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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Reference: Integrity of the electoral roll

FRIDAY, 2 MARCH 2001

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JOINT COMMITTEE ON ELECTORAL MATTERS

Friday, 2 March 2001

Members: Mr Pyne (*Chair*), Senators Bartlett, Faulkner, Ferris, Mason and Murray and Mr Laurie Ferguson, Mr McClelland, Mr St Clair and Mr Somlyay

Senators and members in attendance: Senators Faulkner, Ferris and Murray and Mr Pyne and Mr St Clair

Terms of reference for the inquiry:

To inquire into and report on:

- the adequacy of the Commonwealth Electoral Act for the prevention and detection of fraudulent enrolment;
- incidents of fraudulent enrolment; and
- the need for legislative reform.

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Committee met at 9.31 a.m.**ALDERSON, Mr Karl John, Principal Legal Officer, Criminal Law Branch, Attorney-General's Department****CARNELL, Mr Ian Gregory, General Manager, Criminal Justice and Security, Attorney-General's Department****SCHNEIDER, Mr Anton Maurice, Senior Adviser, Fraud Policy and Coordination Unit, Law Enforcement Branch, Attorney-General's Department**

CHAIR—This is an inquiry into the integrity of the electoral roll. Ensuring the integrity of the electoral roll will in part depend on the ability of the relevant government agencies to detect, investigate and prosecute enrolment fraud cases. Today, the committee will explore ways of improving the accuracy of the electoral roll by making it much harder for fraudulent enrolment to go undetected and unpunished. Today we are hearing from the Attorney-General's Department, from Dr Amy McGrath and from the Australian Federal Police. The committee hopes to explore with the Attorney-General's Department the Commonwealth fraud control procedures and prosecution issues. I think we are also going to pursue issues to do with penalties. Dr McGrath is the President of the H. S. Chapman Society, an organisation devoted to research on the electoral system. Today we hope to explore with Dr McGrath her views on the reasons for the extent of enrolment fraud as well as suggestions to prevent and detect enrolment fraud. Finally, the committee hopes to discuss the detection and investigation of enrolment fraud with the Australian Federal Police. In particular, the committee will be interested in ways of improving the level of investigation of enrolment fraud.

The hearings of this committee are public and open to all. A *Hansard* transcript of the proceedings is being made. The transcript will be available in hard copy from the committee secretariat or via the Parliament House Internet home page.

Before the committee commences taking evidence, I place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given before it. Parliamentary privilege means special rights and immunities attached to parliament, its members and others necessary for the discharge of functions of the parliament without obstruction and without fear of persecution. Any act by any person which may operate to the disadvantage of a witness on account of evidence given by him or her before the committee is treated as a breach of privilege. While the committee prefers to hear all evidence in public, the committee may accede to a request to take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee, at a later date, to publish or present all or part of that evidence to the Senate. The Senate also has the power to order production and/or publication of such evidence. I should add that any decision regarding publication of in camera evidence or confidential submissions would not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

I welcome witnesses from the Attorney-General's Department and thank them very much for their submission and for coming today. I emphasise at the outset that the inquiry is about the integrity of the electoral roll, not about the internal party matters of any political party except in so far as they impact on the roll. The evidence that is given at the public hearing today is

considered to be part of the proceedings of parliament. Accordingly, I advise that any attempt to mislead the committee is a very serious matter and could amount to contempt of the parliament. We have received your submission, numbered 28, which has been authorised for publication. If you want to make any corrections, amendments or additions to it and also make a brief statement—and I understand you would like to—please do so and then we will proceed with questions.

Mr Carnell—I would like to make some quick introductory comments. Obviously, we welcome the opportunity to come and assist this inquiry to the extent we are able to. I should touch on the department's role. Obviously, the development of legislative reforms is ultimately a matter in this area for the Special Minister of State and the government, but the Attorney-General's Department does have a role in assisting in the formulation of criminal law and enforcement legislation across the government. The department is also responsible for providing the Minister for Justice and Customs with advice on fraud control policy.

A matter of substance that I think is worth touching on upfront is the looming changes that come from the model criminal code process. The offence of forging an electoral paper or using such a forgery currently carries a maximum penalty of six months imprisonment—that is under sections 339 and 344 of the Commonwealth Electoral Act. From 24 May of this year, this offence will be replaced by general forgery offences in the criminal code, which carry up to 10 years imprisonment—a twenty-fold increase. Similarly, as part of this process of offences being taken from the code, the false statement limb, section 339, will be replaced by the code's false statement offence, which will carry a maximum penalty of 12 months imprisonment.

These changes are all part of a broader process to consolidate key Commonwealth criminal offences in the criminal code, ensuring that they are appropriately framed and carry adequate penalties. One of the key principles that has been applied is that the maximum penalty for a given offence should be sufficient to properly deter or punish the worst crimes that come within the offence. For less serious contraventions that come before the courts, a lesser penalty can be imposed—something that the courts do not hesitate to do. As you noted, the committee has received a submission from the department canvassing some of these issues. No doubt you wish to explore those issues, and we would be happy to answer any questions you have.

CHAIR—Thank you. I would like to ask about penalties. I would like you to expand on whether you think the current penalties under the various acts are sufficient and whether there could be any changes that you think would be beneficial in terms of future cases like the ones that we have been looking at.

Mr Alderson—The first comment I would make about the electoral fraud related offences in this act is that the penalties are low compared to some offences in other Commonwealth legislation that you might say are comparable, particularly the criminal code offences. Most of these offences—those to do with false enrolments, false witnessing of ballot papers, false signing of ballot papers—tend to carry \$1,000 maximum fines. Some of them also carry up to six months imprisonment.

In terms of looking for a possible benchmark to compare that with, the new criminal code false statement offence, which will be commencing in May, carries 12 months imprisonment and a maximum fine of \$6,600. There is a ratio set out in the Crimes Act, where you compare

fine levels and imprisonment, and there is a default position which is that six months imprisonment is equivalent to a \$3,000 maximum penalty and 12 months imprisonment is equivalent to a \$6,600 maximum penalty. Even taking as a starting point the existing offences, for those that carry six months imprisonment, a \$3,300 fine would be a more normal starting point than a \$1,000 fine, which is really right at the bottom end of low penalties. The principles to think about in terms of whether these penalties should be increased are: what are the incentives that you need to overcome in order to deter the offence from being committed and, also, what is the potential harm that could come from committing the offence? So an individual who chooses not to vote is making a personal protest that is unlikely to have major ramifications for national affairs. On the other hand, if electoral fraud is to an extent that it could influence the outcome of an election, the consequences of that are potentially quite large.

A specific point I would make on the framing of the multiple voting offence is that, as it is presently worded, it is not clear to me that, if you vote several times in one election, you are committing that offence several times. The way it is worded suggests that, say, 10 votes is one offence against that provision carrying that maximum penalty—which, in that case, is \$1,100. Potentially you could reword that to make it clear that each time you vote in addition to your entitlement to vote, you are committing that offence that carries that maximum penalty; so that a more serious case involving a concerted attempt to vote numerous times would carry a higher penalty of, say, \$1,000 for each additional vote.

As Ian mentioned, there is a code process of bringing offences together and establishing benchmarks and having broad offences for the major matters. If you were to take as the starting point that a false statement carries a 12-month prison term, which is more than the impersonation and fraudulent destruction and so forth offences that are in the Electoral Act, and if they are alternate ways of causing the same harm, of impairing the electoral process, then there is an argument for looking at them all together and taking the same benchmark for all of them.

CHAIR—Is there any proposal under the Model Criminal Code changes to look at any of the enrolment fraud offences?

Mr Alderson—As Ian mentioned, two categories have been brought within the code—that is, forgery and using a forgery, and false statements. In those two cases, the actual offences that are in this act are being repealed as from 24 May and replaced with the new code offences. The other categories of offence, such as impersonation and fraudulent destruction, so far are not within the code provisions that are in the pipeline. Although the code project is pressing on and will potentially encompass more of these offences, at this stage there are no more reforms that would actually directly lead to amendments of these provisions, so the issue, in the short term, is: do those code offences create a precedent that might be considered here?

CHAIR—Has the Attorney-General's Department recommended changing the penalties as you have outlined to bring them more into line with what would be commensurate with the six months and 12 months of imprisonment on top of the fines?

Mr Alderson—The normal process in which we operate is that, because each minister and his or her department administers that legislation, we are essentially there to receive their requests to review penalties or to have a look at their suggestions for changes, and we get a lot

of that. Across Commonwealth legislation there are a lot of proposals in the pipeline. Normally, unless it ties in with a specific reform that is being done centrally—like these criminal code forgery offences—we would not initiate a suggestion for change.

CHAIR—At the moment, are the old penalties the ones that are applying?

Mr Alderson—Yes.

CHAIR—And is the old statute of limitations the one that applies?

Mr Alderson—Yes.

CHAIR—What is the statute of limitations that applies to these offences?

Mr Alderson—Because the maximum penalty is six months imprisonment, there is only one year to prosecute these offences. Another implication of moving to, say, 12 months would be that, under the Crimes Act, that six months is the cut-off. That, or below, you have one year to prosecute; above that, you have an unlimited period to prosecute.

CHAIR—Okay, so any changes to the fines and imprisonment would automatically lead to the statute of limitations being altered as well.

Mr Alderson—Yes.

CHAIR—Professor Colin Hughes, when he gave evidence, suggested that because a lot of these offences involved people in political parties doing it for political reasons, imprisonment or fines were one way of punishing them but another way might be to ban them from joining a political party or ban them from ever running for preselection or standing for office or something like that. Do you have any opinion on whether that would be an appropriate penalty?

Mr Alderson—I would say that people when framing enforcement legislation often leap straight to offences as the immediate answer. It is almost equivalent to a corporate licensing type idea where you impose licence conditions or you suspend a licence rather than going a criminal route. We, in our vetting role, would always encourage people to look at those alternate mechanisms because, as you say, they often do provide quite a different deterrent from just a straight offence or penalty.

Senator MURRAY—I will start, as is my fashion, with a comment. Without being rude to you or anyone else who has ever considered these matters and debated them at length, I always think that people who contemplate six months as a minimum term of imprisonment should spend a couple of nights in a prison; it is not a light sentence. If you offered me six months or \$3,000, I know which one I would take. It is a very serious matter. I have always been surprised at the kick-up from three to six months, frankly. But you know about that debate and so do I.

Mr Carnell—But I emphasise that that is the maximum penalty—there is that issue.

Senator MURRAY—Yes, I understand that. I think most of the people who deliberate on these things have fortunately never been in prisons.

Mr Carnell—I well understand the point you make. I have a background in social security and I am well aware of what you are talking about.

Senator MURRAY—You would understand that. My first question is about the immediate relevance of the new criminal code amendment bill to elections held this year. I assume that anybody who commits an offence this year would be prosecuted under the old law, because it is only after December 2001 that you would be prosecuted under the new law?

Mr Alderson—No, the criminal code will apply to all Commonwealth laws from December 2001 but particular components are being phased in earlier.

Senator MURRAY—That is the May date, you mean?

Mr Alderson—Yes, that is right.

Senator MURRAY—Okay. That is useful. The second matter is really the difference which the Chairman outlined—the difference between electoral matters and normal matters, if I can express it that way. Electoral matters are identified in the Constitution as being of primary importance, because it is the issue of representation of the people. From the Constitution down flows the belief that if you do certain things you can lose your seat—if you are not a citizen, for instance or if you have dual citizenship or other matters. It seems to me that, based on that constitutional foundation, it is legitimate to look at specific punishments relative to representation in the seat. It has far more applicability in these circumstances and therefore Professor Hughes's suggestion, rather than just being a kind of observation, actually has a 'firm foundation', if I can express it that way. Do you react to that line of argument? Does that have some credibility or is that just a thought?

Mr Alderson—Sanctions that are directed at the substantive rules governing the electoral system—who can stand for election, who can vote and so forth—are outside our immediate area of expertise. In terms of the role of criminal law, the usual position that has been adopted is that where there is a public harm involved an offence will be created so that there is an ultimate criminal sanction that is indicative of that broader community protection objective. But in terms of should the emphasis be on other types of sanctions, that is not something we would disagree with.

Senator MURRAY—Your submission is very helpful, as submissions from the Attorney-General's department always are, but I think really we need a bit more guidance as to direction. You have reviewed the status of the law and how it applies, and made some observations relevant to that, but I think—as many people do; and we have had witnesses who have expressed the view—that political and electoral matters need a particular perspective because of the constitutional foundation and the importance of representative democracy. I have just been reminded—and this is very useful—that, if you are convicted of an offence that carries a 12-month penalty, you cannot, under the Commonwealth Constitution, stand for or sit in the federal parliament.

Therefore, it seems obvious to me that you should try to create that as the base conviction if it is a serious matter under the act because there is a direct link and it has a precedent. Then you do not have to establish provisions in the electoral law which say you lose your seat or you cannot stand. Are you with me? I would like your department to help us by looking at those links and at whether they would be appropriately better considered. My own view is that the reformation of the criminal code and the withdrawing of offences from different acts and making them general offences is a wonderful device but you need some specific considerations in our law. How do you react to that?

Mr Alderson—In terms of looking at automatic disqualification from sitting in parliament, the key question is to look at each offence individually and ask, ‘In a worst-case scenario, is this the kind of matter that really ought to lead to that consequence?’

