard was the people who exposed it. When I called to discuss the AEC's lapses in the case, the single senior official designated to speak on this matter had no comment and warned that the *Herald* would be in contempt of court if it referred to any confidential police files.

The AEC barred Cook from recontesting the 1996 election because he had become an

unfinancial union member after he was sacked by Australia Post. The circle was complete. Those who had exposed the electoral fraud were excluded, and those who had benefited from the 1994 fraud were re-elected.

In the course of my investigations, I relied largely on court documents, on the judgments of Justice Moore and others. I relied on a stream of phone calls to me. I relied on information from the police.

The one group that refused to speak to me, even once, was the union itself, and I regarded this activity as bizarre. I called them repeatedly asking for information. I called Mr Metcher and Mr Jones at the union office, and not once would they ever come to the phone. I was constantly speaking to a secretary, and the brick wall repeated itself when I attempted to contact Senator Conroy here. Maybe today we can just restrict ourselves to Senator Conroy's role in the 1996 election.

I have on the desk here what you all know to be a 'shit sheet'. We will call them smear sheets for delicacy. I have a Vietnamese version of the same sheet. The sheet was generated by a speech Senator Conroy gave in parliament. Within 24 hours of that speech being made in the Senate, this sheet was coming out in the thousands in the mail centres throughout New South Wales with the accusation that the opponent team had been 'exposed' in the Senate.

In my submission, I am not unaware that I have hinted at a very grave accusation as to the probity and conduct of Senator Conroy himself. I did not make the accusation lightly—not the accusation, the question. I have raised a question. My assumption is that Senator Conroy received bad advice, and I have proceeded on that. But I did attempt to get his side of the events in a fax on 6 October 1996 in which I faxed Senator Conroy a dozen questions. I have never heard back from Senator Conroy, and maybe we can make a little progress on this today.

I will just read to the committee, without repeating the 12 questions I sent to him, the section that I devoted to the senator's actions. I regard this sheet as squalid. It is a disgrace. It says everything wrong with union elections in Australia. The other side in this campaign was not blameless. They too put out an anonymous, cowardly smear sheet. They said that the members of the CEPU who exercised their option not to give handwriting samples to the judge had defied the court by refusing to submit their handwriting. That is not true. They had their own reasons for not doing so which they expressed in court, but anyone who knows anything about union elections knows that this is normal. This is the way union elections are conducted. In fact there is a long tradition of parliamentarians adding their arms to this sort of stuff.

Just because it is a time-honoured practice it does not mean it is an acceptable practice. It is one of the reasons why there has been a structural decline in union membership and union power in this country over the last 30 years. The elections for

unions have a taint over them. In one front page story in the *Sydney Morning Herald* we pointed out that in our database, since it grew up in 1986, we have over 1,500 stories about election corruption. In that same period of time, not one story has mentioned that anyone has ever been prosecuted successfully for any fraudulent or illegal activity in those elections.

The *Sydney Morning Herald* remains committed to this issue in that it is quite a very unusual case. We devoted a lot of time. I devoted months to investigating the case. I do not pretend to be an expert on elections, but I do pretend to be an expert on this case. So I will just read the section that I have that is pertinent to the deputy chairman of the committee, subheaded 'Senator Stephen Conroy'. It states:

On the evening of Thursday, September 12, 1996, Senator Stephen Conroy, the deputy chairman of this committee, made a number of comments in the Senate of direct interest to the committee. He concluded his remarks by stating, "I look forward to the inquiry into electoral matters."

I am glad Senator Conroy is looking forward to the inquiry because, to any informed observer, his actions appear to involve a breach of the code of conduct concerning parliamentary privilege. Whether his role extended to misleading the Parliament is a matter for others to judge. But the only question in my mind is whether he knowingly abused privilege or whether he merely misled the Senate unwittingly.

The statement Senator Conroy made to the Senate on September 12, 1996, was almost immediately reproduced and distributed widely in what is known in the union movement as a 'shit sheet.' A second version, in Vietnamese, was also distributed. The committee will forgive my indelicacy but it is the name used for this time-honoured practice. Although time-honoured, the practice is unlawful. The material used by Senator Conroy was written by a member of the NSW Right Labor faction. This faction controls the CEPU and was the primary beneficiary of the 1994 fraud.

These are not my words; this is not my assumption. Justice Moore made this statement. It continues:

Senator Conroy said inter alia:

"I would like to read to senators from a submission to Justice Moore from Edward Mason, dated 15 July 1996. Mr Mason was a candidate in the 1994 elections and a member of the Cook-Battese team."

He then read into the parliamentary record an attack on a veteran union activist, Noel Battese, written by another union activist, Ed Mason, accusing Mr Battese of ballot-rigging in the 1994 CEPU election. After reading from Mr Mason's attack on Mr Battese, Senator Conroy stated:

"So there you have it. A member of the Cook-Battese team has pointed directly at who is responsible. Yet Battese is the instigator of the challenge to the election on the grounds of electoral fraud. One of his own team has given him up."

Apart from being filled with errors and distortions, there is one significant problem with this speech. I was present in court on the day Ed Mason supposedly made a 'submission to Justice Moore'. Mr Mason has prepared a document, which Justice Moore read privately and returned to Mason, telling him that if he wanted to make any accusations he should swear an affidavit and then subject himself to cross-examination.

I have here a copy of Ed Mason's submission. There was no submission; there was this piece of paper. It never made it on to the court record. It continues:

According to the court records, that was the last time the court ever heard anything about Ed Mason's accusations. The next time they emerged, they were being read into the parliamentary record by Senator Conroy. Within 48 hours, the *Hansard* copies of the speech had been printed by the thousands and distributed, clandestinely, throughout the postal system. On one side of the green-coloured sheet was the *Hansard* extract, and on the other side were defamations of members of the Noel-Battese 'Clean Team'. The anonymous author of the sheet proclaimed: 'The Clean Team have been exposed in the Australian Senate.'

It was the last and most effective of a string of anonymous defamations during the 1996 CEPU branch election. Previous 'shit sheets' had described some of the reform candidates variously as a phone sex addict, an alcoholic, a bankrupt.

I have these sheets here on the table, by the way. It continues:

One of the sheets even carried the photograph of an adversary of the incumbent Right faction, plus this description of his life:

'My wife left me. Her and her solicitor squeezed me for every cent I had. I have lost my home and am now living out of the back of my car. They made up stories about my drinking and gambling. They even told lies about me visiting prostitutes in Fyshwick . . . So then I lost custody of my kids.'

I have spoken to the man in question. He is not living in the back of his car. In fact, he recently put an extension onto his house. Everything else in the sheet is also untrue.

Senator Conroy's contribution to this smear campaign, made under parliamentary privilege, came on the eve of the opening of the ballots of the new election.

Copies of the speech were also distributed to selected members of the news media.

On October 6, 1996, I faxed a letter to Senator Conroy containing 12 questions. He has never responded. This surprises me, given the exuberant tenor of his speech to the Senate and his obvious interest in this fraud. I will therefore include my letter to the Senator in this submission. Perhaps Senator Conroy is now interested in responding to the questions.

CHAIR—Thank you, Mr Sheehan. Before we start questions, can I first of all remind Mr Sheehan and all members of the committee that this inquiry by the Joint Standing Committee on Electoral Matters is inquiring into and reporting on the role of the Australian Electoral Commission in conducting industrial elections under the Industrial

Relations Act, including but not limited to—and I will remind people of the terms of reference—whether there should be any 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.

I just thought it would be opportune at this stage to remind people of ultimately what this committee is reporting on and we should focus our questions and discussion in relation to the particular case that Mr Sheehan has raised in the submission on how it can relate back to those matters.

Mr Sheehan—Are you suggesting that this may be stretching the terms of reference at all?

CHAIR—No, I am not. I guess I am saying this in advance to remind people about what we want to achieve out of this inquiry. I do not want to see the questions and debate move away from the benefit that we can get as a committee out of lessons learned for recommendations towards possible changes to actions by the AEC or changes to the act, those sorts of things, because that is what we are required to report on.

Mr Sheehan—In terms of practical suggestions, there does seem to be a complete inability of the AEC to be proactive in these matters. When these sheets are being distributed, you need a physical presence in order to intercept these sheets and to basically at least begin the war against this sort of smear campaign—these are defamations, these are unsavoury—and they seem to be accepted as part of the universe of elections. When police begin a crime blitz, they start with the small crimes first. If you were to punish people for distributing these sheets, that would be I think a symbolic and practical step towards improving the aspect of the conduct of elections.

The other thing I would like to see the committee bear down on is the explanation given by the returning officer in this case when asked why he did not notify the Australian Federal Police. I have the transcript in front of me and his answer basically is, 'I just can't answer that one.' I think that gets back to the structural passivity of the AEC. You have people there who do everything by the act. They say that they have met all their legal obligations to conduct a clean election and they seem to think that sending out pamphlets is going to do the job. You do not send out pamphlets. You send out the Australia Post security service, you send out the Australian Federal Police or you give more power to Australian electoral officers to go out and troll the workplaces for illegality.

That seemed to be the most obvious cost effective. I do not think it would impose a cost burden on this cost sensitive government. It is just a question of giving them more power to act. As for the relevance of Senator Conroy, I believe he has interjected that these allegations or these statements made by me are untrue; is that correct?

Senator CONROY—Do you want me to respond? I am happy to. I will be guided by the chair.

CHAIR—The questions do not need to come back to the committee, but if Senator Conroy wants to comment—

Senator CONROY—I was just making the point that again today you have repeated something that is not correct or true—and it is a fundamental point, something which you seem to have a lot of trouble dealing with in your articles. In one of your articles, which you have reasserted now, you say that the committee has investigated the CEPU elections. As the person who seconded the reference to conduct this inquiry, and as you have just been told by the chair, this is not an investigation into the CEPU elections. It never has been.

Mr Sheehan—You can split all the hairs you like, Senator Conroy, but we are examining the CEPU election as a case study of the AEC.

Senator CONROY—You are. The *Sydney Morning Herald* is. Your paper is and you have been; this committee is not. But you have repeatedly, as you have just done again in your newspaper article, stated that this committee is investigating the CEPU elections—and it is not.

Mr Sheehan—I think that is hairsplitting, Senator Conroy. The fact is that this committee is examining case studies, and this is one of them.

Senator CONROY—It is a case study to deal with the question of integrity of ballots. This is not an investigation into the CEPU elections, which you have repeatedly asserted and stated in your newspaper articles.

CHAIR—You have made that point clear. Would you like to ask some particular questions?

Mr Sheehan—There is one point that I would like to raise. On 6 October, I attempted to have—I just think it's empty cant, that's all.

Mr LAURIE FERGUSON—I have one point on financial status. On the question of Mr Cook, he lost his job; therefore he became unfinancial in the union. There is this overall problem of the financial status of people, that various unions have quarterly or half-yearly fees. What do you say about people like Mr Cook? Do you want to limit the ability of people to come back into the ballot who have actually been dismissed?

Mr Sheehan—Does this open an administrative nightmare? I spoke to the AEC about this issue. They were acting quite properly in knocking Mr Cook out of the ballot. They had no choice. I said that there was a natural law element here where clearly there is

a failure of natural law and that it seemed rather pedantic to leave him out, and they said that their hands were tied. If you would like to untie the hands of the union—because a lot of union members are struggling; they may go in and out of the union; and the union dues are definitely a discretionary item that is one of the first to go when you have lost your job—if you can get your job back within the time frame of the union election, it would seem to be fair that you should be entitled to vote in the election. It is a question of the continuity of 12 months membership. There may be a reason for that rule—which was the manipulation of unions where people would come in, the same as branch stacking.

