



**COMMONWEALTH OF AUSTRALIA**

**JOINT STANDING COMMITTEE ON  
ELECTORAL MATTERS**

**Reference: Conduct of the 1996 federal election**

**CANBERRA**

**Thursday, 15 August 1996**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Members:

Senator Ferguson (Chair)

Senator Abetz	Mr Cobb
Senator Chamarette	Mr Connolly
Senator Chris Evans	Mr Griffin
Senator Lees	Mr Melham
Senator Minchin	Mr Swan
Senator Wheelwright	

Matter referred to the Committee:

All aspects of the conduct of the 1993 federal election and matters related thereto.

**WITNESSES**

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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

*Conduct of the 1996 federal election*

CANBERRA

Thursday, 15 August 1996

Present

Mr Cobb (Chair)

Senator Conroy

Senator Minchin

Mr Laurie Ferguson

Mr Griffin

Mr McDougall

The committee met at 10.28 a.m.

Mr Cobb took the chair.

[10.28 a.m.]

**BELL, Dr Robin Alexander Ian, Deputy Electoral Commissioner, Australian Electoral Commission, West Block, Parkes, Australian Capital Territory 2600**

**DACEY, Mr Paul, Assistant Commissioner, Development and Research, Australian Electoral Commission, West Block, Parkes, Australian Capital Territory 2600**

**DAWSON, Ms Peta, Director, Litigation, Australian Electoral Commission, West Block, Parkes, Australian Capital Territory 2600**

**GRAY, Mr Bill, Electoral Commissioner, Australian Electoral Commission, West Block, Parkes, Australian Capital Territory 2600**

**MALEY, Mr Michael Charles, Director, Research and International Services, Australian Electoral Commission, West Block, Parkes, Australian Capital Territory 2600**

**MUFFET, Dr David, Australian Electoral Officer for Victoria, Australian Electoral Commission, 2 Lonsdale Street, Melbourne, Victoria 3000**

**WILLSON, Mr Trevor, Assistant Commissioner, Information and Education, Australian Electoral Commission, West Block, Parkes, Australian Capital Territory 2600**

**CHAIR**—I declare open this public hearing of the inquiry into the conduct of the 1996 federal election and matters related thereto and welcome the witnesses and others in attendance. Appearing before the committee will be officers from the Australian Electoral Commission.

I remind the witnesses that the proceedings here today are legal proceedings of the parliament and warrant the same respect as proceedings in the House and the Senate. Although the committee does not require you to give evidence on oath, you should be aware that this does not alter the importance of the occasion and the deliberate misleading of the committee may be regarded as a contempt of the parliament.

The committee prefers that all evidence be given in public, but should you at any stage wish to give evidence in private you may ask to do so and the committee will give consideration to your request. We have before us your submission dated 29 July of this year. Are there any amendments to the submission?

**Mr Gray**—Yes, Mr Chairman. There are two amendments I would like to draw to the committee's attention. The first is on page 41 of our submission at paragraph 5.8.3. The fourth last line of that paragraph states 'subsequently resigned his office of profit,

was re-elected'. I would ask that after 're-elected' the words 'at the next federal election' be added. On page 80 of our submission at paragraph 11.1.1, the third line of that paragraph reads 'the relevant Acts are the'. I would ask the committee to delete the words 'Commonwealth Electoral Amendment Act 1994'. It will then read 'the relevant Acts are the Commonwealth Electoral Amendment Act 1995', and so on.

**CHAIR**—Thank you for that. I note from your opening preamble that you will be presenting to the committee supplementary papers on other issues later, such as Albert Langer, the Court of Disputed Returns, statistics relating to multiple voting and preliminary scrutiny of declaration votes, et cetera. It has been the tradition of the committee to ask the AEC to come before us for the first lot of hearings and then for the general wrap-up at the end, but I think on this occasion we will be inviting at least some of you back halfway through our hearings to talk in further detail on those points. Do you wish to make an opening statement before we proceed to questions?

**Mr Gray**—I would like to take that opportunity. The Australian Electoral Commission welcomes the opportunity to meet with the committee and discuss matters arising from the conduct of the 1996 federal election. As the committee will have noted, the AEC submission canvasses a wide range of issues and makes some 32 recommendations to amend the Commonwealth Electoral Act, based on our experiences in the administration of the 1996 election.

Our submission identifies our intention to put supplementary submissions to the committee. One will address in some detail those issues which relate to Mr Albert Langer; namely, the implications of sections 240, 270 and 329A of the Commonwealth Electoral Act and their impact on the current scheme of full preferential voting. Another will detail the outcomes of the four election petitions to the Court of Disputed Returns. It is also our intention to provide a further supplementary submission in which we will address issues raised in the other submissions currently before the committee.

Whilst we are willing on this occasion to discuss any of the issues raised in other submissions, we have yet to complete that submission. We would respectfully suggest that questions arising from those submissions be held over for a later sitting of the committee, if you consider that course to be appropriate.