Senator MURRAY—I can hear your response; but I want to take you to a tradition, a precedent, in our democracy which stems from the Westminster system: that the penalty always exceeds the crime. For instance, ministerial responsibility frequently requires resignation, with consequent massive loss of money and entitlements, for relatively minor offences in terms of normal criminal law matters—you will recall the famous example of the television set, which I think was in Malcolm Fraser’s time—because of the imposition on parliamentarians and ministers to have higher standards than the community at large. If you were willing to come back to us with a supplementary submission then that is the second theme I would like you to examine and explore. I sense that you have treated this as, ‘This is one law relative to other laws,’ and asked, ‘How should we view it?’ However, I view this as a special law because it relates to our highest law of all: the Constitution.

Mr Carnell—Certainly—we will take those questions on and make a supplementary submission.

Senator MURRAY—If you do not think that is a valid direction then say so, but I think there is some merit in my argument and that that would assist the committee considerably.

Mr Carnell—I think we would certainly concede the principle that we do not have a uniform template to put over all offences and that there are special cases and considerations in a number of areas—you are highlighting them.

Senator MURRAY—The second broad line of questioning I have is in relation to the AFP case categorisation and prioritisation model, which essentially says, ‘The complaints are greater than our resources and we will distinguish between them.’ That seems a valid managerial device. I ask for your views on that and, if you want time to consider them, perhaps you could provide them in a supplementary submission.

As you know, a police officer has absolute discretion as to whether they charge or not. That is a good discretion to give them because they cannot be told what to do by people who want to corrupt the process. That discretion is perfectly legitimate in the normal course of events because it is unlikely to be exercised in a corrupting manner. Sometimes police officers look after mates and so on, but it is less likely. However, political affairs mean that sometimes people attach more passion. I will give you an example, if I may. In country Western Australia in the

recent state election, a police officer in full uniform drove up to a polling booth, got out, took only one how-to-vote card, which was a One Nation how-to-vote card, went in and voted.

Firstly, I think that was a foolish thing to do. A private conviction should remain private, and that was a public declaration of support by a uniformed officer. Secondly, notionally, there may be circumstances where a police officer might get a complaint about a particular political party to which they were attached—in terms of this case categorisation and prioritisation model—and they would not investigate that one. You see what I am saying to you?

Mr Carnell—Yes.

Senator MURRAY—Therefore, I seek your view as to whether that case categorisation and prioritisation model is appropriate when you are dealing with electoral matters which attach themselves to political circumstances. The police need to operate without fear or favour and a discretionary ability in these circumstances could be inappropriate, even where the offence is minor—because it is political.

Mr Carnell—I understand what you are saying. It is primarily for the AFP to comment on that. My understanding of the situation is that the AFP say that they do take on all the serious matters and that the area where they do not take all of them on relates to multiple voting—that they do take on a significant number of those, primarily to send a message, and that they obviously do not take on the routine things like failure to vote. My understanding of the AFP advice is that they take on all the serious matters. I think their position on the apparent discretion in their prioritisation model is that it is not exercised in any way which would arouse the sort of concern to which you are pointing.

Senator MURRAY—As I understand it, the AG's office, regardless of the government of the day, takes the view that justice should be applied equally to all. In any discretionary circumstance, you always have to guard against the discretion being wrongly exercised. I think it is more likely to be wrongly exercised where certain circumstances exist perhaps than in others. I just assume so from human nature, but my judgment of human nature may be wrong. I wonder whether it would be far preferable if, in this area, discretion was not exercised. It is not as if the caseload is massive. The AFP's submission says that since 1995 they have received 105 complaints. That is not going to break the bank. Do you see my point?

Mr Carnell—Yes.

Senator MURRAY—I would like you to consider whether, in view of its particular importance—relative again to the obligation under the Constitution to have a fair system—it is unwise in this particular area, even if the AFP have been operating completely honourably, to have a discretionary system of pursuit of complaints. I would like you to consider that as a formal question to come back with a view on.

Mr Carnell—We will consider it. I do not wish to appear unhelpful, but I suspect, when we have deliberated on it, our answer may be that it is a matter for the AFP.

Senator MURRAY—Except the AFP are subject to direction in certain circumstances as to how they will apply their resources, not just as how they will deal with the law. They have to be

independent in that regard. As to how they will apply their resources, that is an issue that needs to be determined.

Mr Carnell—It is a power of general direction. I think that is the expression.

Senator MURRAY—That is right.

Mr Carnell—We will certainly consider that.

CHAIR—Earlier you said, in the question about offences and penalties, that you needed to ask what harm was done to others. In response to what Andrew has been saying—about whether the benchmark should be the minimum required to preclude you from standing for parliament if you have a conviction in one of these particular areas that says you could face, potentially, 12 months of imprisonment—do you think that would be heavy handed in respect of these sorts of offences? Is that what you are suggesting? Do you think the harm is not sufficient enough for that to warrant such a potential 12-month sentence?

Mr Alderson—The short answer is no.

CHAIR—You do not think it would be too heavy handed?

Mr Alderson—Not necessarily. The argument that could be put would be that, if a candidate for parliament makes a false statement in another context—say in seeking a government benefit—the 12 months would apply. So deceptive conduct in an electoral matter may be viewed as the equivalent. That would be the argument for treating them the same, but that extra consequence needs to be taken into account. The question would be: for a particular offence, should the penalty be held down for that reason, because of that extra consequence? There may be reasons for treating this as special, but the usual approach the parliament has taken is to set a penalty as being something right in its own right, and the surrounding consequences are set up to flow from that.

CHAIR—Andrew's point is that there is almost something slightly different about electoral enrolment fraud, because the motivation for it is often for personal gain in terms of getting into parliament. You cannot really look at the penalties and offences for enrolment fraud without thinking of why it is happening. You cannot see it in itself. You do not just go along and have some enrolment fraud because you think it would be a good thing to do. You do it because you think it is going to be of some assistance to you. Most of the evidence we have received has been because people wanted to gain preselection or people wanted to affect the outcomes of an election, which seems to be the smallest part of the evidence. Therefore, if the penalty was that, even after doing all that, you could not actually sit in parliament if you were caught doing it. It would very quickly mean that people would not have that motivation because they would think that they would have to go to all that effort for nought.

Mr St CLAIR—Can you give me a clarification? When is the actual fraud committed? Is the fraud committed by the person who does the enrolling or the witnessing in a false manner, or is it the person that coerces somebody to do it?

Mr Alderson—Both of those would be offences under the criminal code.

CHAIR—Do you see what I mean?

Mr Alderson—Yes. The point you are making about the first point, looking at the particular characteristics of the offence, is certainly the approach that is taken. You talk about the different motivations that this offence has against financial fraud. The financial fraud provisions in the criminal code carry 10 years. Although this is described as fraud, I think you are quite right in saying that a different concept is involved, so you do not just apply a financial fraud template to that. All of the consequences need to be taken into account, and that is a consideration.

In section 339, there is a list of different things you can do in relation to ballots that constitute an offence. Two of those have been taken out and put under the 12-month penalty. The question would be: are the others of equivalent seriousness, do they have equivalent consequences and should they carry the same penalty, or are there other considerations that would suggest not bringing them into line in that way?

CHAIR—In our report we might want to think about recommendations to do with penalties for offences. If we were to recommend that the penalty should be 12 months, which would mean you could not sit in parliament if you were convicted of such an offence, would the Attorney-General's Department think that would be an over-the-top response or that it would be reasonably commensurate with the offence? That would be a useful thing for us to be looking at in terms of recommendations and practicals. You might want to take that on notice and respond to us. You can express an opinion if you wish.

Mr Carnell—We are not in a position to give you a rock solid policy position but, from what Mr Alderson said earlier, I think it is clear that such a recommendation would not be out of line with what generally applies in terms of offences and penalties—that there are sound arguments if someone wanted to take that position.

Senator FERRIS—Does your department have a general feel for electoral fraud? When we had the AEC in to give us evidence at the beginning of our reference, their view was that electoral fraud was not a comprehensive issue. They really downplayed electoral fraud. Do you have a general view on that?

Mr Carnell—No. We do not have the sort of access to operational information that would allow us to have a view one way or another. The AFP may or may not be able to offer something more.

Senator FERRIS—I propose to ask them, but they would probably take a similar view, given that they have that very complex system of analysis before they even pursue electoral fraud. That is something that I propose to take up with them.

Mr Carnell—When I read their submission there was one quite specific point that caught my eye on the basis of some earlier experience of mine. I do not know whether it is significant. It is the sort of point I would prefer to make in camera. It relates to the early 1990s when I had responsibility, among other things, for the fraud control arrangements in social security. There was a use of the electoral roll in that work. I could make a couple of small observations about that, but they are not earth shattering.

Senator FERRIS—We have had some evidence on that. Perhaps you can make them to us in confidence.

CHAIR—You could make them in camera now, if you wish.

Senator FERRIS—I have a couple of other questions. Perhaps we can go into camera after dealing with those. The AEC suggested in their latest submission an alternative to increasing penalties might be to provide dedicated funding to the AFP to investigate electoral offences. Do you have a view on that?

Mr Carnell—It would be an option. Quarantined funding is always difficult for an organisation to operate—they need flexibility to adjust to rapidly changing circumstances—but it is not impossible.

Senator FERRIS—I have no doubt that when we question the AFP it will be a resource issue—that it will get us the answer to the question on analysis and investigation—and some might say that many of the other areas of crime that they investigate are more serious. If there was to be a quarantining of funding, that would satisfy that particular aspect of their difficulties.

Mr Carnell—Yes.

Senator FERRIS—Do you have any view on this proposal of ID being used for voting or for enrolment?

Mr Carnell—There is a long history of comments about what effect it has on the process and the costs if people were to present ID for actual voting. Ultimately it is a matter for the judgment of the government and parliament. In terms of identification for enrolment and so on, the point I would make is that this is an era where the reliability of documents that people produce is increasingly under threat. My personal view is that the Commonwealth needs to do further work on the integrity of the documents it produces that may be used as identification and look further at its processes in an across-the-board manner about accepting identity and, consistent with privacy considerations, look at what better opportunities there are with things like datamatching.

Personally, I suspect it is not worth exploring issues of biometrics or common ID numbers. I think the Australian community, at least in the late 1980s, expressed a view about those sorts of measures. But below those there are other things the Commonwealth needs to look at to keep moving with this threat. There is the greater capacity to forge, create or modify documents, technology, desktop publishing and printers that you can use. I think you could say that there are some signs of greater retailing of false identities.

Mr St CLAIR—Professionally?

Mr Carnell—Yes, actual organised approaches to selling identities. I am not saying that is definitely a growth industry, but I think there are some worrying signs that it might be. With modern computer systems, it is vital to ensure that people cannot get legitimate personal details and then use those in identity fraud. It is an area of significant threat and growing threat, and it needs significant attention. Those are comments that bear perhaps more on the operations of

some other Commonwealth agencies, but obviously there is a close interaction, with some ramifications for the AEC as well. Reading their submission, as a relative outsider, they have obviously done a lot in recent years to use the opportunities, but they will need to keep advancing them and advance them in sync with what else the Commonwealth might do in an overarching sense.

Senator FERRIS—Presumably your background in social security might assist when you go into camera. I find that a very interesting comment and one that I will pursue with the AFP when they come in.

Evidence was then taken in camera, but later resumed in public—

[10.22 a.m.]

ALDERSON, Mr Karl John, Principal Legal Officer, Criminal Law Branch, Attorney-General's Department

CARNELL, Mr Ian Gregory, General Manager, Criminal Justice and Security, Attorney-General's Department

SCHNEIDER, Mr Anton Maurice, Senior Adviser, Fraud Policy and Coordination Unit, Law Enforcement Branch, Attorney-General's Department

CHAIR—The AEC have suggested that one of the problems with electoral fraud is that the penalties are less important than the funding. They have said that the AFP gets given some incidence of fraud and the AFP says, 'Well, there's no money involved. It is really small beer as far as we're concerned, and we're not going to pursue it,' or they pursue it in a cursory fashion. The AEC have said to us that they see that one way of dealing with that would be to have a dedicated arm of the AFP and sufficient funding for electoral fraud. Do you think that is correct? Do you think that would be a reasonable way to go, or do you think that would be overly expensive and unnecessary? Also, are there other precedents under other acts for a special arm in the AFP to deal with a particular area, and how serious are those other areas in comparison to electoral fraud?

Mr Carnell—There are probably several things I need to say. I am sure the AFP would say that they very deliberately have not used financial benchmarks in their assessment of the significance of cases, and—

CHAIR—That was evidence the AEC gave us in a public hearing.

Mr Carnell—Yes. And I would strongly say that that is an appropriate approach, simply because you might catch a fraud early or even before any financial benefit flows, or because there is not even a financial benefit does not mean it is not a very important matter warranting AFP attention. That has been an issue that the AFP have been very conscious of, and have worked on hard, I am sure. I am not aware of any other situation where there is that sort of an arrangement that you are describing, of quarantined funds to ensure that all cases are accepted rather than go through the prioritisation model, and I would be pretty confident that my knowledge there is 100 per cent.

CHAIR—So, what the AEC is asking for is a bit unprecedented then.

Mr Carnell—Yes.

CHAIR—Is there anything else?

Senator FERRIS—No.

CHAIR—Stuart is not here, so he is obviously relaxed. Thank you very much for coming and giving us evidence today. It has been very helpful, because I am sure that part of our report will be about penalties and offences. Andrew has suggested that you might make a supplementary submission with respect to particular items. Thank you once again for taking the time to make a submission and come along this morning.

Proceedings suspended from 10.26 a.m. to 10.49 a.m.