Mr LAURIE FERGUSON—So, on this point, you would be happy, if there was some kind of rule, that people—this is a very narrow group of people—who were subsequently found to have been improperly dismissed should be eligible to come back in a ballot if that is the only reason why they lost financial status?

Mr Sheehan—It is very difficult to have a finding on unfair dismissal in a timely manner. So you could change the rule but it would not alter the fact. I think Quentin Cook's case took about 13 months to have a finding, and so that narrow change would not really have any practical effect probably.

Senator CONROY—This was the matter that came before Justice Moore.

Mr Sheehan—Which one, the unfair dismissal?

Senator CONROY—No, the question of his financial status. Were submissions put to the judge?

Mr Sheehan—I believe there were.

Senator CONROY—So the judge has a fairly wide discretionary role?

Mr Sheehan—I do not think the act gives him that wide discretionary role, but I am not pretending to know what the act says literally on that.

Mr McCLELLAND—Was that a matter of discretion or a matter of fact? Didn't Justice Moore have to determine whether Mr Cook was or was not financial?

Mr Sheehan—My reading of it was that, once it was determined that he was unfinancial, the law was unambiguous and he could not stand for election. There was no discretion.

Mr McCLELLAND—That is the mutual contract, is it not, that the rules provide between each union member? If they determine what the criteria for someone standing for office are, there is mutual compact between each and every member. That is Justice

Moore upholding the rules of an organisation, just as he would be compelled to if there were articles of association of a company.

Mr Sheehan—I have not suggested once that there was anything improper in his exclusion from the election.

Senator CONROY—There are a number of cases, certainly in Melbourne, in the Victorian union elections, where judges have ruled to put people in to ballot specifically. I have certainly been aware of cases where the judge can make a finding that a candidate is eligible to stand. I am interested that you have rephrased your language on Mr Cook's position from an article that you wrote on Monday, 24 June, where you say, 'Last September in Mr Cook's legal challenge to the tainted union election, he was dismissed. This meant he was no longer able to contest any further union elections because he was no longer a postal employee'. That is actually factually wrong on two points, is it not?

Mr Sheehan—Is it?

Senator CONROY—It is factually wrong because you can be seeking work in the industry and be eligible to be a union member. That is the rule; it is quite straightforward. So just because you are sacked does not mean you are no longer able to be a member of the union or to actually stand in it. You do not have to be employed to stand in a union election. So it is wrong importantly on one factual point.

Mr Sheehan—I am just curious to know what this has got to do with your statements to the Senate on—

CHAIR—I think the questions are coming from the committee, Mr Sheehan, not the other way.

Senator CONROY—And you state that he is not allowed to contest any further union elections. That is not the case at all. He could become eligible tomorrow and contest a union election by becoming financial. So on both points of the question—the ongoingness and why he could not stand in the 1996 ballot—you are factually incorrect.

Mr Sheehan—That is the 24 June article. I think that was the first one.

Senator CONROY—Yes; Monday, 24 June.

Senator MINCHIN—It was correct to say he could not contest an election while he was unfinancial. That is a perfectly accurate statement.

Senator CONROY—But he does not say that. He says—

Senator MINCHIN—That is the import.

Senator CONROY—No, it is not. He says the legal challenge pertained to the notion that he was dismissed. He is saying quite clearly that, because he was dismissed, he was no longer able to contest any further union elections because he was no longer a postal employee. It is factually wrong on two important points.

Mr Sheehan—Subsequent articles published by the *Sydney Morning Herald*, and there were numerous—

Senator CONROY—I have got them.

Mr Sheehan—would have basically described the judge's description of Cook's condition.

Mr McCLELLAND—He was ineligible to stand at that election, but that election only, without rectifying his financiality at a subsequent time. Is that correct?

Mr Sheehan—That is correct in fact. He is eligible to stand for an election now but, until Justice Locke found in his favour, he was not in a position to stand for the 1996 election because of his unfinancial state.

Mr McCLELLAND—But that cannot be remedied even as a result of Justice Locke's decision. She did not restore financiality to him in the union or did not even purport to. That did not even arise as an issue, I understand.

Mr Sheehan—Right.

Mr McCLELLAND—I have a question on the use of the 'shit sheets', to use your terminology. Do you think part of the problem stems from a High Court decision called Hocking where the High Court determined that the distribution of misinformation concerning a candidate did not amount to an irregularity but, rather, an irregularity only occurred in so far as material was distributed which interfered with or misled a candidate as to their casting a vote? Justice Wilcox in particular of the Federal Court has expressed regret at the High Court decision. Do you think part of the problem stems from that reasoning?

Mr Sheehan—It is not an impediment, because you will notice no-one puts their names on these things. The Nuga-Wella case, which was recently decided, found $500,000 in defamation damages for a letter distributed to 12 people. If my name had been mentioned in this comment by Senator Conroy in parliament, I would have, as Noel Battese did, challenged him to repeat it outside the Senate. Senator Conroy did not accept that challenge. If I find out who printed and distributed this sheet, I would sue them for defamation and I would win.

Mr McCLELLAND—That may be, but what I am trying to get is a constructive

input on the issue.

Mr Sheehan—I do not think Hocking chills any attempts by the AEC to curb the dissemination of these documents.

Mr McCLELLAND—Can I take it from that that you disagree with me: you do not believe there is a need for the law to provide that the distribution of misinformation about a candidate could constitute an irregularity?

Mr Sheehan—I would love to see the laws made more strict and specific to make it much more difficult with much more punitive ramifications for the distribution of these defamations.

Mr McCLELLAND—You are suggesting that the remedy has to be in the area of defamation as opposed to the area we are looking at—namely, the law relating to the conduct of elections?

Mr Sheehan—Not necessarily. If you were to amend the electoral laws to make this specifically an illegal act and make it more rigorous, this would be a cost-effective way of helping to clean up the environment of elections.

Senator CONROY—Mr Sheehan and I disagree on many things, but on one thing I do actually agree with him—that is, in terms of the distribution of smear sheets. Having been the victim of them on a number of occasions, I am fully aware that it is, as you describe, accepted practice or something like that. I agree that it is an unfortunate thing that happens. I have often sought legal remedy to be unfortunately told that, given they are unsigned, I have no recourse.

I am glad you raised that the other side had also done it. You have probably seen that one as well, which suggests a number of things which were not factually accurate. I am just disappointed that you did not contribute a column to rebutting that shit sheet and this one in the same vigour which you pursued the distribution of some other smear sheets.

I would also like to ask you to clarify a point you made in your written evidence. You suggested—and I think it was a misunderstanding—that I read an anonymous smear sheet into the record of the parliament. Is that your contention?

Mr Sheehan—I don't know what you were reading from, but the text you were reading into the record of the parliament was the same as this text.

Senator CONROY—It is not anonymous, though.

Mr Sheehan—No.

Senator CONROY—My point is that there is a difference.

Mr Sheehan—The only thing I have suggested is you were reading Ed Mason's statement.

Senator CONROY—Yes, which is not anonymous.

Mr Sheehan—Did I say in my verbal testimony that I described this as anonymous?

Senator CONROY—Yes, verbal and written. You said I had read into parliament an anonymous sheet.

Mr Sheehan—I withdraw that. That was just an error of statement. I should have stuck to what I had written. The reason I faxed and phoned your office on 6 October last year was that it is important to me to hear your side of things. I regard that as fundamental fairness. That is why I began this submission by saying I constantly called the union. It is very hard to report things when you are only getting one side of it. But I tried to speak to you beforehand. If you had said to me, 'What you are saying is very untrue and unfair,' I would have put it in the *Sydney Morning Herald*, but you did not give me that chance. I would have accepted anything you told me as fact.

CHAIR—Just to clarify this on the record, can we note that there has been an amendment to the submission?

Mr Sheehan—If I referred to Ed Mason's sheet or the document that Senator Conroy was reading as being anonymous, that was a misstatement.

CHAIR—Anonymous is used in relation to the other sheet that you refer to. Would you like to tender any other documents that you have referred to?

Mr Sheehan—Would it be helpful to the committee if I submitted Ed Mason's sheet and the Vietnamese smear sheet?

Senator CONROY—I would like to see them all. On page 6 of your submission you say 'and, apart from the usual anonymous defamations of the kind read out in the Senate by Senator Conroy'. The point I am making is that there is nothing anonymous about Ed Mason's submission to Justice Moore, which is entitled 'Submission'—just in case other committee members have not seen it yet.

Mr Sheehan—Yes, I accept that.

Senator CONROY—There is a difference between reading that and the material about bankrupts and phone sex addicts. I take it Mr Sheehan is not alleging that I have

read something like that into the *Hansard*.

Mr Sheehan—No, not at all.

CHAIR—That clarification has been made, anyway.

Mr Sheehan—I was probably thinking that this was about to become a smear sheet. A person could interpret the point of the speech as being that it would become part of a smear sheet. A reasonable person could make that—

Senator CONROY—To set your mind at rest, until you contacted me I was unaware that any distribution of anything I had said in the Senate had taken place.

Mr Sheehan—I would have preferred to have said that in the *Sydney Morning Herald* at the time. I accept that.

Senator CONROY—We could get into a debate, but the chair would probably not want me to. I am happy to.

CHAIR—I do not think this is the place to debate that aspect.

Senator CONROY—The chair won't allow me to respond to you.

Senator MINCHIN—On the same issue, you have referred to the distribution of what we are now calling a smear sheet as being 'unlawful'. By that do you mean it is unlawful because it is defamatory? There is no other area of law to which you are referring in relation to that being unlawful?

Mr Sheehan—If you are caught handing these things out, what is the worst that can happen to you? You tell me.

Senator MINCHIN—That is what I am leading to. Should we be looking at an amendment to the relevant legislation to provide that the distribution of anonymous material and defamatory material in union elections is an offence under statutory law, not simply a matter for common law defamation? Would that be your submission to us?

Mr Sheehan—It would, because if somebody is standing for office in a union election that is just as sacred an election as any other. The system basically winks at these sheets. I think it should stop winking at these sheets. It has done damage to Senator Conroy. Whoever is responsible for this, sold him up the river. He has said to the committee that he was unaware of this. I am presuming that he did not think he would be misused in this way by people quoting him anonymously. It is not helpful to him.

Senator CONROY—I disagree with your contention. I am still waiting to read

Paul Sheehan's article that mentions in any way that the judge and the handwriting expert found that other than Natour-Jarman supporters were involved in ballot fraud. I have been waiting for six months.

Mr Sheehan—I do not have all my articles in front of me, but I was under the impression that I have in fact made that reference. I have quoted the judge. I am sorry I do not have all the pieces, but my understanding is that I have quoted Justice Moore's judgment saying that some of the ballots were by the other side—the Battese team and the Natour-Jarman team. My understanding is that I quoted that in one of the articles in the *Sydney Morning Herald*.

Senator CONROY—If you could table it for the committee, that would be appreciated. I live in Melbourne, so I do not always see your newspaper, unfortunately, although I try to.

Mr Sheehan—I actually think that it did mention—

Senator CONROY—Other than in responding to my statements in the Senate. Are you saying you did it independently?

Mr Sheehan—What I have done is quote Justice Moore saying that there were a number of irregularities benefiting both sides but by far the balance was on the side of the Natour-Jarman team.