The AEC submission is the product of an extensive consultative process involving the divisional returning officers from each of the 148 federal divisions, the Australian electoral officers for each state and territory, who are also the returning officers for the Senate elections in their respective states and territories, and other senior operational and technical staff involved in the conduct of the election. Operational staff in each of the states and territories conducted their own detailed debriefing conferences which then culminated in a national conference of senior operational personnel. This submission is the distillation of that consultative process and represents the AEC perspective on the conduct of election '96.

I also take this opportunity to draw to the attention of the committee the fact that, although the last parliament ran close to full term, proposed changes to legislation which arose from the deliberations of the previous JSC did not make it through parliament before the 1996 election was called. This presented us with a number of challenges which had to be met at the last moment. In some cases we had held off with finalisation of training material. In others we had prepared draft changes to our procedures on the expectation that the bill which had been before the parliament for some time would be passed. More importantly however, it meant in effect that much of the good work done by the predecessor of this committee towards improving the administration of elections could not be implemented for the 1996 election.

It would be our hope, therefore, that, notwithstanding any other perhaps more major issues which the committee may give its attention to over the next year or two, the recommendations of this committee which relate to the conduct of the 1996 election and any resulting legislative amendments might be processed by parliament a little earlier in the electoral cycle. To this end, I wish to indicate that the AEC stands ready to work closely with your committee in order to finalise its report so that this timetable can be met.

I conclude by reiterating the point made in the introduction to our submission that the consensus within the AEC is that, from an administrative and operational viewpoint, the 1996 federal election was the most successful federal election conducted by the commission since its formation in February 1984. That said, we recognise that there are areas which require improvement and which we will need to address both now and in the time available leading to the next federal election so that we will be able to again meet the demands and high expectations of the parliament and the Australian community. I trust that our submission will be of assistance to the committee.

**CHAIR**—Thank you for that. As I said earlier, I note that some of the more contentious issues, such as the Albert Langer situation, are yet to come. You made reference in your supplementary submission, which you have just given, to the disappointment in not getting the previous legislation through before the election. Were there any of those recommendations in particular that you were keen to see get through or did you basically support all of them equally?

**Mr Gray**—I would highlight to the committee the intention we had to conduct the scrutiny of the Senate by way of computerisation. We had engaged in a fairly long and extensive consultative process with stakeholders, including parties, and there was general agreement that we should move in that direction. Indeed, we had prepared ourselves for that and we were in fact going to initiate computerised scrutiny of the Senate in the 1996 election. That, unfortunately, was part of legislation which did not find its way through the parliament before it rose in December.

I think there are other matters which have been identified in some of the

submissions that have come from other parties, including ours, which revisit, if you like, the need to have some reform in particular areas and further clarity in some particular areas which were raised after the 1993 election. Again, they were included in recommendations from the joint standing committee. They found their way to support by the government and were introduced as legislation but, again, it was legislation which did not find its way through. If there is disappointment to be expressed, it is in relation to our preparedness and readiness to conduct a computerised Senate scrutiny, which we are unable to do until the legislation permits us.

**CHAIR**—I see that you will be commenting on the Albert Langer matter in more detail later, but I did note in your submission that you actually supported, if I read it correctly, a shortening of his gaol sentence. Is there any preliminary comment you want to make about the Albert Langer matter at this stage so that we can be thinking about it before your supplementary submission comes later on?

**Mr Gray**—Our supplementary submission will be fairly detailed and I do not want to canvass too much of that at this stage, other than to merely indicate that it was an incident which highlighted those provisions in the act which we have an obligation to give effect to. We were disappointed that some commentators felt that we had it open to us as a commission to somewhat selectively apply the legislation and to in some way exercise a discretion as to whether or not we would apply the legislation as the parliament had intended it to be applied. I do not believe that we have that discretion. I do not think it is an appropriate discretion. It is one where the legislation makes clear what is and is not permitted.

Clearly, the parliament's intention is reflected in that legislation and we gave effect to it as we saw appropriate. All that followed and the examination by the various courts in looking at the actions of the AEC, and indeed the legislation, confirmed that we had acted appropriately, that it was clearly a breach of the legislation and an injunction was sought and issued in respect of those activities.

In relation to the actual gaoling, again some confusion perhaps arose that it was as a consequence of the breach of the legislation. It was, of course, as a consequence of breaching an injunction and a court order. Those distinctions, I think, are not minor. I think they are distinctions that have to be recognised and made by those who comment upon it. Beyond that, I would prefer to wait for the presentation of our supplementary submission which, as I say, will go into something of the history, all of the circumstances surrounding that particular issue and, indeed, what others had said, including the courts—the High Court, the Federal Court and the Victorian Supreme Court.

**CHAIR**—You say that you had great success in the area of advertising to make the public aware of the last election, as determined by polling, et cetera. You took on a new advertising agency, Box Emery and Partners, who, in your opinion, did a good job. Who was doing the advertising before? Were there any deficiencies in it?



**Mr Willson**—The agency the commission had used for the previous three electoral events was a Sydney based agency, Doorley Buchanan. Under the guidelines which we follow, which were issued by the Office of Government Information and Advertising, we went to open tender again following the 1993 election. As a result of that process, Box Emery and Partners are now the appointed agency for the Electoral Commission.