[10.49 a.m.]

McGRATH, Dr Amy Gladys, President, H.S. Chapman Society

CHAIR—I welcome you to today's public hearing—finally. We have had a few stops and starts.

Senator FERRIS—Thank you for your patience and for coming back.

Dr McGrath—It is all part of the drama.

CHAIR—I remind you that this inquiry is about the integrity of the electoral roll. This is not an inquiry into the internal party matters of any political party except insofar as the impact on the electoral roll. The evidence that is given at the public hearing today is considered to be part of the proceedings of parliament. Accordingly, I advise that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament.

The committee has received your submissions numbered 25, 39, 60 and 61 which have been authorised for publication. I would ask whether there are any corrections or amendments that you would like to make to any of your submissions or whether you would like to make a brief opening statement before we proceed to questions.

Dr McGrath—I am here as President of the H.S. Chapman Society. I have put in a corrected copy of the original submission. I want to make a particularly important correction in that Neil Oliver is not dead. That inquiry did not proceed because the man putting up the money died. There was none available, although the door was open—which is mentioned in this submission.

As far as my opening statement goes, I would particularly like to emphasise one point that has not been made so far in these hearings, and that is, the changes made by Professor Hughes to practice and procedure in 1987. These changes reduced the role of scrutineers and severely diminished the capacity of candidates and parties, as well as scrutineers, to detect fraud. The only people who are in a position to do that during an election are scrutineers. These changes were specifically—there were others of specific importance—to division-wide voting. That never went to parliament. It was never approved by the parliament. It simply occurred by reason of abolition of printing of subdivision rolls. I have pointed that out to the parliament in earlier years in my earlier submissions.

The subdivision rolls simply disappeared, and next time 80,000 names, or thereabouts, appeared on the rolls in telephone book form which were harder to read. This meant that if candidates had 'Return to Sender' mail which they had possibly in the past sorted into polling booths, they only had small rolls of 2,500 to 5,000 mostly to check for those specific booths. Right up until 1984 you voted in specific booths. These were also posted in the courthouses or roundabouts. In England they put them on telegraph poles: 'Notices, look in your library'. The public's roles, either per se as voters or scrutineers, largely disappeared. The audits—where two people would audit at audit tables—disappeared. Therefore, the audit was not progressive during the day. More importantly, the marked up master roll was a master roll with every voter

on one roll marked up. It was much easier to detect on small precinct master rolls if there were problems. These are gone.

Optical scanning came in as the third equation. Incidentally, supplementary rolls are progressive during the declaration vote counting, which is now 15 to 20 per cent of the vote. Certified lists on polling day disappear into places unknown—known as scanning centres—and have disappeared for at least two to three weeks. There is no possibility for scrutineers or candidates to correlate the certified master roll marked up with the supplementary rolls. Their role in detecting fraud has virtually vanished. Provisional voters in all categories are submerged in the continuing records of the supplementary rolls so that, although there are provisional rolls in all categories, there is no statistic or no marked up roll for them. You would not know what the reinstated votes were during the progress of the count.

The final comment I would like to make is about the optical scanning of the roll. For no valid reason that I have ever been able to see, it is done on the Monday. They are actually moved from the equation for that period. The reason given by Professor Hughes at the time was that they wanted to scan it for multiple voters and non-voters, which might be useful, I suppose for courts of disputed returns. But as the sequential activity is not available within the period of the disputed returns, I cannot see the point. They could just as easily go later.

As the Electoral Commission itself admitted in 1993 in its submission on identification of voting, there are 10 ways of multiple voting fraudulently and they can only detect one of 10 ways. So, if they can only detect one of 10 ways in the same name, what is the rush? I think these things deserve attention from this committee, because it has become more and more impossible for scrutineers to scrutinise.

CHAIR—Dr McGrath, what do you mean by saying that they can only detect multiple voting in one of 10 ways?

Dr McGrath—When it is done in the same name that is all they can do.

CHAIR—But what is the way they can detect it? By scanning?

Dr McGrath—By optical scanning recognition. And we have no guarantee that they actually scan all the rolls, because if you have 60 booths you have to correlate 60 rolls. This is a very strong argument for a return to precinct voting. I do draw the attention of the committee to the fact that on two occasions Professor Hughes himself has not objected to a return to precinct voting. He himself has said that you could return to it in 24 hours. You could, because the act has never been changed; the act is still constructed in terms of subdivisional voting—in every sense, including penalties.

Senator FERRIS—What about cost?

Dr McGrath—The act is all there.

Senator FERRIS—But how much money?

Dr McGrath—For extra rolls?

Senator FERRIS—Yes.

Dr McGrath—I have no idea; nor does he.

Senator FERRIS—But that may be an argument the AEC would use against.

Dr McGrath—Yes, but he did not advance it. He always advanced cost as a factor in absolutely every other form. Also, we do need to draw attention to the fact that in the report from Cundy and Dickson, who were electoral commissioners for New South Wales in 1988—the report was the reason I wrote my book; I would not have written it but for that report—they said we should return to precinct voting—New South Wales shared rolls with the Commonwealth—because the system was wide open to manipulation and fraud. Because it was wide open to manipulation and fraud, it was imperative to bring back the built-in public scrutiny, candidate scrutiny and party scrutiny into the system which exists with precinct voting. Colin Hughes recently suggested that, if wanted, it would be very easy to do. You could do it in 24 hours. I have spoken to DROs. They said that the roll is still based on census districts and it would be extremely easy to do. So there are no redistributions involved, which is probably what you are thinking of.

Senator FERRIS—No, I was thinking that the argument of cost would probably be advanced as it has been by the AEC on many other—

Dr McGrath—This is off the top of my head. I think it is probably cheaper because you have to print for 60 booths—some of which only had 100 voters, in 1987—four rolls of 80,000 people. Now you would have a number of small rolls, specific to each booth, so it would probably be cheaper.

Senator FERRIS—That is an interesting issue that we can pursue, Chair, when we have the AEC back. At the end of our hearings we are going to have the AEC back to raise some of these sorts of issues.

Dr McGrath—I am sure you could arrange to get the references through Mr—

Senator FERRIS—Yes. There are a couple of things that I have discussed with you during your attendance at these hearings which I think are worth raising again to put on the *Hansard* record. You pointed out to me during one of our conversations that the enrolment form does not list penalties for fraudulent enrolment and said that you felt that would be something we could recommend. Would you like to expand on that?

Dr McGrath—I did say that that had been improved slightly on the new enrolment form, and since I made that statement the old ones have disappeared from my post office. The problem really is—back to 1984 when this enrolment form was being used—people getting on that form. The point I do want to make is that nobody has pointed out that there has been no full habitation review, as the Electoral Act requires, since at least 1980. That is a very important point. Some parts have only been done up to 30 per cent.

Senator FERRIS—This will be another one where there will be a cost factor advanced, I imagine, in the argument opposing that.

Dr McGrath—It comes to the issue: how do you clear out the deadwood—which is enormous—on the roll?

Senator FERRIS—Indeed—physically perhaps. One of the other things that you mentioned to me in a previous hearing was that witnesses do not have to declare, when they witness an enrolment signature, how long they have known that witness, which is in fact the case with a number of other statutory applications, such as passport applications. Would you like to make some comments about that?

Dr McGrath—They are for the very reasons you were saying. People everywhere else are required, but why should a lesser value be placed on securing your vote simply because we have a compulsory system? At the moment, the system is skewed to protect the dishonest voter, not the honest voter. So the liberality involved, in not requiring the witness to say how long he has known the person, has a bearing on that. You have to have built-in deterrents—everybody else does. This is the biggest corporation in Australia—12.5 million voters—and no corporation of that size, anywhere in the world, would have such laxity as not to require someone to guarantee you are who you are.

Senator FERRIS—In relation to their shareholders, so to speak.

Dr McGrath—In relation to their shareholders.

Senator FERRIS—That is an interesting point.

Dr McGrath—As a shareholder, I object.

Senator FERRIS—I think, as shareholders, many of us do. On the first page of your first submission, you make this comment:

The priority of ALP governments from 1983-96 was to see as many people legally enrolled as possible ... rather than to ensure as many dishonest people as possible are deterred from illegal enrolment.

Would you like to expand on that?

Dr McGrath—It has a reasonably populist argument, which is part of the philosophy of the Labor Party, to make it user friendly rather than abuser friendly. Their duty was to get as many people as possible on the roll, including those that are ethnic people who cannot speak English, Aboriginals and so on. The whole argument hinges totally and swings totally on the basis that there is no fraud. It stands or falls by that, and that is the one I have been attacking. If there is institutionalised corruption, as there is throughout almost all union elections, my arguments start with the fact: if institutionalised corruption exists in unions—as evidenced by an inquiry done by Marshall Cook QC in 1990 to 1991 in Queensland, and a great number of union officials are in parliaments throughout Australia—how can I believe that it has not migrated into parliamentary elections?

Senator FERRIS—I think Shepherdson answered that question for you, Dr McGrath.

Dr McGrath—I have not been privy to what he said.

Senator FERRIS—The findings of Shepherdson showed that, in fact, there was a form of institutionalised corruption in some sections of—

Dr McGrath—That is true but that is only partial, isn't it?

Senator FERRIS—I agree.

Dr McGrath—That has to do with, mainly, specifically fraudulent re-enrolment and parachuting names, where there are at least 25 ways of committing fraud that I am aware of. It is really a hydra-headed monster. Nobody has attacked that.

Senator FERRIS—Let us just move to the question of voter ID. I think you were here when our previous witness from Attorney-General's, Mr Carnell, made the comment that there now appears to be quite a growing industry in the production of fraudulent documentation. If we were to recommend voter ID—which, as you know, I favour personally—how could we make sure that the voter ID was, in fact, genuine? What do you say to the comments made by the AEC and also the Labor Party that this would disenfranchise the young and the socially disadvantaged?

Dr McGrath—There are at least two points or more to that. They have never produced statistics on that—or maybe they have and I have not seen them. It is the old problem in that you have a number of humanities issues: do you change or do you even distort the system to protect the interest of a very small minority? I think the answer has to be, when it comes to an electoral system, you do not.

Because we have done that, we are now out of step with most of the countries in the world that have voting systems. At the moment we have more options for voting than any country in the world, and I think a lot of people from both sides of politics consider that you do not really need absent as well as pre-poll voting. They are proliferated. The third factor is that you are distorting the principle of secret ballot because now we have secret ballot only for 85 per cent of the people, and the Electoral Commission has never mentioned that. They have encouraged this optional maze for various reasons and have in fact breached the law in respect of a couple of them. In the referendum the Electoral Commissioner allowed postal and pre-poll voting seven weeks before the referendum and I think at least 10 days before the issue of the writs, when there was not even an election. There is laxity in that area. All of it is not a secret ballot. It is much easier to intrude in declaration votes than it is in a secret ballot.

Senator FERRIS—I bring you back to the point I was making about the socially disadvantaged. It would be my view—and I would be interested in your response to it—that even people who are now on one form of pension or another need to have a bank account because there are no cheques paid any more for pension payments. So most people have bank accounts now, and to get a bank account you need 100 points. Therefore, it follows that even the socially disadvantaged must have had some form of ID to have opened the bank account. What is your response to the AEC's claim that taking voter ID or taking enrolment ID into the legislation would disadvantage people?

Dr McGrath—I just wonder how many have attended Sydney's large clubs—like the Panther club, East Sydney club, South Sydney Juniors and Monster Video shops? They find no

problem. Most of the attendees are people who have very little means. They are pensioners who go in for \$3.50 lunches on Thursday. They all have to produce ID, and they have no problem with that. Frankly I think it is insulting and patronising to socially disadvantaged people to say that they are not capable of producing identification.

Senator FERRIS—That is an interesting perspective on it. What do you say to the AEC's claims that enrolment fraud is not really a big issue in Australia? You would be aware—because you were there for that hearing—that in the AEC's submission and in their comments the consistent theme was that enrolment fraud is not a significant issue in Australia. They point to the number of convictions of one sort or another to sustain that argument. Yet, when we look at the AFP's submission—we will be having them as our witnesses next—we find that it is the AFP that has the discretion, based on a certain set of criteria, as to whether they pursue enrolment fraud.

Dr McGrath—The answer is that they would not know; they would not have a clue. DROs tell me that: they would not have a clue.

Senator FERRIS—That head office would not have a clue?

Dr McGrath—I do not know about the head office, but the AEC in general—the functioning institution—would not know if there was any fraud. They are not in a position to say there is not. It is written up at length in my case for an ombudsman. The argument was considered so compelling that the editor of the *Sydney Morning Herald* wrote two-thirds of a column in support of me and my case for an electoral ombudsman—because the Electoral Commission cannot and does not investigate anything—and said all political parties should support me. That was the *Sydney Morning Herald*. So it was not just a lightweight piece.

Senator FERRIS—It is pretty scary when the *Sydney Morning Herald* supports you.

Dr McGrath—It is not really, because I had to advance my case. It is not so easy to get an editorial from the *Sydney Morning Herald* on this issue, believe me.

Senator FERRIS—We agree, or on any issue!

Dr McGrath—Let me finish as this is one of the most important points. On the question of whether they do investigate and can investigate, for the 1987 election, when all the rolls were delivered by Professor Hughes a week before the election, there were three-quarters of a million people enrolled. They were checked, and some 100,000 were taken off just after the election.

Senator FERRIS—After they had voted, presumably?