Mr McCLELLAND—On a different point, you have indicated an offhand dismissal, if I can put it that way, of Mr Mason's contentions. Wasn't he in fact examined on 2 August 1996 for a quite considerable number of pages but, as a result of a request by cross-examining counsel, the proceedings were adjourned to enable them to have further time to consider and take instructions with respect to the evidence given by Mr Mason?

Senator CONROY—Can I supplement that. I would like your opinion on why the Battese-Cook lawyers did not want Mason cross-examined that day.

Mr Sheehan—I have no comment on that.

Senator CONROY—You said you were there.

Mr McCLELLAND—I would refer you in particular to the transcript of evidence of 2 August 1996.

Mr Sheehan—Is this the day that Ed Mason tendered this statement?

Mr McCLELLAND—Yes.

Senator CONROY—You said you were there.

Mr Sheehan—I was there.

Mr McCLELLAND—In particular, I refer to pages 1432 through to 1456. That is something you might like to take notice of.

Mr Sheehan—What is the point you are making?

Mr McCLELLAND—As to whether you will revise your assertion that Mr Mason's evidence was dismissed in an offhand way by Justice Moore.

Senator CONROY—Once I had opposed hearing it.

Mr McCLELLAND—In other words, there was evidence of substance given by Mr Mason in those proceedings. The second point I would like to make is that in your submission you have been quite critical of the role played by Justice Minister Duncan Kerr. Are you aware that on 2 September 1996 the current Attorney-General, Mr Daryl Williams QC, in reply to a question from Mr Kerr, said:

The Australian Federal Police also have an independent discretion to investigate allegations of offences and, as a matter of law and operation, attorneys-general and ministers for justice do not and have not given directions to the police in relation to operational matters.

Mr Sheehan—I have never suggested that they do or should.

Mr McCLELLAND—But you have condemned Duncan Kerr, with respect, for failing to do precisely that—for failing to direct the prosecution policy of the Commonwealth.

Mr Sheehan—What I said in the *Sydney Morning Herald* was that, under the watch of Mr Kerr, nothing happened. This whole thing was a debacle.

Mr McCLELLAND—Are you advocating that ministers of the Crown now step over the line of elected representatives to parliament and become prosecutors? Is that what you are advocating?

Mr Sheehan—I am advocating that you acknowledge the reality that when a government is rigorous about investigating something it gets investigated.

Mr McCLELLAND—So you are virtually saying that you have condemned Duncan Kerr because he did not adhere to a policy of a police state—that is, a state where the politicians direct prosecution as opposed to an independently determined prosecution policy by the law enforcement agencies.

Mr Sheehan—No, I am not saying that, and you know I am not saying that.

Mr McCLELLAND—In light of that, are you prepared to withdraw your imputations against Duncan Kerr?

Senator CONROY—And Michael Lee.

Mr McCLELLAND—That is a separate matter. I am coming to it.

Mr Sheehan—I have said that under the watch of Duncan Kerr a blatant conspiracy to defraud an election went nowhere. I have said no more than that.

Mr McCLELLAND—What more do you think Duncan Kerr should have done? Here is your opportunity to place on the record what you think, as justice minister, he should have done.

Mr Sheehan—I believe, on legal advice that the *Sydney Morning Herald* received, that the matter was deemed to no longer be touchable because of the statute of limitations and the DPP policy, as we have examined it. The DPP discussed with us the relevant paragraph, 2.23 on page 8, of the prosecution policy of the Commonwealth.

Mr McCLELLAND—Coming back to the question, what more do you think Duncan Kerr should have done?

Mr Sheehan—I am not going to suggest what the minister should or should not have done. I am suggesting that the reasons for not vigorously prosecuting this matter were wrong.

Mr McCLELLAND—I will leave that point there. In the unfair dismissal case of Quentin Cook against Australia Post, are you aware that Mr Cook had two options: one, that he could have alleged victimisation on the part of Australia Post as a result of his political activity; and, two, which is the one he took, that he allege unfair dismissal under sections 170 and following of the act—namely, that he had been unfairly dismissed in substance and in procedural fairness—but that there was no finding that he had been dismissed as a result of his political activities in the CEPU elections?

Mr Sheehan—I was not aware of that option that he had. But in the judgment of Judicial Registrar Locke, and because of the possible politicisation of the matter, she saw fit to mention—and I quoted this in the *Sydney Morning Herald*:

The actions of [Australia Post] were out of all proportion, ill-founded, unjust and illogical and were tantamount to capriciousness and spitefulness.

As to the political dimension she found—

Senator CONROY—Nothing. She made no comment. There was no finding.

Mr Sheehan—I do not think reference to something in a judgment is irrelevant. The judgment is 118 pages because she has a lot to say about the matter. You cannot just ignore aspects of the judgment because it suits you.

CHAIR—Mr Sheehan's finding is referring to something.

Mr McCLELLAND—Can I perhaps abbreviate it? Did Judicial Registrar Locke find that Australia Post had dismissed Quentin Cook as a result of his political activities?

Mr Sheehan—She found that he had been unfairly dismissed, and she made references on two occasions in her judgment to the fact that on one occasion he was referred to as a 'Liberal shit' by the officer who was formulating the complaint against him. She also made reference to Justice Moore's judgment. She said:

In that case no finding was made about the involvement of Australia Post management irregularities in the ballot. In passing, His Honour did remark that it was difficult to understand how these matters had occurred without the knowledge of management.

So the justice—

Mr McCLELLAND—We can come back to the primary text of Justice Moore's decision. But, returning to my question, did Judicial Registrar Locke find that Quentin Cook's employment had been terminated by Australia Post because of his political activities?

Mr Sheehan—She found that he had been unfairly dismissed and saw fit to raise issues of political irrelevance in her judgment.

Mr McCLELLAND—That is as strong as you can get?

Mr Sheehan—That is pretty strong, but if you are asking me to change her judgment I cannot do that.

Mr McCLELLAND—No, I am not asking you to do that. Can you point me to the place where she—

CHAIR—He has answered the question twice. It is not a cross-examination.

Mr Sheehan—You are asking if she found that he had been unfairly dismissed because of his political activity. My reading of this judgment is that this would have been

a relevant element in her very negative finding against Australia Post.

Mr McCLELLAND—Do you have any evidence whatsoever that Michael Lee played any part in the decision of Australia Post to dismiss Quentin Cook?

Mr Sheehan—I have made no such accusation in the *Sydney Morning Herald* and I have no such evidence.

Mr COBB—I would like to turn to the role of Australia Post in this. You make a suggestion that the committee might want to examine the resources of the Australia Post Security and Intelligence Service. From your involvement in and research into this case, have you got some comment to make on what their activity was as far as effectiveness goes with the interception of mail, et cetera, and was there any deliberate pulling back? What sorts of things can be done to rectify it?

Mr Sheehan—I certainly make no comment that could be interpreted as saying that Australia Post played an active role in the subversion of this election. I have been extremely critical of Australia Post on a number of grounds but, on your specific point, on the issue of security and the strength of Australia Post's security service, I raised the issue with Australia Post and asked them about their staffing levels. They gave me statistics showing that the staffing levels had been declining over the years and the reasons they gave seemed perfectly reasonable, that the technology had improved, that they were outsourcing administrative functions and that it is quite conceivable that the number of officers that Australia Post could put into the mail centres as proactive officers during an election is basically unchanged. I just recorded their response without comment.

But I will say one thing: there was a very big difference between the 1994 election and the 1996 election. The 1994 election was so compromised that it was voided by a judge. The 1996 election was clean except for the smear sheets, but that is a much more difficult and much more trivial problem compared to the very serious conspiracy that went on in 1994. I believe that the significant and very critical media coverage—coverage that Australia Post believes at times was unfair and hostile—was the single determining factor in their much more rigorous and effective policing of the 1996 election, and I would like to see the 1996 election as a paradigm for future elections.

Mr COBB—What sorts of things were they doing? Presumably they still had the same depleted number of staff, et cetera.

Mr Sheehan—Not necessarily depleted. You would have to raise that with them. But they were in the mail centres as a show of strength.

Senator CONROY—They installed cameras, didn't they?

Mr Sheehan—The cameras were always there. They showed me how the cameras

could occasionally catch people tampering with the mail. There is an issue of whether or not the union has to be notified if the cameras are running. I do not think, if that is the case, that they have to be notified. I do not know if that is the case. If it is the case, I would see that as something that should be changed. But they went into the mail centres; they, for want of a better word, patrolled the mail centres; they put all available officers on the floor, on the beat, for want of another word. I think they did chill the fairly blatant vote gathering that went on in 1994. Justice Moore found that the vote gathering in 1994 was blatant.

Mr COBB—So there were no cameras used in 1994—

Mr Sheehan—I do not know that.

Mr COBB—But what they did in 1996 was adequate, in your opinion?

Mr Sheehan—I had a lot of people calling me complaining about gross irregularities in the 1994 election, so I had a wide network of contacts of people who were disgusted by the activities that had taken place in 1994. Those same people were not calling me in 1996. As the police explained to me, people will call me but they will not call the police. I have spoken to the Australian Federal Police and given them as much help as I can on this matter. I did have a lot of people talking to me throughout the mail centres, and the phones were quiet in 1996. The only thing they objected to was the distribution of the sheets and the large number of smear sheets that were floating around. Otherwise, Australia Post was much more effective—and the media also. I was calling the people—some of whom I felt were vote gatherers and vote manipulators. So they felt very much under scrutiny by both the media and the police. The reason the incumbent faction won decisively in 1996 is that they mounted a very large and effective get-out-the-vote campaign, calling up people, and they did it in the proper way.

Mr COBB—Judicial Registrar Joan Locke said the response of Australia Post was so out of proportion, ill-founded, unjust and illogical—that was to do with the dismissal. Did she comment on their lack of picking this up in 1994 compared with the rectification of it in 1996?

Mr Sheehan—From memory, I cannot answer that. But that passage I read to you earlier on, about how she finds it difficult to understand how these matters had occurred without the knowledge of management, was a fairly strong statement I felt.

Mr COBB—Were there any changes in management or people in authority that you know of between 1994 and 1996?

Mr Sheehan—Not that I am aware of.

Mr COBB—So the same people did it wrong in 1994 and largely correct in 1996?

Mr Sheehan—Well, that is one way of putting it.

Senator CONROY—You have made reference to your never having alleged improper interference or political interference. Can I take you back to your article of Monday, 24 June: 'Sacked postie who blew the whistle on poll fraud'. In that article you say, 'The judgment in this case is expected later this week. If Mr Cook wins, this will be prima facie evidence of political coercion within Australia Post management.' That is a fairly serious allegation.

Mr Sheehan—Yes. It certainly is.

Senator CONROY—Would you like to substantiate it? A moment ago, you said there was no suggestion that Michael Lee—

Mr Sheehan—When I said 'political coercion', political coercion takes many forms, and I did not say—nor have I ever suggested—that Michael Lee said, 'Sack that man.' You will not find that in any article.

Senator CONROY—You have made an assertion of political coercion.

Mr Sheehan—Yes, I have.

Senator CONROY—'Political' applies to people involved in politics.

Mr Sheehan—I have said that, if Quentin Cook wins his case, it is not going to look good for the people who were running Australia Post at the time. And it does not look good.

Senator CONROY—Hear, hear! But what has that got to do with political coercion within Australia Post management?

Mr Sheehan—Political coercion means that—

Senator CONROY—There is a fairly clear implication from that.

Mr Sheehan—It is clear, it is unambiguous and I repeat it now.

Senator CONROY—But you have no evidence to support any political interference in Australia Post management?