Dr McGrath—Immediately after they had voted, 100,000 were taken off—60,000 in Victoria and I think it was 40,000 in New South Wales. Each year it has got bigger. They say 15½ thousand had multiple voted, and that is only in the same name—nothing else out of the three-quarters of a million. Then there were half a million in the next two elections—1990 and 1993—in the last week. That is not even in the months before, but in the last week. When the habitation reviews never get to more than 30 to 50 per cent—if that—first of all, they are not even looking; secondly, they get to 5,000 who have no explanation whatsoever—I think that

was in 1993—for multiple voting in one name. What do they do? They send out two notices, and then it drops off the computer base. If they do not answer or if they say they did not do it, there is nothing that can be done.

One DRO sent Federal Police out three times to a man they knew had done it, and he just said he did not do it, end of question. Hard evidence is demanded by the penalty clauses of the Electoral Act. That is all you can find. They keep on coming to me and saying, ‘You have got to find hard evidence.’ Do I stand in the booth and watch them writing?

Senator FERRIS—What about the cat that was enrolled? Is that hard evidence?

Dr McGrath—If they deny it you have not got hard evidence. Where is the evidence? You have got to have a witness.

Senator FERRIS—Yes, but there was no evidence that Curacao Catt was anything other than a cat.

Dr McGrath—No, but that has very little to do with it.

Senator FERRIS—But did that surprise you?

Dr McGrath—Hard evidence is seeing a person actually do the vote, sign the vote.

Senator FERRIS—That is not possible.

Dr McGrath—That is hard evidence. That is the only thing that will stand up in the summary court of jurisdiction in the District Court.

Senator FERRIS—Hang on. If somebody fraudulently enrolled a cat, there is the enrolment form there, there is proof when the letter is returned to the local member with a cat paw on it, so that is hard evidence that a person who signed that form fraudulently witnessed a person who did not exist. How much harder evidence do you need than that?

Dr McGrath—Perhaps the question should go to the AEC: what did they do about it? Did they take the person to court? I do not think they did.

CHAIR—No, they did not, because they only found out 10 years after. I think that was the problem, wasn't it?

Dr McGrath—But they do not even when they know. It goes to the Federal Police, then it runs out of time under the statute of limitations, end of question.

Senator FERRIS—Did it surprise you that a cat was enrolled? Have you got any evidence of dogs and cats being enrolled anywhere else that you know about?

Dr McGrath—That is not my area. My area is to explain how the potential for fraud occurs.

Senator FERRIS—That is a very obvious example.

Dr McGrath—But that is not part of the charter we adopt for ourselves. You are asking me to ask about what we do not do.

Senator FERRIS—I know this was a very small issue in the overall scheme of things, but the fact that somebody can do that, whether they did it maliciously or for a bit of fun, indicates to me that, because many people give their animals human names these days, it would be possible right across Australia to enrol household pets and, in fact, have household pets voting. This could be a very important principle of enrolment fraud. It may be very difficult to detect if the dog or cat's name is Fred, Mary, Molly, Pam or Benji or whatever it might be.

Dr McGrath—Mickey Mouse was enrolled as Michael Raton.

Senator FERRIS—You are making my point. I am just wondering whether this is something which could largely go undetected for years.

Dr McGrath—Let me quote the Electoral Commission—I always like to quote the views of informed people on such things. The Electoral Commission has said that fraudulent enrolment would be extremely easy and almost impossible to detect—that is in their 1998 report. That is really what you are saying.

CHAIR—When was Mickey Mouse enrolled? Was it here in Australia?

Dr McGrath—Yes.

CHAIR—When was that?

Dr McGrath—I would prefer not to say.

CHAIR—Why?

Senator FERRIS—Is it recent or a long time ago?

Dr McGrath—In the last decade.

Senator MURRAY—One of your mob did it?

Dr McGrath—My mob did not do it, no. I would not have that and they would not have that.

Senator FERRIS—You have not got any thoughts on Benji, I hope?

Dr McGrath—It goes in the category of what the Electoral Commission is pleased to say we use hearsay. In this committee I prefer to say what I actually know myself.

Senator FERRIS—Leaving aside the amusement of this, I think it is a very important issue that all it takes to enrol a household is somebody who is prepared to fraudulently witness the

signature. You talk about hard evidence and I agree with you. But I would have thought that that provided hard evidence and, if that had been pursued—because it was hard evidence of that person who had fraudulently witnessed that signature—then a very important public example could have been made.

Dr McGrath—The answer is that the habitation reviews were not being done. Part of this was that from the time the Electoral Commission came in—and I have the figures somewhere in the files—the funds for this were reduced heavily. You need to know that they hire extra casual labour. DROs do not do them themselves. At the same time, the habitation review budgets were reduced enormously. I noticed you were discussing the question of funds. Funds should be put back to where they were in 1980. It is not a question of extra funds; it is going back to where you were. The Electoral Commission were also pursuing at the time a process of regionalisation. They were reducing DROs to one and a half, so it was almost impossible to carry out checks of any kind. That battle was fought in the mid-nineties. When the coalition came back in they increased the staff to three or four again. But they were going to put in clusters of electorates—a very contentious point.

CHAIR—I would like to pursue something that you pursued before. Examples of absurd enrolments are quite useful to the committee because they indicate to us how many holes there are in the net for people to get through for electoral enrolment fraud, even if they have been put on as a test to see if they were successful. I wanted to pursue very briefly this ‘Mickey Mouse’ statement you made. In submissions you have given us other examples of enrolment fraud that you have uncovered. You are saying that Mickey Mouse was enrolled as an Australian voter, as Michael Ratton?

Dr McGrath—Raton—Spanish for mouse.

Senator MURRAY—If Dr McGrath does not want to outline that more fully in public, we can go into camera.

CHAIR—She has already said the name.

Senator MURRAY—But she has not said how she knows that.

Dr McGrath—It is only hearsay, second- or third-hand.

CHAIR—So you have no evidence of it?

Dr McGrath—I do not know who it was; I do not know who did it.

CHAIR—How do you know about it?

Dr McGrath—Because I saw it on the roll.

CHAIR—Michael Raton?

Dr McGrath—I checked after I heard.

CHAIR—When was this?

Dr McGrath—I think it was done in Macquarie after the failure of the Electoral Commission to investigate in Macquarie properly.

CHAIR—Which election?

Dr McGrath—They were testing whether a proper investigation had been done. Complaints were made about that election that a lot of people on Hat Hill Road were on vacant blocks.

CHAIR—Which election?

Dr McGrath—The 1993 federal election in Macquarie. They were in hotels and service stations and at improper addresses. The Electoral Commission claimed to have done an investigation. The reason why I have asked this committee to table copies of these investigations is that we only hear that they happened; we do not know that they happened. They claimed that they had seen it and it was all exaggerated and that there were not these hundreds of names at all, which contradicted what a team of people had seen. So they wondered whether the habitation review, a proper doorknock, had been done.

CHAIR—After that year you found out through other sources that somebody came along—

Dr McGrath—They realised there had not been a proper habitation review done. I feel questions need to be raised in relation to the Townsville area and other areas as to how soon a habitation review is done after people have raised questions.

CHAIR—After that concern about the AEC's investigation in Macquarie in 1993 somebody, who you may or may not be aware of, organised the enrolment of a person called Michael Raton—

Dr McGrath—Found it on the roll, and then later took it off.

CHAIR—to prove to themselves that it was possible to enrol that way.

Dr McGrath—No, to prove no proper habitation review was being done as a consequence.

CHAIR—And the AEC never uncovered that enrolment.

Dr McGrath—It was doubtful whether a habitation review had been done in one of the areas where a lot of complaints were made of false enrolments.

CHAIR—That is a bit embarrassing, isn't it, that somebody Mickey Mouse can come on and off the roll with impunity and the AEC never really knows that that enrolment—

Dr McGrath—Was it a post office box?

CHAIR—It was a post office box. That fits with the evidence we took about Curacao Fischer Catt, who was able to enrol and potentially vote for over a 10-year period. But obviously the Mickey Mouse example was somebody who wanted to see if the AEC picked it up, if there were habitation reviews—

Dr McGrath—That is right, yes.

CHAIR—and then took it off the roll themselves, proving to themselves that in fact the AEC had no idea this was going on. That is very interesting.

Dr McGrath—Well, they certainly had not done a proper habitation review, which I think is necessary when it is serious, and that case went to the Court of Disputed Returns.

CHAIR—I remember: Alasdair Webster. Do you have any other questions that you want to ask?

Senator FERRIS—Yes, I have a lot but I will let Senator Murray go next.

CHAIR—Andrew, do you have some?

Senator MURRAY—Yes, I do. Dr McGrath, I just want to go through the audit process again. If you want to maintain the integrity of any large database you have to have a good audit process, and that is a point you have made. There are two main forms which the audit needs to take. One is independent of the organisation, and the other is dependent on the organisation, and you always need the independents because if there is any corruption within the organisation, of any sort—and I do not necessarily mean just corrupt behaviour but corruption of process— independent audit establishes that.

In my view there are four types of independent audit. The first had never, ever been done in this country until I initiated it, and that is an audit of the roll by the Auditor-General, and that is now under way. The second has always been carried out but is dependent on the vigour of the person involved, and that is audit by members, where members go through their roll and attempt to verify it and cleanse it. In any one parliament of 148 members there are never more than three or four who do that in an absolutely diligent way.

The third area is where other agencies use the roll and in consequence of their investigation they establish that particular enrollers are not valid, and you heard us exploring that earlier today, and it is my belief that the coordination of agency activity could do with a lot of improvement. The fourth is the area you outlined earlier, which is whereby political parties themselves, on the day or immediately after the day of voting, through a scrutineer process validate a sample of votes—it can never be more than a sample. I just want to know from you if, in your view, that is the sum total of the independent possibilities for verification of the roll, as distinct from the dependent possibilities, which I will explore a little later. Is that a good summary?

Dr McGrath—Independent of what?

Senator MURRAY—Independent of the AEC. Perhaps I should continue and give you those which I think are dependent, and I want to ask you questions about those. The first dependent activity is the act of putting people on the roll and of managing the roll. The second is cleansing the roll by the AEC itself. The third is doorknocking, and the fourth is other review mechanisms. The identification thing is tied up with the first. Would you agree with that summary?

Dr McGrath—As a total summary?

Senator MURRAY—Yes.

Dr McGrath—I have got a couple of tangential points.

Senator MURRAY—Let me explore some specific points. I think your scrutineering area has been well explored already, and you have made some interesting points. I think the other agencies' area has been well explored with the Attorney-General's office. An area we have not touched on yet, which you identify in your submissions, is doorknocking.

I am one of those who are extremely sceptical of doorknocking. If you are doorknocked by a police officer, you would be very concerned to tell the truth. If I were doorknocked by some casual who has been hired to do the job—and, as you know, my name is Murray—and they knock on my door and say, 'Mr Pyne?' and I say, 'Why do you want to know?' and they say, 'We're from the AEC. We're here to check that Mr Pyne lives here,' I can say, 'Yes, he does.' 'And what about Mrs Pyne and all of the little children?' even though I am a single man, and I will say, 'Yes, they are here.'

Doorknocking is worthless, in my view, unless it is accompanied by a request for identification, and you would never get the Australian population to agree to go inside and get their driver's licence and show it to a casual who is knocking on the door. That is my view of the weaknesses of doorknocking. Why is it that your organisation continues to emphasise doorknocking?

Dr McGrath—You cannot say it is my organisation particularly. We do not sit down and have a resolution to support doorknocking.

Senator MURRAY—No, but you know what I mean: your submission, if you like.

Dr McGrath—No, I do not think that—

Senator FERRIS—But it is the habitation review, to be fair; it is not just doorknocking.

Dr McGrath—It is two different things. I agree, but some doorknocking is better than none.

Senator MURRAY—Why?

Dr McGrath—Ron Cundy, who was the electoral commissioner in New South Wales for years, deplored on the video I made the fact that he had not seen a habitation reviewer for years

at his door. Secondly, the divisional returning officers will tell you—and have told you, I think, in these hearings—that they wish to continue a habitation review in tandem with CRU. They do not dismiss it. If they do not dismiss it I do not dismiss it, because they are the people who do the job, and they are on the line if the roll is corrupt. So if they support it, I do, plus CRU.

But CRU has serious deficiencies as well, so they may complement each other. The form of spot checking habitation review that they say is useless—it takes ages to get around—is one where there is not enough money and it has not been done properly. If you have a habitation review that goes on for three to six months—not a little thing going on for six weeks—they say it can work. Maybe you should speak to a lot of them.

Senator MURRAY—Yes. But I am interested in your views, because you have pursued this in your submissions.

Dr McGrath—I object to the fact that I have not seen a reviewer for years in Sydney where I am.

Senator MURRAY—But it seems to me that the habitation review now picks up the grassy knoll, the post box on the empty plot problem—

Senator FERRIS—Peter Beattie picked that up.

Senator MURRAY—which used to exist.

Dr McGrath—Yes.

Senator MURRAY—It used to exist, but I have not read anything which says that somebody has knocked on a door where somebody has lived there and found out that they are actually wrongly enrolled.

Dr McGrath—I have just had the answer. I get garbage bags of information on this. They tell me that what happens is when they send the reviewers out they say you must not tell them any more streets than they are going to do, because somebody else might find out and then go and stuff the roll in their wake. That goes on in Queensland, and probably elsewhere. That was done in 1989 in Queensland, and quoted in *Hansard*, I might say. They say it does keep them in very close familiarity with the neighbourhood. They come back, they have been down the streets and they have had a look at them. You do not get that on CRU. You are sitting paper shuffling in an office. Their knowledge of the neighbourhood is crucial to the sixth sense they have about anything that is undue, or new blocks of flats that do not have numbers on them, et cetera.