Mr Sheehan—I have 118 pages of scorching judgment to suggest that—

Senator CONROY—On Australia Post?

Mr Sheehan—Yes.

Senator CONROY—But you are talking about political coercion within Australia Post.

Mr Sheehan—We are talking about basic English here. I used the word 'within'. I talked about political coercion within Australia Post—not 'from' or 'above' but 'within'.

Mr McDOUGALL—Can I take us to an area where I hope we might be able to do something in the future or make some recommendation in the future. Within state departments of justice, all of them, to my knowledge anyway, have a model set of rules for incorporated associations to adopt—maybe in some form of amendment which the justice department agrees upon—for the operation of that association. Would you see all unions having an adopted set of model rules as a possible future way of overcoming all these problems that you have been able to raise?

Mr Sheehan—This is something that has just come out of left field, and I have not had time to gather any thoughts on this matter. What would be the effect, do you think, of the changes that you would envisage?

Mr McDOUGALL—From the evidence that has been given during this inquiry to date, there seems to be some difficulty with the AEC in regard to a set of standards on which elections are to be run, because unions and all industrial organisations seem to have sets of rules that vary extensively and, therefore, pose some difficulty for the AEC to get some sort of common strain. Do you believe that, for both unions and employer organisations, maybe within the Industrial Relations Act there should be a set of model rules to be able to not only set down guidelines and rules of operation but also police them by?

Mr Sheehan—And who would be doing the policing?

Mr McDOUGALL—I am not here making the suggestion at the moment. I am seeking information.

Mr Sheehan—I was just trying to clarify it. Is that another form of strengthening the act in terms of the conduct of the election? Would you be giving any sort of self-administrative or self-disciplining power within the organisation?

Mr McDOUGALL—I would see that a set of model rules could strengthen the operations of the conduct of elections.

Mr Sheehan—Would they prescribe things like this, for instance?

Mr McDOUGALL—Under the AEC election act with regard to federal elections,

any information that is handed out, posted, mailed has to be authorised. Maybe the set of rules could also incorporate that.

Mr Sheehan—I just find it hard to see how a set of rules would stop people who want to subvert an election. They are by definition an underground. So they are already breaking a set of rules, and these would be more rules for them to break.

Mr COBB—Can I just return to your point. You say that in the *Sydney Morning Herald*'s database over the last decade or so there are 1,529 stories or letters about various rorts in the union movement. Are they all to do with elections?

Mr Sheehan—You put up the key words 'union', 'election', 'corruption'. So you get a selective number. There may be more stories traversing this area, there may be less, but it is a fairly accurate guideline of the volume of concern within the community about the conduct of union elections.

Mr COBB—You make reference shortly after that in your submission to a briefing paper 'Federal law enforcement concerns' circulating amongst certain federal law enforcement agencies. Have you got a copy of that you could provide to the committee?

Mr Sheehan—I have a copy of the first page of that. The circumstances in which that was given to me are such that if I had felt it was helpful to attach that for the committee I would have. But this was given to me in the classic leak mode. I referred to it. It was given to me by a senior Australian Federal Police officer of a group who are concerned about the politicisation of the bureaucracy. So I quoted from that because his bona fides were the real thing.

Senator CONROY—There is a group in the Australian Federal Police investigating the politicisation of—

Mr Sheehan—No, I didn't say that, Senator Conroy. I did not even say anything close to that.

Mr COBB—So what are you saying? You do not want to make it available?

Mr Sheehan—Yes; I do not.

Mr COBB—Fair enough. Are you able to indicate even in general terms the tenor of the language?

Mr Sheehan—We get back to Mr McClelland and Senator Conroy's points about political coercion, political influence. It is a very subtle thing. Every politician sitting at this table knows that when you get a change of government you get a change of

atmospherics in the federal bureaucracy. Suddenly things that were untouchable become very touchable. No-one has to say a word, no-one has to do a thing, but suddenly the bureaucrats who can read the wind and like to keep their jobs suddenly find more rigour in areas that they were basically not very interested in before. It is the reality of politics. It would be a naive and stupid person who said that this is not the way of the world. Frankly, there is nothing wrong with it. That is why people change governments. They know that the change will flow right through the bureaucracy.

Senator CONROY—I would like to raise a couple of issues that you put in your evidence and were raised earlier. I am not sure whether you were here when Dr McGrath was giving all of her evidence.

Mr Sheehan—I was here partially.

Senator CONROY—The end part?

Mr Sheehan—The end part.

Senator CONROY—We were discussing Mr Battese. Mr Battese got a pretty good run from you, would it be fair to say, in the—

Mr Sheehan—It gets back to Jim Metcher. I wanted to quote him even more than Noel Battese.

Senator CONROY—No, but you have got a big photo of him, a couple of—

Mr Sheehan—Noel Battese—cement head or concrete head—is built for the news business, isn't he?

Senator CONROY—You are aware of the statements he has made that he was aware of a left-wing network in Redfern Mail Centre—that allegation that he has made extensively?

Mr Sheehan—I know that Noel Battese knows more about the shenanigans in the Postal Workers Union than any person alive and no-one would ever confuse Noel Battese as being an angel from heaven on these matters. I spoke to Noel Battese extensively. I quoted all the people I spoke to extensively. Trying to get balance was very difficult. You would not contribute to the article in which I named you.

Noel knows what goes on in these elections. He knows every dirty trick in the book, and he knows it from first-hand experience. Noel has been on both sides of the issue. But, in this matter and in the 1994 CEPU election, when he was asked by a senior official of Australia Post, 'Why are you doing this, Noel?' Noel said, basically, that he

was an old man and he had a few points to score.

Everybody has a vested interest when they speak to the press. Everybody has their own barrow to push. That is why you want to speak to as many people as possible. Because certain patterns begin to emerge, and you start to look for who can be trusted and who cannot, who is telling you the truth, whose comments are backed up and whose are not. I have heard some fantastic stories about this election, about Australia Post and about various people, and those stories are not in the *Sydney Morning Herald*, because they are not verifiable. The only things we put in are from the judgments or from the police or when I have heard about the same thing from about six different people.

Senator CONROY—So you accept that Mr Battese has previously had first-hand experience?

Mr Sheehan—I do not know what Mr Battese has done in his past life as a union official, but he has seen it all.

Senator CONROY—You used the words 'first-hand experience' which implies more than seeing.

Mr Sheehan—You have got it in for Noel.

Mr LAURIE FERGUSON—'First-hand experience' can mean many things.

Senator CONROY—That is what I am asking him, what he means by 'first-hand experience'.

Mr Sheehan—If you are asking me whether Noel Battese has participated in election fraud?—how the hell would I know? I was not there. None of us know what any of these people do. We do not know who frauded this 1994 election. I know that Noel went to the meeting that Ed Mason spoke of, and I spoke to about six people who were at the meeting and their recollection is that Ed Mason's recollection of the meeting in which Noel Battese was sitting around telling people to fraud the election is a lie.

Senator CONROY—And you believe them?

Mr Sheehan—You find six people to support Ed Mason and we might be getting somewhere.

Senator CONROY—I wanted to clarify in my mind that you are confident in everything Mr Battese has done.

CHAIR—He did not say that. You are putting words in his mouth again.

Senator CONROY—I want to be absolutely clear, because I am developing a point, if that is quite all right with you.

Mr Sheehan—No. What you are doing is trying to put words I did not say in the record.

Senator CONROY—When I finish a sentence, you are entitled to respond—and you have. You said at the beginning that you are not an expert in elections and union rules and things like that. There is a fairly fundamental point you raise in your evidence—and it is contained in your letter—where I think you have made a substantial error: that is, the question of the type of ballot that took place in this union election. It is point 10.

Mr Sheehan—By the way, could I just mention that Noel Battese took a handwriting sample. He was quite happy to subject himself to that test. That might tell you something.

Senator CONROY—You referred repeatedly to a Cook-Battese ticket in your speech: 'In fact, the ideologically opposed Cook and Battese teams merely agreed to swap preferences, just as the ALP and the Shooters Party are swapping preferences in the Lindsay by-election.' Can I take you through where you have unfortunately got it wrong there.

Mr Sheehan—Which question are we on?

Senator CONROY—This is point 10 of your letter, contained in your evidence. To my mind, it is a very important issue. This ballot was not a preferential ballot—were you aware of that? This is a first-past-the-post ballot.

Mr Sheehan—The various tickets were cross endorsing each other.

Senator CONROY—No. They ran a joint ticket. There is a fundamental difference between running a joint ticket and swapping preferences. This was not a preferential ballot. It was a first-past-the-post ballot. You put one to 12 or you put 12 Xs, and they have the same effect. So your continued assertions that the ideologically opposed teams were swapping preferences—implying that they were not operating together and it was a bit of a lucky coincidence that they agreed to swap preferences—are wrong. They ran a joint ticket. This is what happened, as opposed to what you think and have misunderstood. The rules of the union do not provide for a preference swap. They provide for a first-past-the-post ballot.

Mr COBB—A swap.

Senator CONROY—You may not understand that it is an important point, Michael.

Mr Sheehan—This is a very important point. I will raise the most important point with you now: don't you think the time for you and I to sort this out would have been 6 October, before I wrote the article? Why have you waited 10 months to try to make nitpicking points to me? Change the word 'endorsements' to 'preferences' and we have solved the problem. You are making these points about a fundamental change. I gave you this question 10 months ago. Why did it take you so long to answer me?

Senator CONROY—You have run a biased reporting of this entire affair. You have championed one team and then, right at the end of the process, you suddenly found out that your boys were in it too. That is the only point I have ever made. The boys that you have given this great run to—this clean team, new deal team—are actually implicated as well but you have not seen fit at any stage after two years of an investigation to mention it until I have raised it and you have responded.

Mr Sheehan—Why has it taken you 10 months to raise this with me now? I am still waiting to see—

Senator CONROY—You see an expose on their shit sheets. You have given an extensive article—a massive front page article—followed up by the spectrum, with your commentary on letters distributed that were not anonymous. You have personally editorialised the campaign literature of the other team.

Mr Sheehan—That's not true.

Senator CONROY—Yes, it is. You have gone through and read into your article the Jarman rebuttal, which you have chosen to editorialise and give your opinion of what they have said in their campaign literature. I am still waiting for you to write an article about the fact that supporters of the Cook-Battese team had been implicated in ballot fraud. It has not made the front page of your newspaper.

Mr Sheehan—Let me give you a little insight—

Senator CONROY—No-one has been found guilty of ballot fraud yet.

CHAIR—Can I just stop this here. We are doing what I anticipated might happen, in that—

Senator CONROY—This is evidence he has submitted.

CHAIR—Senator Conroy, with the greatest respect, you are raising articles from a newspaper. We have all been done over by newspapers.

Mr Sheehan—That is not true. None of my articles are in the submission.

CHAIR—The particular articles that you are raising are newspaper articles. They are not the submission. I think you have made the point in the submission with regard to the method of ballot, and that is relevant to the submission. You have made that point. I am not going to allow some cross-examination of a whole series of newspaper articles. I do not think that is appropriate. We really have to wrap this up because we have one more witness and we are running behind time.

Senator CONROY—Can I raise something?

CHAIR—Do you want to ask a question on that particular point in the submission?

Senator CONROY—Yes. So you accept that there is a substantial difference between two teams swapping preferences, a la the ALP and the Shooters, as you allege, and running on a joint ticket?

Mr Sheehan—No.

Senator CONROY—You don't understand the difference?

Mr Sheehan—I don't accept that there is a substantial difference. They were basically a Liberal team and a reform Centre Left team. There were clear ideological differences between the candidates placed. I do not see it as one ticket. I see it as two tickets that were clearly in alliance with one another. You have described a Cook-Battese ticket as if there was one entity. That is simply not true. There are two distinct entities. Quentin Cook is a member of the Liberal Party. Noel Battese is an old member of the Left. These are very different people who made an alliance of convenience, but they were never one party.

Also on the issue of the irregularities that were perpetrated by supporters of Cook-Battese, the key thing here is from a news point of view. I have to ask whether this is interesting. If it is not interesting, I have to have a good reason to put it in. It seems to me from my discussions with the handwriting experts that about 85 to 90 per cent of the irregularities were on behalf of the ticket that won the election. You are talking about 10 per cent. You are trying to structure the evidence as if both sides were as guilty as the other. That is clearly not true.

Mr COBB—I am interested in the response you received from the AEC when you contacted them and your comments on their helpfulness or otherwise.

Mr Sheehan—The AEC run it by the numbers. I was directed to speak to only one person: David Kerslake. I was told that I should not contact anybody else in the organisation and that it was only David Kerslake that I should speak to.

Mr COBB—Is that because he was the expert in that area?

Mr Sheehan—He was the guy in charge. The buck stopped with him. He was in charge of industrial elections. When I asked him if there was anything in their records that showed that they had successfully prosecuted election fraud over the course of the thousands of elections in recent times, he suggested, unhelpfully, that I try a freedom of information search. That would have cost a lot of time and money.

I would have thought that the AEC would have been delighted to give me the cases that they had on their records, where they had sent to the DPP recommendations for prosecution. My understanding of their response is that they did not have such a list to offer me. I cannot speak authoritatively on that because their response was ambiguous. But they have never at any point put forward a list of the successful, or even suggested, prosecutions. There may be some, but I have never been able to find any.

Mr COBB—Did you get the impression that they were trying to fob you off? Were they being helpful in any way?

Mr Sheehan—They were punctilious. There seems to be a sort of outrage from the AEC when any suggestion is made that they have been less than effective. It seems to be a defensive outrage. I would think that, if the government was looking at reforming a system, they would start at the top of the AEC and find somebody else to run the place.

Mr LAURIE FERGUSON—Not having spoken to Noel Battese for about a decade and not being an aficionado of this case like yourself and Senator Conroy—I think you got towards answering this question towards the end there; this is the first time that I have had a look at it—what did they decide about the two teams with regard to handwriting? Did they make a definitive decision that 10 per cent was one way and 90 per cent the other?

Mr Sheehan—When you say 'they'—

Mr LAURIE FERGUSON—Moore.

Mr Sheehan—There has been no definitive finding on that matter. But Moore does say on several occasions—in his cautious legal language—it would appear to be that, on balance, the great majority of the irregularities were to the benefit of the Jalal Natour-Jarmon team.

Mr LAURIE FERGUSON—And, impliedly, at the same time, makes a decision—

Mr Sheehan—I asked the handwriting experts if they could give me a ballpark figure and they gave me one. I do not put that up as having any more significance than a

mere guesstimate.

Mr McCLELLAND—If I could just come in there: do you recall the 14 August decision where Justice Moore said, 'Thus it would appear electoral fraud was not the province only of those supporting the Natour-Jarmon team, but it was perpetrated by others involved in the 1994 elections as well?'

Mr Sheehan—I recall that vividly.

Mr LAURIE FERGUSON—Who essentially are Mr Westwood and Mr Anderson? What are their backgrounds?

Mr Sheehan—Mr Westwood is the top forensic handwriting expert in Australia. He is former Australian Federal Police chief handwriting expert. He is the best. One of the misinformations put forward by the CEPU was that after Westwood was appointed they appointed their own handwriting expert Chris Anderson, who was taught by Westwood. They put in their CEPU notifications to members that they appointed a handwriting expert so that they could get to the bottom of this election fraud. In fact, it was a purely defensive measure. They wanted Anderson to knock out Westwood's findings and Anderson could not do it, because the probity of both Westwood and Anderson has never been in question.

Mr LAURIE FERGUSON—Anderson is ex-AFP too? Where did he come from?

Mr Sheehan—I am not sure. But they worked together for some time. My memory does not serve me on the matter of whether he was AFP. There is a good chance that he was.

Mr LAURIE FERGUSON—One final thing for those who have not followed it closely, you are saying Battese volunteered handwriting. Did the other people at the meeting identified by Mason volunteer the same thing?

Mr Sheehan—The three members—Holden and Battese; the third one's name escapes me—all submitted handwriting samples to the judge.

Mr LAURIE FERGUSON—So there were two remaining at the meeting that didn't?

Mr Sheehan—There was a whole bunch of people at the Ed Mason meeting who were not office holders and who were not actually affected. But this was a meeting that took place long before Justice Moore intervened.

Mr LAURIE FERGUSON—I understand that.

Mr Sheehan—There were people who were standing for election at that meeting. The people that I am aware of at the meeting, who were standing for election, did submit to handwriting samples.

Mr LAURIE FERGUSON—But, as we all know, on either side they could have people who were not ticket members who did this job for them.

Mr Sheehan—Yes.

Mr LAURIE FERGUSON—Fair enough.

Senator CONROY—On the point of the handwriting, didn't Mr Westwood find that some of the ballot papers completed in favour of the Natour-Jarman team also had the same handwriting as the ballot papers that were voting for the Battese-Cook team?

Mr Sheehan—He did, and that whole issue is one that may or may not be resolved, but at the moment it is an unresolved issue.

CHAIR—Thank you, Mr Sheehan, for appearing today.

[1.51 p.m.]

COOK, Mr Quentin Redvers, 9 Leumeah Road, Woodford, New South Wales 2778

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

Mr Cook—As a private citizen.

CHAIR—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 your submission, which is now publicly available. Are there any corrections or amendments you would like to make?

Mr Cook—No.

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

Mr Cook—Suffice to say that the submission stands on its own. It is relatively simple, but it is simple for a reason. It goes, without unnecessary or undue verbosity, to address the four objectives of the committee.

CHAIR—Thank you.

Senator MINCHIN—You said it was simple for a reason. Are you able to expand on that? Are you putting to us that the only change you want to see made is that elections be done by an attendance ballot rather than secret and you think that will solve the problem?

Mr Cook—Yes, that is true. The greatest problem with the union ballot system is in fact its connection with the postal system. As it says in the submission, letterboxes are not ballot boxes. One of the problems is the fact that you have a month in between the time of the member receiving his ballot paper and the time when he is due to vote. Anything can happen to a ballot paper in that particular amount of time. A ballot paper can pass through a dozen sets of hands before it reaches the member and can go through another dozen sets of hands before it gets back to the AEC. It is absolutely essential, in my opinion, that the postal system be negated in union elections, and in fact any elections, simply because the postal system has demonstrated incapability of being able to handle the sanctity and security of the ballot system.

Mr COBB—Why does it go through so many pairs of hands?

Mr Cook—From the time that a person posts a letter the dozen sets of hands involve the processing of that letter before it actually gets to the member themselves. So the postman clears it out of the letterbox and puts it into a truck and the truck takes it to a mail centre and it is then handled and handled until the postman himself delivers it. It can pass through a dozen sets of hands on that route and then on the way back again.

Senator MINCHIN—We heard evidence from Mr Sheehan that the re-election that was ordered by the court was in fact conducted without any obvious evidence of fraud except for what he called the smear sheets. Are you saying that is an exception to the rule? Do you accept that that election was conducted properly but it is an exception to the rule?

Mr Cook—I do not because my political mind and my experience tell me that probably the same sorts of things went on in that election as in previous elections. It is just that there were no challenges and there were no investigations made either. I was not a candidate—I was not allowed to be a candidate—so I really was not that interested in making those sorts of investigations. To my knowledge and to my satisfaction, it was being handled by the federal police and the correct authorities, so I was prepared to let that one go through to the keeper.

Mr McCLELLAND—Just on that, the period of time to file an application for an election inquiry in respect of the 1996 ballot has now expired, hasn't it, and no-one has filed an application for an inquiry?

Mr Cook—Yes, that is correct.

Senator CONROY—On the 1996 ballot, you could go to—

Mr Cook—Yes.

Senator CONROY—Was it a large or small percentage? Do you know, off the top of your head; just a rough estimate?

Mr Cook—I do not know the percentage.

Senator CONROY—Do you know how many took that offer up?

Mr Cook—I do not know that. I know that some people took that option. I do not know how many and what percentage of the total vote it was, but I know that some people did opt to do that.

Senator MINCHIN—Do you not believe that we could overcome the problems of

postal ballots by requiring that they go to people's residential addresses rather than to workplaces?

Mr Cook—Yes, that would help. One of the problems in the past has been that, when ballot papers have gone to workplaces and those particular individuals have moved on from that workplace, those ballot papers have then been collected by a person or persons unknown and then used. So that has been the demonstrated experience—

Senator MINCHIN—So if we were going to stick with postal, it would certainly be advantageous to make it residential addresses.

Mr Cook—Residential is marginally better than workplace addresses, that is correct.

Senator MINCHIN—Pardon my ignorance, but is there anything to identify, when a union election ballot paper is mailed, that it contains union election material?

Mr Cook—Yes, the items, once the envelopes are in the system, are fairly clearly identifiable. You are talking about people who deal with envelopes for a living, who can recognise all sorts of things.

Senator MINCHIN—So there is no way we can overcome that problem? Is it not possible for the AEC to change its procedures to ensure that it would not be obvious that an envelope contained union election material?

Mr Cook—No, not in any realistic sense. My view is, my experience is and my thinking about this subject is that it is best to completely not involve the postal system whatsoever. By involving the postal system, all you are doing really in my opinion is involving an unnecessary middleman—that is, somebody to handle the transit of the ballot papers. If the elections were conducted where it was just an exchange between the member and the AEC, you totally negate the use of the postal system and, thereby, you do not involve a third party in any way. I am sure that Australian Post will wipe their brow with relief as well.

Senator MINCHIN—What if it was a requirement that you use private contractors, that the AEC could only use private contractors?

Mr Cook—No. My submission is that a member is notified that an election is pending. He then presents himself to his local office of the AEC where, upon the production of identification, he is given a ballot paper. He then fills out the ballot paper in a properly provided receptacle, gets his name crossed off on a roll, sticks his ballot paper in a receptacle, into a ballot box, and walks out the door. And that is the end of the story.

Senator MINCHIN—The turnout then would be very low, wouldn't it?

Mr Cook—No, I do not believe that.

Senator CONROY—You say, ‘if the member were given leave’. Do you think that would be normal? Would a boss give the guys and the ladies time off?

Mr Cook—I do not think it is unreasonable.

Senator CONROY—Would you support that being inserted into an award clause so that on the day of the ballot the boss has to give the workers an hour?

Mr Cook—Yes, into an award clause perhaps. I do not think it is unreasonable. We are only talking about an hour or half an hour every two years. That is not an unreasonable amount of time—and spread out over a month. If you have this number of employees, in order to vote—over a month—you could say, ‘You go for the hour, you go for the next day and you go for the next day’. That is not an unreasonable proposition even if it has to be legislated as such. You will find that the turnout will be far greater if people were actually allowed to go and vote.