Senator MURRAY—People like you and others stress the need for identification to confirm a person's identity and yet doorknocking is carried out without a requirement for identification. So it seems to me to have the same weakness. If you ask an honest person if they are who they are, they will give you an honest answer. If you ask a dishonest person, they will give you a dishonest answer.

Dr McGrath—The safe houses will give you a dishonest answer.

Senator MURRAY—So I am not sure that doorknocking ever addresses that problem.

Dr McGrath—It is also part of the historical tradition of our voting system. We have had more fraud since it has gone.

Senator MURRAY—With respect, that has not been proven.

Dr McGrath—I know it has not been proven.

Senator MURRAY—And that is the difficulty we face.

Dr McGrath—You must put that as a requirement for the Electoral Commission. I would mention that industrial elections do require returning officers to investigate irregularities. A number of the ‘frauds’ occur through irregularities rather than through fraud. Everybody thinks of ‘fraud’ in terms of district court definitions. They require industrial elections to investigate and they can, if they wish, stop elections. The only election that has ever been stopped by the Electoral Commission was that stopped by John Curtis in 1986 in Queensland, very successfully too—people ended up in gaol.

No action is ever taken to interfere with elections in the middle of the process. Because of what went on in Queensland at the last election, that election should have been stopped. Bob Longland said that the roll was totally clean—they had dealt with 634,800 names the year before, with roll cleansing with Centrelink and Telstra. On 8 December in the *Courier Mail* he said it was clean and they could proceed. The day before the issue of the writs he sent out a letter to 600,000 voters who he said were wrongly enrolled and to 250,000 voters who should have been on the roll but were not. If the Electoral Commissioner running the election, on the day before the issue of writs, says that 600,000 people are wrongly enrolled, I think the election should be stopped.

CHAIR—I do not remember him saying that.

Dr McGrath—I think you need to give the Electoral Commission more powers to stop elections.

Senator MURRAY—Could I ask the secretariat if they could get a commentary from Mr Longland on that. That is the first time I have heard that said.

Dr McGrath—I would be delighted if you get that. The *Courier Mail* ran a front page on this. Everybody was horrified. It caused chaos.

Senator MURRAY—Neither of us are Queenslanders, so we did not see it.

Dr McGrath—It caused chaos. I think you ought to talk to a couple of DROs about what happened. It caused total chaos. It meant that letters were going back to voters based on the Commonwealth roll. They were required to say, for example, whether Kai Roland was living there still because they had three names at his house. One of them had not been there for 12 months. He got back a letter because the DROs could not check with more than 60,000 people

in the four days of deluge of mail, the phone going off the wall and no extra staff. The man who had left Kai Roland's house was told where to vote and when to vote.

CHAIR—Who is Kai Roland?

Dr McGrath—He is a person on the Gold Coast. I have got the form where this person was told they could vote even though they had not been there for 12 months. If that information got into the wrong hands, somebody would have a blueprint for voting under the names of hundreds of people who are no longer at houses. That sort of operation, no matter how honest, because of the potential in the hands of one dishonest employee, should not happen. The Electoral Commission needs more powers in my opinion.

CHAIR—Perhaps the Electoral Commission does not need more powers as much as it needs more scepticism about the perfection of its system.

Dr McGrath—I do not know—I do not try in that territory—but I do think that, at the moment, they have got no requirement to investigate anything and no extra money for it. They made the point themselves when they were here. I think it should be a statutory requirement.

Senator MURRAY—Let me ask you another question and then give it back to my colleagues. It goes to the question of ID. ID when enrolling is one thing; but ID when voting is another, and I am personally more concerned about that than when enrolling.

Dr McGrath—Voting?

Senator MURRAY—Yes. My judgment is based on the past: that we are never going to get Australians to agree to carry ID—that is my judgment—and people would arrive, if you required it, at the polling booth without ID. The roll did not used to show gender, however it now does because the title is there—Mr, Mrs or Ms. It shows name, it shows address and it shows date of birth. It is there on the master roll. So I think it is possible to establish ID reasonably well by the person presenting themselves to vote being appraised. If their name is Mr McGrath and Dr Amy McGrath is standing there, straightaway they are going to see that. If they cannot answer where the address is, they are straightaway going to see that. And, of course, if the age of Dr Amy McGrath is 24 years old and they look at you, they are going to say, 'This is a fraudulent person before me.'

Dr McGrath—I think that has got a lot of merit, because—

Senator MURRAY—That is just a question and answer approach, which does not involve anyone bringing ID.

Dr McGrath—Could I give you a short parable answer. In the course of making a video in England on their views on their present system—vote tracing—I became friendly with the chief electoral officer of Northern Ireland. He is answerable only to the House of Commons, and he dealt with exactly what you are suggesting. In 1985 he got up enrolment on voting that was acceptable to the Commons, and he has struggled with that ever since. He had problems because they did not have any photo on the ID. So he had all these people going up and saying, 'I am Harry Adams', or whatever, and they were not. The IRA had in the boots of their cars all these

false identification pension cards and things, and they would just give them to the people to take in in the name that they wanted to vote in. So he did not reduce the level of fraud—and in postal voting—until he kept the statistics from three elections and he found a voter would register as, say, a long-distance lorry driver in one election for a postal vote and at the next one register that he was in a wheelchair. So he got up a—

Senator FERRIS—He had a bad accident in between.

Dr McGrath—committee in the House of Commons. The excellent blue books on these issues, by all parties, are worth your reading. The Labour Party were very cooperative, and so were the Liberal Democrats in England. It is a very good document. He has gone to the House of Commons and said, ‘You have got to put a photo on. There is no way of preventing corrupt voting without it.’ And I would answer, ‘I would totally agree with you. Put a picture on like the Americans do.’

Senator MURRAY—Yes, but that is not what I have said.

Dr McGrath—No. It would be nice if that would be extra.

Senator MURRAY—Do you mean on the voters’ master roll?

Dr McGrath—No. You would have to have a picture on the ID, so that you could see they are who they are.

Senator MURRAY—But the point I just made to you is that I do not think the parliament will agree to ID, and I do not think the Australian people will agree to ID when you vote. I do not think that is going to happen. On the voters’ roll are four items which could require identification: gender, name, address and date of birth. Very few fraudulent people would be able to remember all of those if they were voting in somebody else’s name.

Dr McGrath—Are gender and birth date on the roll at the booth?

Senator MURRAY—They are now.

Dr McGrath—When did that come in?

Senator MURRAY—That came in with the last change of the Electoral Act.

Dr McGrath—That is interesting. I did not realise that.

CHAIR—That is an improvement.

Senator MURRAY—It is a very important point, because people are continually asking for ID to be presented. The judgment I have is that neither the parliament nor the people will accept that, and I am asking you: do you believe that those four items being on the master roll, which the electoral officer can then check with the person before them, is sufficient?

Dr McGrath—Yes, that is interesting, because the whistleblower in 1987 recently in Queensland has said that the teams that had been voting in numerous state and federal elections found difficulty in matching the gender in the rolls. They did not have enough women to go and do the fraudulent voting. There were more men who take part.

CHAIR—I saw that. I have a couple of questions. Your submission emphasises the role of an electoral ombudsman. Could you outline how you would see an electoral ombudsman operating, and what you think they would be able to do that is not being done now?

Dr McGrath—Could I preface it by saying that Professor Hughes himself said in two places that it would be acceptable to him, although he describes the AEC's argument that it would cost more. In fact, he suggested an alternative in a Monash University seminar a week ago. I will think of it in a minute. I discussed this with Peter Maywald, director of investigations at the Commonwealth Ombudsman's office, because he ran three very important issues for me during the Constitutional Convention election and referendum. We were very concerned that there were 15 alternative ways of voting: the mandatory yes and no, a referendum, and so on.

There is no reason why it should be a separate ombudsman's office. It could be part of the structure of the ombudsman. So it would cost less. You would not be setting up an office, and so on. But they would have to have special powers, extra to those existing now, answerable to parliament. At the moment they only deal, I think, with how the Public Service departments are dealing with administrative issues. You reach an area of stalemate, as I did with that issue on yes and no, because the Attorney-General's answer was that an act in 1961—a different act to the Electoral Act—said that they could use their discretion. It did not say they could use their discretion 15 ways, including crossing out 'no' and making it 'yes' on a vote, but they used that as evidence to me that was all right for them. But I did notice in the end it disappeared from the televising advertising. You would need a bit more than that. But it would be acceptable to expand because it is already the case within the defence department to have an officer with different powers.

CHAIR—That is a very interesting suggestion. So you are proposing that within the Commonwealth Ombudsman's office there would be an office, a department or a section—

Dr McGrath—Electoral ombudsman.

CHAIR—who would be the electoral ombudsman, with special powers—under the Electoral Act, presumably—in the same way as the defence department ombudsman has special powers.

Dr McGrath—I am not quite sure whether it would be the same, but that could be looked at.

Senator FERRIS—The Inspector General.

CHAIR—But a similar sort of set-up.

Dr McGrath—Yes, because during an election, as any member or senator would know, dozens of things come up—for instance, ballot boxes in pre-poll voting being a yard behind the counter and not allowing you to put your vote in a box. I rang up Ian Dickson in the state election about this, because fundamental to the principle of the ballot is that you put your own

paper in the box, because what is happening to it for three weeks while it is sitting around the office somewhere? I had to ring Ian Dickson in that case.

Senator FERRIS—Would you see them having the statutory role that, for example, the Telstra ombudsman has, or in fact the retail ombudsman has? As a result of our retail trading inquiry, which I served on—and I think Senator Murray did too—we now have a retail trading ombudsman, where small retailers can go and lodge complaints about various things. Would you see this being a similar role in principle?

Dr McGrath—I presume so. I have not gone into it in detail. But I have already attracted support from the Liberal and National parties and the Democrats. I wrote to all parties about this, and the New South Wales Democrats invited us—our vice-president went—to go and speak to them about it. It would attract all parties, I would think. The AEC is busy for three months before an election and for months afterwards. They are not set up to do it, or to be bothered to have lots of complaints. They could sift the wheat from the chaff and also advise on ballot boxes.

Ian Dickson rang the people concerned in areas where they were doing it. You are dealing in the area of irregularities. I think it would be very satisfying for candidates who feel aggrieved after elections. The High Court complain; they do not want to be bothered; they are too snobbish. They only want to deal with high law—this is what my husband says—they do not want to be bothered with—

Senator FERRIS—He has to declare an interest.

Dr McGrath—They do not want to be hearing evidence about how many ballot papers there were and how many people were wrongly enrolled.

Senator FERRIS—So you are saying that the High Court is sitting as a Court of Disputed Returns.

Dr McGrath—Yes. They are an appeals court really. A lot of these things could be in the area of being settled or explained. I think the area he could deal with, for example, is that recounts should be mandatory for an under 200 margin, as they used to be. Now it has totally changed. You have to put out a set of reasons, which you do not have time to get together, to take to the Electoral Commissioner to get a recount. You could go and complain about that, which is really about changing practice and procedure. A lot of the changes that I have objected to are not legislative.

Senator FERRIS—They are just practice and convention?

Dr McGrath—Practice and procedure. For instance, during the Constitutional Convention election, the Electoral Commissioner allowed people to admit votes not by birth date but by signature only—even printed signatures. I have to write a paper months later to this committee. I would be able to go to such an ombudsman when it happens and say, ‘Look, I don’t think this is right.’ It is in all the literature. It has to be by birth date and signature, and then I wouldn’t have to bother you any more.

Senator FERRIS—We would be sorry about that, Dr McGrath.

CHAIR—The second thing I want to ask about is the evidence that we received from district returning officers in Queensland—particularly from Robert Patching who made submissions to previous inquiries about which I think you have written in the past—about non-citizens voting. Do you want to make any comments about the prevalence of non-citizens voting or concerns that you might have about that?

Dr McGrath—Yes. There are two things about that. I found—in writing—that Graham Richardson said that although it is not mandatory to be on the roll to become branch stacked in south-west Sydney, they hurry to get them on the roll. I can only speculate, in that case, that a lot of them are put on the roll en masse. My vice president spent 35 years in the ALP in south-west Sydney. He says a lot of these people are getting \$2,500 for one Tripodi page. I am not sure about that, so I had better back off that one.

CHAIR—You do not mean being paid to be on the electoral roll?

Dr McGrath—They pay the membership fees. They are not turning up to meetings.

CHAIR—Are you are talking about Joe Tripodi, the state member of parliament?

Dr McGrath—In areas like his where there was branch stacking—I will put it that way and correct myself—the possibility is that, in hurrying to put them on the electoral roll, they put them on in bulk. For example, 189 people—known to my vice president in, I think, Lowe—were listed at one post office box address.

Senator MURRAY—What year was that?

Dr McGrath—It would be quite recent. I only came into this game in 1996. I think I got that cutting from him in about 1997. I did not know him well before that.

Senator FERRIS—There is nothing illegal about that, is there? It is possible that 189 people could use the same box number without there being—

Dr McGrath—I think we need to question allowing people to enrol with a post office address.

Senator FERRIS—I agree, but I am asking you about now. It is not illegal.

Senator MURRAY—In some cases, it is very difficult for that not to happen. A pastoral station, for example, will have an RMB—roadside mail box—for all the residents on the station.

Dr McGrath—That is true.