Senator CONROY—To come back to the envelope aspect, why couldn’t a blank envelope be used? It has to have a return address, I guess, but it does not have to show that it is the AEC. The AEC must send out all sorts of different mail at any one time—even if somebody was aware of the return address of the AEC—it need not necessarily be a ballot paper or in relation to a ballot. I am just trying to think of tightening up the postal ballot system as such.

Mr Cook—The fact is that whatever envelope the AEC uses it is going to be known by the people that work in the postal industry. For instance, you have just noted the fact that some people have their ballot papers delivered to their workplace address. Once the type of envelope is known by the people who have already got their envelope at the workplace address, then it will be generally known what sort of envelope it comes in. It is not a large stretch of the imagination after that for unscrupulous individuals to be able to tamper with that very tamperable system.

Mr McCLELLAND—Wasn’t part of the problem that Justice Moore found in his May decision that the Electoral Commission in respect of the 1994 CEPU elections had put a distinctive postcode on it, so that made it even easier for people?

Mr Cook—That is correct. Very often the postcode is in fact a fictitious one, but it facilitates the fast return delivery of the envelope itself with the ballot paper in it.

Mr McCLELLAND—So at least there could be things done to minimise the prospect? As one of the members said, there would be a lot of other material that the Australian electoral office would send out—for instance, to new enrollees and things of that nature in federal and state elections. Even if any marking which distinguished a trade

union election from the general bulk of Australian Electoral Commission correspondence could be removed, do you think that would minimise the prospect for tampering?

Mr Cook—The road to hell is paved with good intentions and it is best to eliminate any propensity you possibly can rather than just bandaid it. It is the thrust of my submission that we completely circumvent the postal system, because it is a system that is tailor-made for corruption and for rorting. Let us say you people were to design a new federal electoral system and the system that you put to the Australian people was, 'You don't have to bother to go to the polling places any more; we'll post you your ballot paper. We'll get the Liberal Party in one election to make up the roll and we'll get the Labor Party in the next election to make up the roll. We'll post you the ballot paper to save you the inconvenience of having to trot out every three years and take 10 minutes to vote. We'll give you a month to vote and then you just stick your ballot paper in the letterbox and everything will be all right.' If you presented that scenario to the Australian people, it would be absolutely outrageous; yet that is the system that applies in union elections, where a ballot paper is literally in 75 per cent of cases hanging around for a month.

Mr McCLELLAND—Although, that is a system proposed, for instance, for this constitutional convention—

Mr Cook—Yes, that is true. This is something that perhaps you senators should keep an eye on in terms of the constitutional committee.

Mr McCLELLAND—A concern I had was in fact raised in Justice Moore's decision of 3 June where he said that the problem with the argument for an attendance vote was that it would favour the candidates whose support came from the big metropolitan mail centres and disadvantage the candidates whose support was found in regional areas. Do you think that is a legitimate concern?

Mr Cook—It is a point to ponder, but in my experience it is not a legitimate concern. Justice Moore is a good bloke, he is very fair and all that sort of stuff; but in my opinion perhaps his inexperience in these matters did not go the full way in trying to alleviate the problem as much as humanly possible. If anything, because officers of the AEC are in federal electorates, it would probably advantage city people more than country people because country electorates are far bigger. I live in the Blue Mountains, and that is not Woop Woop by any means, but it would be an unreasonable distance for me to travel to my local office of the AEC. Therefore, I put in my submission that a member can go and vote at the local police station, for instance.

Senator CONROY—You do not think that would intimidate people?

Mr Cook—If you have something to hide, perhaps, or you were about to commit a criminal offence. But, no, not to the honest, average postal worker; absolutely not.

Senator MINCHIN—In your example of what could happen federally, you mentioned that the metaphor extends to having the Liberal Party draw up the roll in one election and Labor the next, meaning that the union draws up the roll.

Mr Cook—The organisation itself draws up the roll.

Senator MINCHIN—Yes. What do we do about that? If the roll is corrupt or lacking integrity, you still have the problem, whether it is an attendance ballot or not. How do you fix the roll?

Mr Cook—Sure. I did not put it in the submission, but that is why I believe there should be a pre-poll audit and a post-poll audit. The post-poll audit is an audit of those people who have actually voted, to make sure they are real people and are able to vote. Nobody is interested in how they voted; they are just interested in whether they are real people or not. I believe too that the roll submitted by the organisation can be cross-referenced with employee records and records from the taxation department. Why I mention the taxation department is not that nobody is suggesting anything intrusive but, because taxpayers fund union elections through the AEC and also subsidise union membership through deductions at tax time, that the taxpayer has to have some sort of a say.

Senator MINCHIN—Would the AEC returning officer or the AEC itself be the body doing the auditing to which you refer—the pre- and post-auditing? How would that be done.

Mr Cook—Yes. That would probably be the case.

Mr McCLELLAND—Or do you think there could be a procedure where, for instance, the organisation was allowed 30 days to have an independent auditor sign off on their membership rolls and then that roll was presented to the AEC, who perhaps had another 30 days to prepare the balloting material?

Mr Cook—Perhaps that could also be the case.

Senator CONROY—Could I ask your opinion on something. In the 1994 ballot, there seem to have been two ways that the fraud was perpetrated. The first way was the collecting of ballot papers after they had been received by an individual.

Mr Cook—By the member.

Senator CONROY—And the second seems to have been straight theft. I am interested in what you think the percentage was. Do you have any idea—

Mr Cook—Any idea how that happens?

Senator CONROY—No. Which was the bigger part? Was it the collection or the theft?

Mr Cook—Probably the collection was the biggest proportion, but only marginally so. What has occurred over many years of union elections is that new people coming into the job who do not know any different feel that the collection of ballot papers is a normal part of a union election. Somebody approaches them, and they hand over their ballot paper with a signed security envelope, and they think that is just the way it is done, they think that is normal. That is one way that ballot papers are collected. There is coercion and there is intimidation. Many of the people who appeared in, for instance, Justice Moore's inquiry did so under some fear of retribution and many other people did not appear at all because they did not want to show up.

Senator CONROY—You are proposing a fairly radical shift in the way ballots are conducted for all unions, which is what we—

Mr Cook—Yes, I know you are not specific to one union, yes.

Senator CONROY—We do not concentrate on one union. We are looking at them all. I am trying to work out whether that shift is necessary for the Postal Workers Union only where you have the unique problem of it being the members' own union involved in the mail centres or whether all these precautions are necessary for all the unions; and whether the majority of the ballot papers were collected after people handed them over voluntarily or through coercion or whether they were actually being stolen by unscrupulous individuals. Is there a need to shift for every union ballot or just for this particular one?

Mr Cook—I believe always to err on the side of safety. This is probably a proposition for all union ballots—particularly the CEPU but, generally speaking, all union ballots. As we walked out of court after Justice Moore had handed down his decision, in walked the New South Wales branch of the TWU where similar things had happened, where ballot papers had been stolen out of the mail.

Senator CONROY—That is the allegation or statement.

Mr Cook—Statement or whatever you like.

Mr COBB—To go back to that 1994 election, when did you first become aware or suspicious that something irregular may have been going on, and how did you come by that information?

Mr Cook—Union elections are always to be regarded with suspicion because of the mitigating factors that occur in union elections. It is not Marquess of Queensberry rules. Union elections have never ever been a battle for the hearts and the minds of the

membership. They have always been a question of who can out cheat whom. In terms of ALP politics, it is always the right and the left. Unions are both the playground and the battleground of the ALP. That is fair enough. That is politics.

Mr LAURIE FERGUSON—Leave Crichton-Browne and Cameron alone.

Mr Cook—Sure, that is politics and you have to accept that. The first whiff of suspicion that I got was when I think—and I am drawing only on memory now—Mr Battese contacted me to say that he was going to have the ballot papers held after a certain date. That is, after a certain date, he got his legal counsel to hold back certain ballot papers, and I believe those ballot papers were then forensically examined. After they were forensically examined, that is the evidence that Battese and his legal people took to the court as evidence of rorting of that particular ballot. That was when my team then got involved in the court process.

Mr COBB—And what was your next step?

Mr Cook—I am sorry, just prior to that, I had also received calls from individuals who said they had been intimidated for their ballot paper and they asked me whether I could possibly do something, whether I knew anybody who could help or anything like that.

Mr COBB—What was the nature of the intimidation?

Mr Cook—The intimidation was that their ballot papers were being demanded from them.

Mr COBB—After they had received them in the mail?

Mr Cook—After they had received them in the mail, the ballot papers were being demanded from them—like, 'Bring it to work the next day and give it to me.'

Mr COBB—This was by a union official or just an ordinary member?

Mr Cook—No, by a person or persons unknown at this particular stage.

Mr COBB—It was, 'Bring it to work the next day'?

Mr Cook—'Bring your ballot paper to work the next day,' yes.

Mr COBB—And what?

Mr Cook—And hand it over to that particular individual.

Mr COBB—And then what? Was it handed back? Did they ever see it again?

Mr Cook—It was to be handed over and the security envelope on the outside was to be signed by the member and then given blank. Or even if a ballot paper is given filled out and you give it to an individual, then that individual knows who that person has voted for.

Mr COBB—And what was the reaction of these people who were approached? Did they say, 'Get nicked,' or did they go along with it?

Mr Cook—Many of them were frightened and genuinely intimidated. They passed their concerns on to me and then I contacted the AEC with the concerns.

Mr COBB—Why were they frightened?

Mr Cook—Very often they were afraid that they may be involved in a crime themselves. They were very often frightened of physical harm to themselves. They were often frightened of their jobs as well.

Mr COBB—And you say you passed this information on to the AEC?

Mr Cook—Yes, I did.

Mr COBB—Do you know who you spoke to?

Mr Cook—I spoke to the returning officer at the time, who was Terry Healy.

Mr COBB—And what was his reaction?

Mr Cook—I cannot really gauge his reaction as it was a telephone call.

Mr COBB—Sure. What were his instructions or comments?

Mr Cook—I think it was words to the effect, 'Thanks for letting me know.' You then have a presumption that somebody is doing something.

Senator CONROY—Did you supply any written evidence—any statutory declarations or anything like that?

Mr Cook—No, I did not because the phone calls that I had received were of people's concerns. They were relating to me their experiences and they would not even tell me, generally speaking, who they were. They just wanted me to make the authorities aware that they thought I was a person who could do that, to make the authorities aware

that this sort of thing was going on.

Mr COBB—So at that stage you were left with the impression that the AEC was doing something about it?

Mr Cook—I was left with the impression that the AEC was doing something about it.

Mr COBB—And what happened then? A period of time passed and nothing happened?

Mr Cook—The allegations were then passed on to the deputy state manager of Australia Post by two then officials of the union, and again nothing was done. Then the allegations that I have just outlined were also the subject of a *Sydney Morning Herald* article.

Mr COBB—Did you contact the AEC again?

Mr Cook—I do not remember. I remember one specific occasion where I did contact the AEC and express those concerns, but at this juncture I do not remember.

Mr COBB—So your role in getting something done about this was to initially contact the AEC. Nothing happened according to your recollection—

Mr Cook—To my knowledge, yes.

Mr COBB—But obviously you were tick-tacking with other people at the same time as to what might be done about it.

Mr Cook—Tick-tacking?

Mr COBB—Talking to other people about something.

Mr Cook—Yes.

Mr McCLELLAND—These matters were raised in the proceedings before Justice Moore—

Mr Cook—That is correct.

Mr McCLELLAND—You were given leave to intervene or appear in those proceedings as a party in your own right.

Mr Cook—That is correct.

Mr McCLELLAND—And you had legal representation.

Mr Cook—That is correct.