Senator MURRAY—A lot of remote mines have post boxes for all the quarters.

Dr McGrath—There is often an argument for specifying various areas or various special qualifications.

Senator FERRIS—But Lowe is western Sydney.

Senator MURRAY—I thought Lowe was a very remote place.

Senator FERRIS—It is from Western Australia.

Dr McGrath—Could I revert to what you were saying earlier? I meant to comment on ‘real place of living’. This is one of the key things and it is very material to what you are talking about: establishing that you are who you say you are and that that is your real place of living. You would be aware that the DROs do not want reinstated votes to continue as they are, because people are being given votes at places that are not their real place of living. I think I quoted, in one of my papers to this committee, seven DROs saying that that should be changed, that it is ridiculous. They could charge me \$50 for not having changed my address, but I think 1,100 in Jim Lloyd’s electorate came back and said they were not on the roll and were given votes. Gary Nairn had a problem with it. What they do in England should appeal to this committee. They do not deny them but they are on different coloured paper and they are withheld. It is a deterrent so that you only get the genuine people coming along, including those that move within the same division. They hand them out without query if they are in the same division. They put them aside—

Senator MURRAY—Let me just stop you there so I understand what you mean. Are you suggesting that, when people come in to vote, for the House of Representatives there would be two coloured papers, one for the person who is on the roll and one for the person who is not on the roll but whose vote is accepted?

Dr McGrath—No. If a person claims that they are not on the roll but should be—which is one path for fraudulent voting—and comes in wanting to vote when they are not on the roll, without paying \$50 penalty, they are often re-enrolled on the spot by the assistant returning officer, who does not know them. In England, their vote is just put on, say, a pink piece of paper which is set aside and not counted unless the results are close enough for it to have affected the results.

Senator MURRAY—Is it put in a box?

Dr McGrath—Yes. It is put in a separate box and it is counted only if the results are close. That is a great deterrent. That makes people re-enrol.

Senator FERRIS—If it is counted, because the votes are close, do they then go and check that it is a genuine address that these people have given?

Dr McGrath—Yes, they do afterwards.

Senator FERRIS—That is not a bad idea. It is pretty cheap, really.

Dr McGrath—It is a very good deterrent. You are actually rewarding people who are lazy. It is in contradiction to the law, which says you pay \$50 if you do not enrol in a month, and the law says you are only entitled to vote if that is your real place of living.

Senator FERRIS—It is also a reasonably cost-efficient way of doing a double-check.

Dr McGrath—Also, if you have 1,100 of these people marching into booths round Robertson, it takes a lot of the assistant returning officer's time. He cannot spot people walking in.

CHAIR—Let me bring you back to the non-citizens, voting because I think we started talking about people joining the Labor Party and so on. Mr Patching's evidence to the committee was that there were many instances of non-citizens who were enrolled by other people or enrolled themselves or whatever, and went and voted; he had a scheme within his office for trying to check their citizenship and take them off the roll, and the AEC closed down that scheme and told him that he was not able to do that. His evidence is that since then he has been the target of some harassment within the AEC over that scheme, but that is not the point here. Are you aware of evidence of large numbers of non-citizens being enrolled to vote, and do you think that we should be able to institute some program to take them off the roll?

Dr McGrath—No. As I said before, I do not speculate on that sort of thing. Ken Chapman has been in the Labor Party in south-west Sydney and Cabramatta and everywhere. If you want to ask that question, you should bring him before the committee.

CHAIR—I am not even talking about with respect to the Labor Party. I am just talking about people voting who are non-citizens.

Dr McGrath—Okay, but still. They have a lot of non-citizens in Labor areas, put it that way—ethnic people, mostly in Labor seats. With regard to Bob Patching—

CHAIR—It is a bit of a generalisation.

Dr McGrath—They are not in the eastern suburbs in Sydney.

Senator FERRIS—I thought the electorate of Sturt had quite a few.

CHAIR—Yes. I think that is a little bit of a generalisation. In fact, 25 per cent of people in my electorate are born overseas and a further 10 per cent have sons and daughters who were born overseas.

Dr McGrath—Bob Patching himself said in a submission to this committee that, in his opinion, there were probably a great many throughout Australia that had got onto the roll partly because they were a bit confused and thought that if they had come into the country and become citizens they were automatically entitled to become voters. But the key point in that debate was that he was not the only one, that it was discussed at an area meeting with other DROs, and that this goes to the integrity of the officials because Bob Longland actually wrote a letter to all DROs in Queensland that they were not to check ethnics enrolling.

CHAIR—That is true.

Senator FERRIS—You have made some really interesting suggestions this morning, Dr McGrath. I am amazed that you only took up this issue in 1996.

Dr McGrath—The AEC seems to think I have been running around crusading for many years.

Senator FERRIS—That is probably based on their belief in your depth of knowledge, because it is quite remarkable. You have obviously done a lot of research internationally as well. The revelations that came out of Shepherdson were largely related to Queensland, although there was a bit of peripheral stuff. Do you believe that similar situations have become established practice in other states? Do you have any evidence that suggests that electoral fraud—as distinct from the branch stacking activities, which are separate—is widespread in the other two major states?

Dr McGrath—I asked Ken Chapman when the *Courier Mail* was ringing me and he said, ‘It is worse here.’

CHAIR—‘Here’ being New South Wales?

Dr McGrath—Yes. Having been in the Labor Party myself, I would agree for the inner suburbs—that is all I know about. In the eastern suburbs it goes back practically to the convicts, to Eddie Ward—

Senator FERRIS—It is the Irish factor.

Dr McGrath—I was asked to do cemetery voting as soon as I joined. I was in a branch run by criminals. The president ran the Pink Pussycat.

Senator FERRIS—Goodness me!

CHAIR—You must have felt slightly out of place there.

Senator FERRIS—That cat could have been enrolled!

Dr McGrath—He probably stacked the models, the ‘pussycats’. In the old days ex-criminals used to hang around in Woolloomooloo and they were sent out to vote. In Barry Unsworth’s electorate I do have evidence that was not submitted to this committee when I was looking through files that somebody made a statutory declaration that certain people were paid \$300 extra a day to go and work booths for the benefit of a candidate who will remain nameless. I do not mean work booths from the outside, to run the booths, to be booth workers.

Senator FERRIS—What about the electorate of Fowler in New South Wales in 1996: is there anything you want to say about that? I think you referred to branch stacking in the electorate of Fowler in New South Wales in 1996.

Dr McGrath—I do not know anything about Fowler in 1986.

Senator FERRIS—In 1996. I thought you referred to it in the submission.

Dr McGrath—That was more internal party politics, so I will not refer to that. I do not know the reference in my submission.

Senator FERRIS—I may be mistaken on that one.

CHAIR—Do you have many more questions?

Senator FERRIS—No. I just think that Dr McGrath's suggestions this morning have been very helpful.

CHAIR—Thank you very much, Dr McGrath, for coming down. We really appreciate it, knowing you had to come back from Melbourne to do this and you have to go back to Melbourne again tonight. We are sorry that we mucked you around a bit in not being able to hear from you in Sydney when we went there. We appreciate the effort you have made.

Senator FERRIS—You have also attended many of the hearings, which I think the committee would want to acknowledge.

CHAIR—Yes. Thank you very much.

Dr McGrath—Thank you and all the best for your report.

Proceedings suspended from 12.00 p.m. to 12.07 p.m.

WILLIAMSON, Federal Agent Gordon James, Director, Technical Operations, Australian Federal Police

LAWLER, Federal Agent John Adrian, General Manager, Eastern Operations, Australian Federal Police

CHAIR—Welcome. I emphasise at the outset that the inquiry is about the integrity of the electoral roll, not about the internal matters of any political party, except insofar as they impact on the electoral roll. We understand your limitations in terms of matters to do with operational activities, past and present. The evidence that is given at the public hearing today is considered to be part of the proceedings of parliament and, accordingly, I advise that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament.

The committee has received submission No. 28 from the Attorney-General's Department and the Australian Federal Police which has been authorised for publication. If there are any corrections, amendments or additions you would like to make, you might mention that before we start asking questions. Would you like to make an opening statement?

Mr Williamson—Yes, briefly. As you indicated, the AFP's comments were included in the submission from the Attorney-General's Department. We have no material that we wish to add or corrections to make to that submission. The AFP is the major instrument of Commonwealth law enforcement. Our role is to enforce the Commonwealth criminal law and protect Commonwealth and national interests from crime in Australia and overseas. We have an agreed set of outcomes and outputs with the Commonwealth government as to what is expected to be delivered by our organisation. Essentially, that is to focus on the serious and complex criminal offences committed against the Commonwealth's interests.

The AFP allocates its resources to a wide range of matters under the Commonwealth criminal law. We would be pleased to discuss in detail with the committee any matters pertaining to the processes by which we decide to allocate our resources or to accept particular matters for investigation. As you noted, we are somewhat constrained in referring to actual operational matters.

CHAIR—In its evidence to the committee and its submissions, the AEC has commented on the relationship between itself and the AFP, that it refers matters to the AFP and does not always feel that they have necessarily investigated them entirely for various reasons, one being that the AFP has a priority method of dealing with the cases and references that come to it, and also because it is not seen necessarily as being as serious an issue as many other things that come to the AFP. Would you like to comment on that, and also on whether you think that the AEC is itself conducting internal investigations in a satisfactory fashion before they immediately send things to the AFP?

Mr Williamson—The AFP applies an objective test to all matters that are referred to it. It is our case categorisation and prioritisation model, and that is a public document so that all interested parties know the basis upon which, in general, we accept or reject matters for investigation. The number of matters referred to us clearly exceeds our capacity to investigate

all matters, and we do not believe that it is appropriate for us to investigate all matters. The AFP, in evaluating a matter referred to it by a client agency or a member of the public in fact considers seven particular dimensions in reaching its decision. The first thing it considers is the type of incident that is involved in the matter. In the case of electoral malpractice, the relevant incident types from the AFP's perspective are either matters of corruption or are matters of multiple voting. They are the two broad areas under which we act in this model.

We then consider the impact of the particular referral. Each matter, I must emphasise, is considered on its own merits. When we refer to the impact, we are talking about the perceived impact of the matter on Australian society. We consider the priority of the matter. The priority of the matter is the relative degree of urgency or interest or exceptional circumstances which might pertain to a matter. We look at the resources which are required for the AFP to investigate it. We look at the budget which might be necessary for us to take on a particular investigation, the length of time it will take us to complete it and, where relevant, any property or fraud value that can be identified. Once we have a picture of a referral against those seven criteria, each of our offices and operations committees then determine whether or not the matter will be accepted. We would be pleased to provide the committee with details of how that prioritisation model works, if that would be of assistance.

CHAIR—It would be of assistance. You might provide that either today or at some other time and we will take it as an exhibit or a supplementary submission. You might want to make it a supplementary submission at a future time.

Mr Williamson—I will take the second part of your question, which is to deal with the matters referred from the Australian Electoral Commission. The AFP's relationships with agencies such as the AEC is largely governed by the fraud control policy of the Commonwealth. Under that policy, agencies deal with routine and minor matters and they refer serious and complex matters to the Australian Federal Police. That is the nature of the relationship between the AFP and the AEC.

You observed that there had been some concerns that the number of matters we investigated was perhaps reflective that we accorded a low priority to these matters. We don't believe that that is the case. The AFP acknowledges that it needs to investigate serious and complex matters, because that is part of the policy, but we also recognise that we need to investigate a number of lower priority matters to ensure there is an effective criminal deterrent for people committing routine type offences—for example, multiple voting or failing to vote and matters like that. Whilst each individual case in its own right may be of relatively low impact, we do investigate matters of that type to ensure that there is an effective criminal law deterrent.

We have seen some details provided to this committee by the AEC with respect to referrals of matters. Examination of our records indicates a slightly different perspective. It should be noted that the AEC material did not appear to include any instances of multiple voting that might have been referred by that agency to the AFP. Examination of our records indicates to us that between the period July 1995 to 1 February 2001, approximately 145 cases were referred to the Australian Federal Police by the AEC. Of those 145 matters, 69 were accepted for investigation, which is approximately 50 per cent. Those are the matters that we would regard at the serious and complex end of the scale.

CHAIR—That is after it had been through your case categorisation?

Mr Williamson—Yes, after they had been through our case categorisation and prioritisation model. On those matters that we might investigate for a deterrent effect, in the relevant period we received approximately 300 referrals of those lesser matters, and we accepted 80 of those—or approximately 25 per cent—for investigation, according to our data.

CHAIR—That is very interesting. I got the impression from the AEC, when they gave us evidence, that there was only a very small number. So there were 149—

Mr Williamson—There were 145.

CHAIR—and 69 were accepted. How did you categorise the 300 that you mentioned?

Mr Williamson—The 301 were in a form of referral that in our organisation we call a bulk referral—that is, where we have multiple referrals of a similar type from an agency. For instance, after each federal election there is normally a fairly large number of referrals of voting irregularities that are referred to us. We aggregate those. In those aggregations, we received referrals in relation to 301 people, and we investigated or took some action with respect to referrals against 80 of the 301.

CHAIR—Have you had any discussions with the AEC—on what I would call the first hurdle, or crossing the first tests for whether it goes to the AFP—about their own investigations within the department, where they might be able to deal with more minor matters and clear them up? Do you think the AEC has satisfactory processes in place for dealing with minor frauds, or any kind of fraud in fact?