Mr McCLELLAND—Mr Battese called some witnesses to give evidence as to pressure placed upon them to hand over their ballot papers. Did you call any witnesses to give similar evidence on your behalf?

Mr Cook—No.

Senator CONROY—You have run in a few union ballots over the years?

Mr Cook—That is correct.

Senator CONROY—How many would that be, roughly—two, four?

Mr Cook—Yes. Two, three, four.

Senator CONROY—Through the 1980s as well as the 1990s?

Mr Cook—Yes. That is correct.

Senator CONROY—In all that time, have you ever known a returning officer to seriously respond over the phone to a verbal allegation with no substantive evidence? Have you ever seen a returning officer do anything in those circumstances?

Mr Cook—I would not know, because once you pass on the allegation or the concern, then it is up to them. They will not report back to me to say, 'Listen, Quentin, I got that bloke.' You just do what you feel is your responsibility and your duty. You do it and you leave it to others to execute their duty.

Senator CONROY—You named an individual to the AEC that was actually doing it?

Mr Cook—No, I did not.

Senator CONROY—You said that you 'got that bloke', so I was—

Mr Cook—I am sorry. Could I have the question again, please?

Senator CONROY—You said that the AEC have never phoned you back and said, 'I got that bloke.'

Mr Cook—Yes, that is true. What I am saying is that any concern that I have ever

passed on, I would not expect them to get back to me and say, 'Quentin, we've carried that complaint through and we found that it had no substance' or 'We got that bloke' or whatever. I would not expect them to do that. I believe the incumbency is that, if I get a complaint, I will pass it on. I am happy to do so.

Senator CONROY—Do you think that returning officers get many phone calls similar to the type that you made?

Mr Cook—I would say, yes, that is probably correct.

Mr McCLELLAND—Do you think there is some uncertainty perhaps as to the role of the returning officer? In other words, are they a ballot facilitator as opposed to an enforcer or prosecutor?

Mr Cook—I think both of those, but one marginally more than the other: a ballot facilitator, sure; a ballot enforcer, yes, I believe to some degree they should be.

Mr McCLELLAND—My question is: do you think there is some unsatisfactory uncertainty as to which role they occupy?

Mr Cook—Some unsatisfactory uncertainty on whose behalf?

Mr McCLELLAND—As to whether they should jump from the facilitator stage into enforcer.

Mr Cook—I see. In their own minds, you mean?

Mr McCLELLAND—Yes.

Mr Cook—I do not know. It is just my opinion, but I reckon that is what they should do. They should also police the ballots as best they possibly can, I suppose. That is all determined on how much money and how many resources they have.

Senator CONROY—Like yourself, I have been involved in the odd union ballot over the years. I have never yet found a returning officer that has been prepared to respond to just me phoning up and saying, 'Look, I think somebody is out there doing this.' They usually say, 'Put it in writing at least and we'll consider it.'

Mr Cook—That is probably true. But, particularly with the CEPU and its various incarnations in the past, there is plenty of form on the board. If you were to say, 'Look, there are serious allegations of intimidation, coercion or employer pressure'—something like that—'going on in the mail centres in the most recent CEPU election,' I would expect that the AEC, knowing the history of that particular union, would at least take it seriously or do something.

Mr McCLELLAND—But they have a dilemma, don't they, that they have to act at that point in time as a determiner of fact, that is a determiner of the allegation, as to whether they take it further. I think in practice they have waited until the determination of facts have occurred in court cases. I am aware of several court cases where judges have recommended that the transcript be referred to the DPP. But I am not aware of any instance where the Electoral Commission has referred allegations to the DPP.

Mr Cook—That is probably true. That is why it makes my submission so good in this respect: it negates all of that. You have just two people involved in the voting process. You have the member, who then goes away from his workplace. His ballot paper is not posted to his home and it does not touch his hand until he is voting. You get rid of all that. The member just presents himself to his local AEC, votes and walks out the door just like you do in federal and state elections.

Again I have mentioned in the submission that it helps in a general uniformity of the voting process if people have to go somewhere to vote where they feel secure rather than, 'Here is my ballot paper in the mail. I will have it hanging round for the next three weeks,' and, 'Where has that ballot paper gone? Who knows?' All that sort of stuff. You cannot have a system like that.

CHAIR—You do have postal votes, though, in a state and federal election.

Mr Cook—Yes, you do. It is my opinion that it is not such a long walk down a short path. What happens in trade union elections cannot be extrapolated to federal and state elections.

Mr LAURIE FERGUSON—You spoke of good intentions. In the context of the royal commission in New South Wales, with major drug suppliers disappearing, rapists running around my own electorate for about a year or two, police losing evidence and not keeping a profile of the events, shift changes in police stations, inexperience in running ballots by them, personnel changes, et cetera, do you really think that that will be a very worthwhile suggestion in regard to running these ballots?

Mr Cook—It is probably the best.

Mr LAURIE FERGUSON—The best?

Mr Cook—Yes, of the alternatives. You could say that they could go to the local bank and do it. They certainly could not go to the local post office and do it.

Mr LAURIE FERGUSON—I put to you that if that is the best in the history of this state over the last years it is a pretty worrying kind of process.

Mr Cook—It is all right because that also is on the road to repair. What I am

doing as an individual is trying to suggest an alternative to the very, very easily rorted and very, very corrupt system that we have. I mean 'corrupt' in the generic sense. If it is inconvenient for an individual to vote at his local office of the AEC, then perhaps police stations can be used. They use a scheme, I believe, similar in country areas with the HSC, where the kids go up and sign for their HSC paper and all that sort of stuff. It is nothing more than identifying the country post offices that would fall into the general category—and then the same process.

Mr LAURIE FERGUSON—Let us go back to the other aspect of it, which I think you are partially conceding. Despite supposedly a very kindly employer who is going to give everyone time off to go down to their polling booth, in some cases many kilometres away and taking quite a period of time, why is there not a very fundamental possibility that people are just not going to bother, that they are going to find it difficult and that at the end of the day we are going to decrease participation?

Mr Cook—The participation rate now is pretty low.

Mr LAURIE FERGUSON—Absolutely.

Mr Cook—And a turnout of about 25 per cent in union elections means that it only takes 14 per cent to give you the winning margin to control the whole union. It is a very low margin anyway.

Mr LAURIE FERGUSON—That is very worrying. Structurally, as I say, there are good intentions, but I see a very strong possibility you are going to have a lower turnout.

Mr Cook—It is my belief and experience that if people are given time off to go and vote they will do so.

Mr LAURIE FERGUSON—Where is that experience?

Mr Cook—If people are given time off to go and do anything, they will do it.

Mr LAURIE FERGUSON—I have to express doubts.

Mr Cook—We have a scheme where people are given time off to go and give blood, and that is quite successful. If people are given time off to go and do it, they will do it. It will at least increase the participation rate.

Mr LAURIE FERGUSON—It is a question of how successful it will be. How many people in Australia do give blood? We are talking about a process which has problems, and I accept that, but I am really questioning your alternative now. Just getting

back to some of the other suggestions put to you, on average well over 30,000 people, from recollection, a month in this country change their electoral enrolment. That is a significant number of envelopes going out, and there are probably other purposes for which the AEC sends out mail. There is probably a variety of possibilities. Could you be constructive about the possibility that we do not go down your road and talk to us a bit more about ways in which we can reduce corruption in the current postal vote system? Is there not a possibility that by having commonly designated mail we can reduce it substantially?

Mr Cook—No, that is not my belief, nor is it my experience.

Mr LAURIE FERGUSON—It has not been the experience, from what I gather.

Mr Cook—Of different types of envelopes used to try to trick unscrupulous people who would rort the ballot system?

Mr LAURIE FERGUSON—Not to trick them. I will go for the lower figure of 30,000. From recollection it is higher. It goes to 60,000 some months. That is one form of mail out there in the marketplace from the AEC. There might be more than one trade union ballot going on at the same time and there may be a variety of other correspondence. Probably there are people who ring in and want postal vote applications posted out to them. So there is a variety of mail in the system. If we could get to a situation where it is not emphatically clear that that is a ballot paper regarding the CEPU election, isn't that going to reduce the problem somewhat?

Mr Cook—No. The reason is that the AEC post the ballot papers out on the same day. So, again, the unscrupulous individual will know when and where the ballot papers are going to be posted. So those unscrupulous individuals are waiting for ballot papers when they come in.

CHAIR—What if you combine a number of these things that Mr Ferguson was talking about in a standardised envelope—an increasing use of home address rather than workplace address, the security aspect that has been raised in a number of submissions, double enveloping for security, signature checking, all these sorts of things which have been raised? Surely with a number of these things together we can actually improve the integrity of a postal vote system.

Mr Cook—No, I disagree.

CHAIR—It will never make it 100 per cent. All I am saying is that we can improve it, and then we can argue about how much we can improve it.

Mr Cook—We—when I say we, I mean the generic we again—have been down this road before. The findings of the St John inquiry into these matters suggested just

that—more security measures, a tightening. No amount of tightening is going to negate the fact that the postal system is not able or is unwilling or incapable of preserving the sanctity of the ballot. Twenty-four people are going to handle that ballot paper before a person gets it.

Senator CONROY—Is that after the computerisation? I have followed how-to-vote cards into mailing centres with AEC officials delivering the ballot papers and watched them be poured onto the machine. Does that cut down the number of handlers?

Mr Cook—Yes, it does cut out the number of handlers. I am not very familiar with computers, but I am willing to take good advice and anybody who has anything to do with computers and automation, anything like that, realises that to rort an automated and computerised system is probably easier than a manual system. You could divert ballot papers to another post office somewhere accidentally and all of a sudden they get knocked off.

Senator CONROY—I have gone further than just that step. I have actually watched as they have then been sorted into their regional bags, put into the trucks and driven off.

Mr LAURIE FERGUSON—If anyone said after the Cook inquiry, 'Very little happened in regard to his suggestions'—

Mr Cook—I am sorry—his suggestions?

Mr LAURIE FERGUSON—Yes, his suggestions. You just referred to the St John case.

Mr Cook—Yes.

Mr LAURIE FERGUSON—And you said that solutions did not occur in regard to security. Did they follow any of his suggestions?

Mr Cook—To the best of my knowledge, they took on St John's recommendations, which had the outer envelope and the inner security envelope. Basically the system that we vote under today is as a result of the St John inquiry and yet that system has been shown now to be demonstrably unworkable.

Mr LAURIE FERGUSON—How does the international mail exchange at Clyde fit into this process? Do ballot papers go through there? I know it is called 'international', but does it handle any of these ballot papers?

Mr Cook—I do not know. I have been out of the system for a while, so my knowledge of these things has lapsed a little bit.

Mr LAURIE FERGUSON—We had the situation back in the old days of the Redfern Mail Exchange. How many mail exchanges are there now in Sydney?

Mr Cook—I think about seven.

CHAIR—Taking up the point about attending the AEC to do a ballot, what about the prospect of taking ballot boxes into the workplace as an alternative?

Mr Cook—Again, I think the evidence has come from—I just forget who it fell from. Sometimes that is not the best way to conduct an election because intimidation and coercion can still go on at in-attendance ballots. My submission is for not attendance ballots but presentation ballots where a person just gets completely away from the workplace and votes in the privacy and, one would assume, the sanctity I suppose of the AEC. So get it right away from the workplace altogether.

Mr COBB—Just going back to the St John recommendations, can you recount to us why those recommendations fell down, why they did not work?

Mr Cook—Because unscrupulous individuals were still able to acquire ballot papers through the postal system. You could send the ballot papers through in a locked strong box and they would still fall into the wrong hands.

Mr COBB—Surely ballot papers being intercepted in the postal system would only occur, if it did occur, when postal union elections were on. Surely workers in the postal union, unless they were working under some instructions—which is hard to envisage for some other union, the Australian Workers Union or something—would not be intercepting those. Are you saying that all union elections are being intercepted to one degree or another by postal workers?

Mr Cook—Factional politics being what they are, it is not a large stretch of the imagination to say that a left-wing organisation would tamper with the ballot papers in a completely different union. I believe one of the allegations in the TWU election in New South Wales was that exactly that happened. In the TWU election, far removed from the CEPU, that was actually done where the ballot papers were stolen, torn open and the numbers written over. Whereas a person had written '1, 2, 3', somebody had written over them '3,2,1'.

Mr COBB—Those are the allegations.

Mr Cook—Or statement. Yes, that is correct. Very often in this type of crime—and there is no doubt about it, it is a crime; as laughingly as we may believe it, a few beers around a barbecue and 'Let's knock off a few ballot papers', ballot rigging is a very serious thing—the only evidence is not so much the gun but the smoke. Very often the evidence is only hearsay. That is all you have. But then you have to use your intelligence

to be able to decide whether, if a system is likely to be rorted and there is a propensity for it to be rorted, it can be rorted. In the CEPU case it is not a question of was it rorted or not—it was. We had nearly a thousand forged ballot papers as uncontested evidence. It is speculation as to how they got the ballot papers, but that is not the point. The point is: there is the murdered body; who committed the murder.

Mr McCLELLAND—Do you think we have a worry with this convention ballot? Do you think there is a worry that pro-republicans, for instance, will interfere in the ballot?

Mr Cook—No. The whole thing is that there is a propensity for anybody to rort the postal ballot system because Australia Post cannot be trusted to maintain the sanctity and the security of any postal ballot. That is not just the republican convention elections: it is union postal ballots and postal ballots in state and federal elections. They have demonstrated time and time again that they cannot handle the job.

Mr COBB—On the matter of rorting, you mention computerised targeting. Can you expand on what you mean by that term?

Mr Cook—The reason you do an audit of a roll is to make sure that everybody who is eligible to be a member and to vote does so. But, in the new age of computers, an unscrupulous individual will be able to, say, target people who are regular non-voters. For instance, you may have been a member of a union for 20 years and records indicate that you have not voted for 20 years. That is exactly the sort of ballot paper I would be going for because you will not notice that you no not have one.

Mr COBB—Can you just track me through the process of what happens there?

Mr Cook—I will identify you and your ballot paper and your name and address. Then I will make attempts—because you will not notice that your ballot paper has gone anyway—to take your address and send it to the address of an accomplice.

Senator CONROY—How do you do that? In the union you can put two names together so that it automatically gets there; it arrives there in an envelope with a sticker on it. Do you put a new sticker on it?

Mr Cook—No, I will change your address at the union office. This is why you cannot have the Liberal Party making the roll or the Labor Party making the roll. I will change Michael Cobb's address at the union office and have his ballot paper sent to the address of my accomplice.

Senator CONROY—There was never any evidence of that being tendered?

Mr Cook—It was completely hypothetical. Then we will all sit around the

proverbial kitchen table and fill out these ill-gotten ballot papers. I will scribble Michael Cobb's signature on the back of it as best I can or I will duplicate it as best I can from the union records that we already have.

Senator CONROY—How widely could that be done before it is detected?

Mr Cook—If it is not detected within 30 days, it would not matter.

Senator CONROY—I meant in terms of how widely the number of ballot papers could be interfered with like that before it became pretty obvious. I asked that because if, for instance, you knew that 10 people were not going to vote and you changed them all to go to one separate address—

Mr Cook—Or various separate addresses.

Senator CONROY—I will move through the process. You pick one, so 10 stand out. On average, you might get husband, wife, mother, father and son. You might get three at an address and you could test the frequency of that happening by a computer search. You print off the most frequent addresses. If you suddenly found 10s bobbing up everywhere, it would pretty much stand out.

Mr Cook—That's true. But because there is such a low turnout in union elections and because 75 per cent of the membership don't generally vote anyway—

Senator CONROY—Maybe that is your experience; it's not mine.

Mr Cook—In your experience, you have attendance ballots?

Senator CONROY—No, postal ballots. The trammies is the only one I have observed that goes through an attendance ballot.

Mr Cook—In my experience there is a notoriously low turnout, so you have a pool of 75 per cent of the members who never vote, never want to vote, never will vote and never have voted.

Senator CONROY—Tragically, Victoria always has a much higher turnout.

Mr Cook—Good on them.

Senator CONROY—So you have to come up with 10 addresses.

Mr Cook—That's true, Stephen. I am sure that you and I, over a couple of beers, could probably in half an hour come up with 10 ways to rort it.

Senator CONROY—The point I am trying to make is that it becomes fairly obvious fairly quickly and it become s very hard for it not to get out as it did in this case. I am not sure you could ever devise a system where nobody ever did anything illegal in it.

Mr Cook—It came out in this case only because people on the opposing side—Mr Battese's team—had the foresight, for want of a better term, to set a trap for the fraudulent ballot papers.

Senator CONROY—On that question, the judge and the handwriting experts, as we have already heard, said that—the judge was very careful in what he said—it would appear that electoral fraud was not the province of only those supporting the Natour-Jarman team, but it was perpetrated by others involved in the 1994 elections as well. 'Others' implies the rival out of outcomes. It never came to your attention that anyone else was doing it—supporters of your own or supporters of Mr Battese?

Mr Cook—Not supporters of my team. My team wouldn't and didn't sully themselves in that sort of behaviour. Again, we get back to the dynamics of politics in terms of my political opponents. I am absolutely convinced that that is par for the course for them. So I would have no doubt that some supporters of Mr Battese may have done it, but I know that Mr Battese didn't because he and I took a handwriting test together.

Mr COBB—Relatively briefly, can you just take me through the circumstances leading up to your dismissal from Australia Post?

Mr Cook—Yes, the circumstances leading up to the dismissal were that Justice Moore's inquiry was on foot, it was being heard and there was a quite separate dispute on at the place that I worked. The next thing you know, I was dismissed out of hand, after 18 years of loyal, diligent and faithful service, for discourtesy. Nobody gets sacked for that.

Mr COBB—It was a singular instance; it was not something that was warming up over a period of time?

Mr Cook—No. That is correct. Basically, in my capacity as the union representative—sticking up for the members—so bereft of a reason to sack me for what I will believe to my dying days were politically motivated reasons, in a moment of incontinence, the area manager described me as a Liberal shit whose time had come and the end was coming for me. Well, three weeks later, he was right. How did he know that?

Mr COBB—Was he that same bloke that sacked you?

Mr Cook—He was the bloke that formulated the case that led to my dismissal—a former president of a union himself.

Senator CONROY—Not the Postal Workers Union?

Mr Cook—Not the Postal Workers Union but a union that amalgamated then to become the CWU. He was the president of the UPT—the Union of Postal Clerks and Telegraphists—which amalgamated with the CWU. So he is the one-time president of that. So he described me as a Liberal shit and then said that the end was coming for me. Well, he was right; and the end did come for me.

We have evidence of correspondence between the union and Australia Post saying that my sacking was on its way—all completely unknown to me. The only hint I got of it was when I arrived back off my delivery round one afternoon and was suspended for three months and then sacked for discourtesy.

Mr LAURIE FERGUSON—What was the correspondence?

Mr Cook—There was some correspondence between the union and Australia Post about my suspension, saying that disciplinary action was on the way.

Senator CONROY—Was that tendered in the unfair dismissal case?

Mr Cook—This was; yes, that is correct.

Mr LAURIE FERGUSON—I am sorry, could you just go through that again, if you do not mind?

Mr Cook—There is correspondence that shows that the union and Australia Post knew all about my suspension and dismissal before I did.

Mr LAURIE FERGUSON—In what sense?

Mr Cook—In what sense?

Mr LAURIE FERGUSON—What did they say? What did the letter say?

Mr Cook—The letters were memos in discussions between Australia Post and the union about my pending suspension and dismissal.

Mr LAURIE FERGUSON—Was that in the nature of saying that the union was essentially aware of allegations?

Mr Cook—Yes, they were aware that Australia Post were going to dismiss me. They were aware of that.

Mr LAURIE FERGUSON—I have to say that really could mean many things, quite frankly.

Mr Cook—It probably could, but when you sit in my shoes you know exactly where it is coming from. And the discourtesy allegedly was simply me saying nothing more than, 'What did you do that for?' As Justice Locke summed up in her judgment: capricious, malicious—all that sort of philosophy.

Mr LAURIE FERGUSON—She said that you were unfairly dismissed—end of story; no argument. However—

Mr Cook—And the reasons for the unfair dismissal is for another court on another day because not only did Australia Post unfairly and unlawfully and wrongfully dismiss me but also they fabricated evidence on which to do so—and again another court on another day.

Mr LAURIE FERGUSON—All right, fair enough, I accept that you were unfairly dismissed—no argument, et cetera. Just on this point that you are trying to make in regard to correspondence—the actual black and white evidence—this letter simply said that they were aware that there were allegations. Is that true or false? That is what the letter is about.

Mr Cook—Allegations of—I am sorry.

Mr LAURIE FERGUSON—From what I gather, the correspondence between the union and the management, et cetera just indicated that they knew that there were allegations and that you might have a few difficulties. Is that fair to say; nothing more than that?

Mr Cook—That is fair to say, from your perspective, yes.

Senator CONROY—The case was done under the old unfair dismissal laws, wasn't it?

Mr Cook—The case was under the old unfair dismissal law, but the judgment was under the new one. Halfway through the case, the High Court handed down its decision in relation to that part of the act which had 'harsh and unreasonable', so that was not to be a consideration in—

Senator CONROY—It was done under the old one.

Mr Cook—If it was done under the old one, it was done under the old one.

Senator CONROY—I was just wondering whether you thought you would do as well under the unfair dismissal laws.

Mr Cook—Under the new one, sure.

Mr LAURIE FERGUSON—If it happened again, you would be fortunate if you were in a large enterprise, wouldn't you?

Mr Cook—I would be fortunate that I was in a large enterprise?

Senator CONROY—Rather than a small business.

Mr Cook—And have less than 12 months service as a probationary employee?

Senator CONROY—And have no unfair dismissal law.

CHAIR—That is not true. If we are going to make those sorts of statements, let us make the record correct. I remind members that Mr Cook has been an employee of the organisation for 18 years.

Mr LAURIE FERGUSON—I thought Reith made further threats this week.

Mr McCLELLAND—On that, Mr Cook, I am not sure whether you can recall that there were some famous cases in the late 1970s, early 1980s involving a fellow called Bowling and General Motors Holden where it was alleged, as a result of a clandestine deal between I think the vehicle builders in that case and GMH, that he had been victimised and he took proceedings against certainly GMH alleging victimisation as a result of his political activities and recovered damages and was indeed reinstated under those victimisation provisions. Have you considered seeking your own redress against Australia Post in so far as you believe they were politically motivated—redress in terms of alleging victimisation for political reasons?

Mr Cook—Yes.

Mr McCLELLAND—Are you going to do that?

Mr Cook—Yes.

CHAIR—At that point, we will close this afternoon's hearing and I thank you for your evidence.

Resolved (on motion by Mr Cobb):

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

Committee adjourned at 2.46 p.m.