Mr Williamson—I do not think it would be appropriate to comment on the effectiveness of work that the AEC does in that area. I do know that we have met with the AEC on local and national levels over a considerable period of time, and as recently as 2 February this year. From our perspective, there is an understanding of each other's roles and responsibilities—that is, the AFP focuses on serious and complex matters; routine matters are dealt with by agencies.

CHAIR—So they have not sought your advice to come in and perhaps give them pointers as to what they could do internally about matters of fraud or irregularities that are raised with them at the office level and then the head office level?

Mr Williamson—Not as far as I am aware. In our last lot of discussions we initiated some procedures between us and the AEC whereby specific types of electoral matters could be included in our case categorisation and prioritisation model. At the present time, it refers in fairly broad details to different types of crime. We thought it would be useful for both agencies to include some examples in that model for guidance for our people and for the AEC in terms of what should be referred. We have also explored with that organisation and offered them the opportunity to speak to the decision makers in our organisation who decide on a regular basis which matters will be accepted or not be accepted. We have also offered to speak to officers of the AEC around the country so that we can ensure that there is a common understanding.

Senator FAULKNER—In relation to the CCPM, I noticed on page 3/6 of the document, which relates to the range of common incident types, that under ‘high’ there is a dot point ‘impacting on the system of government’, and there is another dot point, ‘political interest’. I thought it might be useful for us to understand what these two dot points mean. I thought there may be some crossover at times also. I would be interested to hear your comments on that.

Mr Williamson—For the sake of completeness, I will run through what that element of the CCPM addresses. It is the impact grid of the CCPM. In that area, we assess a matter as falling into one of four categorisations. Matters are of low impact, of medium impact, of high impact or of very high impact. The impact rating, in its own right, does not make a decision as to whether we will accept a matter for investigation; it is one of those seven dimensions. What we have attempted to do in that field of the CCPM is to draw parallels so that when you have a drug matter, a fraud matter, a corruption matter and an offence, say, against the person, we can draw some sort of parallel between them.

There is a cascading effect—as you will note in the table—between very high to high to medium to low. In terms of impacting on the system of government, the highest rating in that dimension is, in fact, something which impacts on our national security—that is very high. Relative to something impacting on our national security is something which impacts on the system of government, and that may be malfeasance by a Commonwealth officer or it may be a serious electoral malpractice or it may relate to offences against the administration of justice.

In terms of the second issue you raised—and, of course, there are a number of dot points under each of those areas—in our very high area we refer to the ministerial direction. Under section 37 of our act the minister can direct that we focus on particular things. If we have been directed to focus on particular things then that is a very high impact matter. If matters have political interest, that is, it is in the interest of Australian society that they be resolved, then they are somewhat less than the ministerial direction but somewhat more than a matter being of speculation in the media. That is how those different cascades tend to work.

Senator FAULKNER—Is there a possibility that there can be crossover with this impacting on the system of government and political interest?

Mr Williamson—Of course. They are not mutually exclusive.

Senator FAULKNER—In relation to politically sensitive matters and their referral to the AFP, the point is made that since 1979 ministers responsible for the AFP have drawn the attention of their colleagues to procedures to be followed where the assistance of the AFP is to be sought in relation to criminal activity likely to have politically sensitive implications. Then, of course, there are the section exemptions. AFP investigations of breaches of the Commonwealth Electoral Act, where the Australian Electoral Commission is the complainant, are exempt from the provisions of these guidelines. I think it might be useful from the point of view of the committee to understand the basis for the exemption and what the actual exemptions therefore mean in terms of the involvement of the minister responsible for the AFP or other ministers.

Mr Williamson—I would have some difficulty in answering the first of your questions because that is actually a matter of government policy. In terms of the practical implementation

of that, where a matter falls within that policy it is referred to the AFP through the Minister for Justice and Customs. In the case of matters from the Australian Electoral Commission, because there are political issues in them they are referred directly to the Australian Federal Police without going through the minister's office.

Senator FAULKNER—These current national guidelines are dated November 1998. Was that part 3 exemption a new guideline from that point or was it in place earlier? I am just trying to understand the history of this.

Mr Williamson—I am not aware of that. We would need to make some inquiries to establish that.

Senator FAULKNER—Would you mind? The reason I ask this, of course, is that the guidelines point out, in a general sense, how they have operated since 1979. As you would appreciate they open up with that caveat, if you like, and I hear what you say about it being a matter of government policy. I am interested in understanding, in relation to part 3 exemptions, when that became government policy—if that clarifies it from the point of view of the question that you are taking on notice. What does this mean in terms of the process? I hear what you say about how a matter may well be referred to the AFP, in this case, with the non-involvement of the minister. Once a matter is subject to investigation how does the protocol start to work through after an investigation is commenced to a matter that might have been referred by the AEC?

Mr Williamson—Once the matter is referred, it is referred in writing. It is assessed against the CCPM and a decision is made to accept or reject. It is allocated to an operational team and that team carries out the investigation under the direction of a relevant general manager such as Mr Lawler. That team in that area is required to report to our head office on their progress in the investigations as they unfold and, at appropriate points of investigations, there may be a further briefing from the AFP to the minister's office.

Senator FAULKNER—But what I am trying to understand in a general sense is how this works with this particular matter that is subject to exemptions—breaches of the Commonwealth Electoral Act where the AEC is the complainant. If a matter were rejected for investigation, would the minister responsible for the AFP ever hear about it?

Mr Williamson—No, not unless there was something—

Senator FAULKNER—He or she would not, I assumed that. Let us say that a matter is accepted for investigation and if I can focus on a matter that fits the exemption, because that is what I am interested in—so is the committee of course, because some matters referred from the AEC to the AFP would go directly to the sorts of issues that this committee is currently examining in this reference. I hear what you are saying about matters that are rejected. That seems straightforward and relatively obvious. What about something that is accepted for investigation? When might the minister responsible for the Australian Federal Police become aware that such a matter is operational—it is reasonable for me to call it operational from that point, I think, isn't it?

Mr Williamson—The minister would not be routinely told that a matter was accepted. If a matter were of exceptional interest the minister would be briefed or if there was some particular development that required the minister to be briefed.

Senator FAULKNER—What if we then have a situation where the exemption should apply because of this being a matter where the AEC is the complainant and it relates to a breach of the Commonwealth Electoral Act on the one hand, but on the other hand, is also politically sensitive. As an example, let us say the AEC refers a matter to the Australian Federal Police that relates to a breach of the Commonwealth Electoral Act: it may relate to a member of parliament or a political party; it may be also, to use the words in the CCPM, politically sensitive. What about that interface? How does it work then?

Mr Williamson—I am having some difficulty understanding the question. When we are required to provide a brief to the minister would depend on the circumstances of the matter, and each one is dealt with on a case-by-case basis. If there is speculation in the media about an ongoing AFP operation, the minister may well be briefed of the fact that there is an investigation going on but would not be able to comment on its content. When a matter is finalised, similarly, the minister would be briefed. There are no specific written guidelines that would go to that question.

Senator FAULKNER—My question is probably not clear so let me try and clarify it for you. What I am asking here is a question that would apply when both part 2, referral of politically sensitive matters, and part 3, exemptions, may be relevant. The question I am asking is whether an exemption, which applies when the AEC is the complainant to the AFP for a breach of the Commonwealth Electoral Act so therefore the national guidelines are exempt, might also be a politically sensitive matter. What takes precedence when it is a politically sensitive matter: the exemption or the procedures? That is all I am grappling with trying to understand.

Senator FERRIS—Why don't you take it on notice? It may be that on reflection of the number of times you have asked it, the officers may be able to give you an answer.

Senator FAULKNER—I am more than happy with that, Mr Williamson. I do not want to get bogged down in it. My questions relate to the *National guidelines: politically sensitive matters—referral to the AFP* and this question of whether the exemption always applies in the circumstance of a politically sensitive matter. Perhaps if you could provide the committee with a bit more of a background so we can understand whether the exemption always overrides a politically sensitive matter. The point being that something can be both politically sensitive and in accordance with the national guidelines obviously subject to the exemption. That is the issue that I am trying to understand.

Mr Williamson—Certainly.

Senator FAULKNER—Thanks for that. In relation to an issue that was raised by Senator Hutchins in September 1999 with the Special Minister of State, and this was subject to an AFP communication to the Australian Electoral Commission in July 2000 where, as I understand it, there was an indication that there was insufficient evidence to proceed with this matter. So that I do not trample into actual operational matters, if you could assure me that the current situation is that that matter is now closed.

Mr Williamson—Are you able to identify the matter with a bit more particularity?

Senator FAULKNER—I think I can, if you would like me to. Senator the Hon. Christopher Ellison, the Special Minister of State, issued a media release on 4 December 2000, which states:

Following correspondence from Senator Hutchins on 23 September 1999 regarding alleged electoral enrolment discrepancies in relation to the Penrith City Council elections held early in September 1999, I referred the matter to the Australian Electoral Commission for comment. On 15 October 1999, the AEC referred the complaint to the Australian Federal Police for investigation into possible breaches of section 337 and 339(1)(k) of the Commonwealth Electoral Act which relate to witnessing and false and misleading statements.

The minister goes on to say:

On 3 July 2000, the AFP advised the AEC there was insufficient evidence to proceed.

I am asking this question seriously because I do not want to trample into areas that currently would be best defined as ‘operational matters’ because I hear and accept the comment you made in your opening remarks about those sorts of issues. Hence I am asking whether that matter is—as has been indicated—effectively closed, that it was fully investigated, the outcome was considered by the AEC and, as a result, the matter had not been proceeded with any further.

Mr Lawler—Senator, that was the position as of July 2000.

Senator FAULKNER—My question, Mr Lawler, is this: is that still the position?

Mr Lawler—The answer to that is no.

Senator FAULKNER—Given Mr Williamson’s wise caveat in his opening remarks to the committee, would you be able to indicate what you can to the committee about the process status of that particular matter? If I can ask my question in that way I probably will not have to ask any others—depending on the answer of course—but I think that might be the most sensible way of dealing with it, Mr Chairman.

Senator FERRIS—Chair, I think Mr Lawler’s answer ‘no’ indicates that the status of that particular reference is now subject to an operational inquiry.

Senator FAULKNER—I have asked Mr Lawler what the status is—

Senator FERRIS—He said no—

Senator FAULKNER—No, he said no to my previous question—

Senator FERRIS—Therefore, how would you expect these officers to answer what they have already said they can’t answer as an operational matter.

CHAIR—I will leave it up to the officers of the AFP to determine whether they can or cannot.

Senator FAULKNER—I am asking the officer to provide an answer that he is comfortable with in terms of informing the committee what the status is, and then I will consider what, if any, question I will ask having heard it.

CHAIR—I will just point out to the witnesses that they would understand the bounds of what they can and cannot say. I would expect them to answer as much as they can within the bounds of those constraints that you are probably well aware of.

Mr Lawler—Certainly. There was a further matter referred to the AFP on 13 February, and it is sufficient to say that that earlier matter is being reviewed and therefore is the subject of investigation.

CHAIR—Which has already been in the newspapers in the last week.

Mr Lawler—I believe so.

Senator FAULKNER—So that was referred to the AFP on 13 February by the Australian Electoral Commission. Would that be correct?

Mr Lawler—Received from the AEC, yes.

Senator FAULKNER—I see. The status of that matter which is, if you like an extension of or a reopening of other matters that the minister had indicated were closed, would now be properly defined as a current operational matter? Is that how you would define this, Mr Lawler? I don't want to put words into your mouth; I would prefer you to tell me.

Mr Lawler—The answer to your question is yes.

Senator FAULKNER—Thanks.

Senator MURRAY—Just for the record—because I am sure it is so—I assume that both of you are long-term police officers who have been in the organisation a long time?

Mr Williamson—That is correct, sir.

Senator MURRAY—I want to talk to you about discretion, bias, subjectivity and objectivity. It seems to me that, as soon as you go to a case categorisation and prioritisation model, you are automatically introducing discretion as to what issues you deal with and you are trying to establish criteria so that the way in which that discretion is exercised is as objective as possible. Is that a good summary?

Mr Williamson—That is correct, sir.

Senator MURRAY—When I looked at your range of criteria, and for the purposes of *Hansard* and the committee I am referring particularly to page 1 of the case categorisation and prioritisation model and the major elements itemised there. What was missing there I thought,

and I would be interested in your reaction, was possible dangers of discretions from the point of view of the officers assessing it. Let me explain to you what I mean.

If a house burglary occurred and it might be considered under these criteria in terms of the value affected and the actual nature of the incident, you would expect these criteria laid out to be pretty objective and to work well. Unless there is a danger that somebody's mate is involved—sometimes, as you would know, it happens that people are a little kinder to a mate than they might otherwise be—it is likely to proceed very well. But as soon as you move into issues where individuals' passions or emotions are involved, you can get discretion being exercised in a biased way. Let me give you an example. If I were a police officer and we were dealing with electoral matters, and in came a member of the Ku Klux Klan Party, I would be likely to have a different attitude to them from the attitude I might have to the Let's Preserve the Green Grass Party—just to give you a silly example; you would understand what I mean. Historically, the areas in which this kind of discretion proves dangerous are religion and politics. If a person is attached to a particular religion and a priest from a particular religion is involved in offences, sometimes in the past that has not been dealt with as well as it might be. You get the same with political attachments. My concern is: do you think that with regard to political issues, like religious issues, the discretionary model needs to have an extra category to be sure that the officers concerned, themselves, will not either naturally or wrongfully affect the discretion because of their bias?

Mr Williamson—I think that is a very real issue to be grappled with, sir. That was one of the rationales for introducing a model such as the CCPM, so that there could be seen to be some transparency in the decision making process. It is not a decision made by an officer. It is not that the CCPM is applied and then the answer is yes or no. The CCPM is used to describe the matter in certain terms, and that matter then goes before an operations committee comprised of the director of operations in the particular office, together with very senior officers in that office, who then evaluate the matter to make sure there has been that absence of bias. We are very alive to the potential for matters of that nature to bring out, intentionally or otherwise, some biases. We would believe that the current situation, where the assessment is made by a member of a team, is checked by their team leader and their coordinator and then goes to an operations committee of senior officers, provides an adequate set of checks and balances to make sure that the right decisions are made at the end of the day.

Senator MURRAY—Is it only reviewed when the request is that discretion is exercised, or is it overturned sometimes when the investigating officer recommends that it be investigated? In other words, is it both ways?

Mr Williamson—It works both ways. It is both the decision to accept and the decision to reject which is made under that process.

Senator MURRAY—You may not be able to tell me this, in terms of your research. Are you able to tell me whether, with regard to electoral matters—those that go before the AFP and have not been investigated—the decision confirmed by the process was primarily made at investigating officer level first or was in fact made at the senior body last? Do you get what I am after?

Mr Williamson—No, on all matters there is an evaluation undertaken by an officer whose role is to evaluate incoming referrals from a range of agencies. So there is always an evaluation, and that then results in a recommendation as to whether the matter will be accepted or not.

Senator MURRAY—You might have misunderstood what I meant. Let us take an example. A hundred matters have come to you under the electoral matters law. In 90 of those cases, the investigating officer has said, ‘We should go further with this.’ But in 80 of those cases the senior review body has said, ‘We do not think so. You will only investigate 10.’ Or has it been the other way round, that the investigating officer with this hundred has actually said, ‘I only want to investigate 10,’ and the review body has said, ‘Yes, that is all right’?

Mr Williamson—I am sorry, we do not have that level of information, nor would it be easily attainable, I suspect.

Senator MURRAY—I would suspect so.

Mr Williamson—If there were variances of that nature, then we would be aware of them, if they were of large magnitude.

Senator MURRAY—I want to return you to page 3 of 6, which I thought Senator Faulkner rightly picked out. A high impact was measured as ‘impacting on the system of government’ and as having ‘political interest’. I would suggest that assessing those would require a fair degree of perception by the review body. Again, I will give you an example. This morning, we had the Attorney-General’s Department before us. They gave us a submission which you might not have seen. In this submission they, in my view, missed a fundamental point. Their submission simply compared the Commonwealth Electoral Act with other acts in terms of penalties, without assessing the Electoral Act as being a very special law because it flows from the requirements of the constitution to establish a parliamentary democracy. Therefore, it has particular meaning.

As you know, I am sure, a 12-month imprisonment term, for instance, prevents any citizen of Australia standing for parliament. It flows directly from the constitution. Sometimes the assessment may be that multiple voting or electoral fraud is an isolated thing—that somebody is just being very foolish, but it is pretty minor on the scale of things. And yet because of the importance of keeping the integrity of the electoral roll intact—because of the relationship of the Electoral Act to the constitution—this matters much more than it appears on the surface. Even I understand this, but I do not know if an investigating officer in the AFP and their operational officer reviewing the matter would—and if they are equipped to properly assess those items: ‘impacting on the system of government’ and ‘political interest’.

Mr Williamson—We would hope that they were. The people who undertake the evaluations are skilled former investigators. They have a background in investigation, so they can apply their understanding of the investigatory process to determine what avenues of inquiry might be available, what is the likelihood of success and those sorts of matters. Because they are a small group of people, we are able to train them well and get a very good degree of consistency in their evaluation process. In fact, those people meet together on a national basis three to four times a year, where issues such as this—and they do not apply just in the electoral area—are canvassed and workshopped, so that everyone does have a common understanding. It is to those

meetings that we have invited agencies such as—and I referred to this earlier—the Electoral Commission to talk to those people, so that we can ensure that there is that understanding throughout the organisation. The very sentiments you have expressed are contained in the policy type documents that the AFP works to with respect to Electoral Commission matters.

Senator MURRAY—You have itemised the number of cases, and we have heard evidence from the AEC. If you put the whole lot together, there are not that many cases over a period of, say, five years. If the committee were to consider this a zero tolerance area—to use a popular phrase—and were to say to the government, ‘We really recommend that you use the process, which is identified here. Ministerial directions can occur. Regardless of what the matter was, you would investigate it, because it was regarded as high priority,’ would that put you to that much more extra cost and frustration of resources? It obviously has some cost and some resource consequence. Would you be able to compute that for us, or is that difficult—in other words, if there were no discretion, and you had to pursue it?

Mr Williamson—If that were to occur, there would be a relatively substantial diversion of our resources from other areas of priority that have been set for us. We would be able to make some assessments—once again, there would be some considerable work involved—of what the likely requirements were to take on the range of work we have actually not done. The difficulty would be in assessing the number of matters that have not been referred to us. Given that the AEC, by and large, has a good understanding of the sort of work we do, it would tend to refer matters to us that we will do. There would be a larger pool of matters which we do not do and which we would never know about.

Senator MURRAY—But operationally speaking right now, you would be able to say that of those matters which were referred to you and which you decided against your criteria not to deal with—let us use 100 as a notional idea—that the average police officer hours attached to that was X in your view and would be a Y cost, and that would come off whatever other things you were doing. You would be able to complete that?

Mr Williamson—Taking into account the parameters—

Senator MURRAY—I mean as an estimate. If we asked you not to do that exercise for everyone who has gone missing but just to give us a notional idea that each one should be regarded as taking up 40 to 50 police hours, or whatever you think it is, and that is XYZ cost, are you able to let the committee have that or is that too vague a request?

Mr Williamson—We could provide information as to how many hours are involved in particular matters because we do track that data. It would be difficult to say a particular average that was there.

Senator MURRAY—If the chair is happy, I would like to request that you take that on notice, if you would not mind doing that, because I for one as a committee member would have no idea—if I asked the committee and they agreed and we asked the minister to pursue a zero tolerance approach—what would be the effect on costs and resources. If you could give us some broad guideline, it would be helpful.

Mr Williamson—I need to reinforce that we can do this with respect to matters which have been referred to us. In terms of costing the ones we have not investigated, we have no ability to scope what is the extent of material that might be referred to us if such a policy were introduced.

Senator MURRAY—Moving on to a different area: one value of having experienced people such as yourselves before us is that you have a good judgment about the general community. Unfortunately, you see and hear things which most of us, thankfully, do not. Fraud is a real and growing concern in terms of its sophistication, the use of technology and the size of it. I will repeat something my colleagues have probably heard me say too many times by now but I was shocked when I saw an AFP sample survey exercise done with Westpac, which you might be familiar with. This was reported in the ANAO's report on AFNs and the ATO—that is a lot of acronyms, isn't it?—where they established that, on the 100 point identification process for getting a bank account, 13 per cent of people were actually acting fraudulently. That shocked me. I hope that does not mean that 13 per cent of people are likely crooks—I suspect it means that they simply wanted the bank account and used whatever means to get it. In your opinion, based on what you know about the community, based on allegations that were made about the electoral roll and based on very few cases coming to you, would you be as suspicious as our previous witness was—and her society—that there is much more likelihood of fraud going on in the roll than has ever been apparent by virtue of the cases put to you?

Mr Williamson—I might make a few comments and then ask Mr Lawler to comment. The particular survey you referred to, as I understand it, found that a percentage of identities could not be verified; it did not necessarily find that the identities were false. I believe there was that qualification to the data.

Senator MURRAY—It was not expressed like that in the report, I must say.

Mr Williamson—I am not sure. I do not have the document here. I know there are some questions about whether we can confirm identities as opposed to proving that they are false. The AFP has not found evidence of a systematic attack on the integrity of the electoral roll in matters which we have investigated to an extent which would lead us to believe that there was significant invalidity associated with the electoral roll. Conversely, we have discovered that it is useful to look at the reason an identity might be created and enrol on the electoral roll falsely. In some instances it would be part of some other fraud which was occurring. As we have moved in this country to greater identification of people for a variety of purposes the fact that you are or are not recorded on the electoral roll is a relevant consideration in identifying people. You may find that there are circumstances where people will enrol on the electoral roll in a false name for the purposes of, in fact, committing some other offence. In that respect, the electoral roll is no different from a number of other things used for identification.

Senator MURRAY—The allegation and fear of some people has been that electoral roll fraud has occurred with a view to perverting the outcomes of elections, but there has been no proven evidence of that even in this inquiry. We have explored that endlessly. The numbers just have not been established to exist to actually make that kind of difference. Yet there is an inference that it is nevertheless widespread which would mean it is not organised but is natural and individuals are acting for their own motives to do these things. They are either non-citizens who want to be on the roll because they want to participate in the country's affairs—as simple

as that—or people, such as you outlined, who want an identity verification, or non-citizens who believe they are properly on the roll because they are wives or husbands of citizens—those sorts of things. But in your experience in this area the police have never found that to be a substantial problem, have they?

Mr Williamson—No. We are also aware that the Electoral Commission has a fraud control plan which identifies these risks and identifies appropriate counter measures to deal with them. We are not aware of any deficiencies in that planning process.

Senator MURRAY—In your inquiries, as far as I understand them and those other that have emerged, you have never ended up with one end of a ball of string and tugged it and actually found at the other end hundreds of fraudulent enrolments, have you?

Mr Williamson—No.

Senator MURRAY—And that is in a long history of investigation.

Mr Williamson—That is correct.

CHAIR—When you say that you are aware that the AEC has a fraud control plan, did the AFP have anything to do with its establishment or is it entirely an AEC produced program?

Mr Williamson—All agencies are required to have a fraud control plan. The AFP participates in the review of those plans.

CHAIR—Are you satisfied that the AEC's fraud control plan is up to the mark?

Mr Williamson—The AEC's fraud control plan has gone through that process of review to ensure that it is appropriate.

CHAIR—In the past do you think the AEC has applied it adequately?

Mr Williamson—We have no reason to believe otherwise.

Senator FERRIS—I would like to ask a question which you may wish to answer in camera that relates to some issues that were raised earlier today by witnesses from the Attorney-General's Department. On a more general note to start with, we had a suggestion this morning from the previous witness from the H S Chapman Society, Dr Amy McGrath, who raised the idea of having an electoral ombudsman who would provide an independent third party opportunity for issues such as some of the issues that you finish up investigating but, also, some more general issues related to the management of elections. Would you have any views on how you might see that in terms of your own resources? Clearly, your resources are always under pressure. Some of the issues that are referred to you—if they do not pass your criteria of analysis—could then be passed on to an electoral ombudsman. How would you see that that might be able to work? Do you have any comment on that? You can take it on notice if you wanted to have a look at Dr McGrath's context.

Mr Lawler—I think it would be very helpful to do that. Otherwise, I would be merely proffering an opinion off the cuff, and I don't know that that would be particularly useful.

Senator FERRIS—Okay, I would be happy if you would do that. The second area which I want to raise with you, on which I think you would probably prefer to go into in camera, is the question of the organised sale and development of an industry selling forged identity documents, which the Attorney-General's Department said this morning was a growing industry. It was in the context of questions that we were asking relating to the use of voter ID or enrolment ID, and we were talking about the veracity of such documents. They made that comment and suggested that you might wish to comment on that. We did go into in camera to have a discussion on it, so, Chair, we should probably offer these witnesses the same opportunity.

CHAIR—Do you want to go into in camera on that, or are you happy to answer on the record?

Senator FERRIS—Do you want to comment at all on it, or would you like to take it on notice?

Mr Williamson—We made a submission and appeared before the committee inquiry into the tax file number processes quite recently, where we canvassed those issues. There was a range that we could canvass without the necessity of going into in camera.

Senator FERRIS—It might be useful for us to have a copy of that submission, perhaps.

CHAIR—Yes, it would be.

Senator FERRIS—If you have raised the issue there and canvassed it publicly, then we do not need to pursue it here other than perhaps to reserve the opportunity to ask some questions on notice arising from the scrutiny of it. None of us were on that committee. Those were the only issues that I wanted to raise with you, thank you.

CHAIR—We talked to the Attorney-General's Department about the adequacy of offences and penalties. Would you like proffer any comments on whether you think the penalties for offences are adequate or whether they should be reviewed for enrolment fraud?

Mr Williamson—I do not believe it is appropriate for us to comment on issues addressed by the Attorney-General's Department.

CHAIR—You are happy to leave that with the Attorney-General's Department. Were you involved in the decision to prosecute Karen Erhmann and Mr Foster under the Crimes Act rather than the Commonwealth Electoral Act?

Mr Williamson—Not personally, no.

CHAIR—Were the AFP involved in that decision?

Mr Williamson—The decision as to where matters are proceeded with is a matter for the Director of Public Prosecutions. The AFP prepares a brief of evidence addressing the factual situations.

CHAIR—And then he makes an assessment?

Mr Williamson—That is correct, sir, yes.

CHAIR—You might not be able to comment much further on that. Is that the case?

Mr Williamson—That would be the case.

CHAIR—Thank you very much for coming along today, answering questions and making your statements to us. We really appreciate your taking the time out to help the committee in its inquiry. I am happy to thank all the witnesses.

Resolved (on motion by **Senator Murray**, seconded by **Senator Ferris**):

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

Committee adjourned at 1.03 p.m.