In terms of efficiencies, in making our judgment on the new appointment we felt that the new agency could add some value to the product. As it turned out, I think that was shown to be the case. It is not only because of a requirement that we go to tender for these things. I think it is quite useful to test the marketplace again after a number of years and to be looking for fresh approaches to what is a fairly challenging area of advertising.

**CHAIR**—You will tender again next time, even though you were satisfied?

**Mr Willson**—The current agency is appointed until after the next electoral event. Our account is a little different from most of the other government work around town in that there is an enormous amount to do for one short period of time and then very little. The tradition has been that the agency that comes on board stays on, given a normal timetable, for two major events. There is also, of course, an enormous amount for that agency to learn in terms of content and it is a wiser investment if we can get a little more out of it before we have to go out again.

**CHAIR**—The only other question I have at this preliminary stage relates to the voting guide which was sent out. We had previous events of party electoral material added to it. I notice that you had sent it shrink wrapped in plastic and there was still some incidence of it being tampered with. What are your comments on that?

**Mr Gray**—The intention, quite clearly, was to try and prevent the addition of material to that particular document. The idea was, of course, to achieve that end. What we found was that those who distributed and contracted the distribution of that material also had contracts for the distribution of other material. When it got to the point of actually delivering it, certain efficiencies were entered upon by the people actually delivering it to the extent that, rather than having a whole bundle, they thought it would be a good idea if they actually opened up that wrapper and stuck the other material in there—washing machine advertisements and a lot of other things. Occasionally we found that it had happened that someone had used their initiative and opened up the package, put all of the material in the shrink wrap and stuck it in the box.

**CHAIR**—Is that a breach of the postal act, do you know?

**Mr Willson**—It does not relate to postal legislation. This is street-walk delivery. It is obviously much cheaper and this material is not addressed to an individual elector. It is a household delivery. The six instances that are referred to in the report are six out of many thousands of people. In many cases, as we know, it is 14- or 15-year-olds who

undertake this work. If the material did relate to a washing machine sale, then no-one took offence. If it happened to be from another political party, that is when we heard about it. The extra few cents per item that we invested to get the shrink packing this time did pay off in the sense that the problem was vastly reduced on what happened last time when it was an open and unsealed leaflet and it was very easy for other material to be inserted and put into the letter box.

**Mr LAURIE FERGUSON**—In relation to ethnic advertising of information, could you give us some background on the actual process of selection for the languages you will utilise in the printed media?

**Mr Willson**—We take advice from two sources on that: the Department of Immigration and Multicultural Affairs and the subagency that is appointed to assist our major advertising agency with that side of the business. They are the people who have the circulation and readership figures for ethnic press, for example. We use a different number of languages for different publications. For a radio broadcast, for example, it would depend on the timing of the broadcast and how many stations were going to air in that language in that particular week. I think the number of languages we use for any particular item ranges from 12 to about 22. The decision is not taken by Electoral Commission staff, who clearly do not have expertise there. We receive advice from those we pay to give us advice in that area.

**Mr LAURIE FERGUSON**—I have some concerns on past experience with other agencies the government involved in this regard. Do you not think it would be worth while for the AEC to look at documents such as the *Atlas of the Australian People*, put out by the Australian Bureau of Statistics, which talks about not only the numbers of people in different language groups but also their level of English knowledge? I know that you might not be doing this, but you might advertise in German and find that 90 per cent of people speak English. I would be more confident if the AEC was actually doing some independent work in this area because there are issues such as concentration of nationalities in electorates, concentrations in urban areas, the circulation abilities of the papers and, as I say, the question of English proficiency levels.

**Mr Willson**—Yes, we certainly take those things into consideration. I do not want to give the impression that we simply receive a piece of paper from these agencies with their advice. We sit at the table with them, and the atlas you referred to is one of the sources that is used. German and Dutch are very good examples of the sorts of things we take on board. Numerically, German, I believe, should be very close to the top of the list in terms of people who would put that down as their first language. It very rarely gets onto our list because of the English competence of that community.

**Mr LAURIE FERGUSON**—Could we actually get some more material as to the AEC's decision making process, the languages used in the last election and that kind of thing? Secondly, is there a reason for the abnormal number of deletions of voters in South Australia in the actual election period?

**Mr Dacey**—I am certainly not aware of it.

**Mr LAURIE FERGUSON**—You have some figures here. One finds that there are 3,000 deletions in South Australia, which is up with New South Wales. Page 105 is a good indication. You will see there that most South Australian seats had deletions over 200, some around 400. If you go to other states, say, New South Wales, there is obviously a smaller number of seats. But when you look at page 106, deletions in South Australia were 3,500 and New South Wales was even less.

**Mr Dacey**—The only reason I could give at this stage is that the electoral roll review in South Australia was conducted prior to the election. There could have been deletions outstanding from then, but that is something we will take on notice and get back to you on. The timings are different for electoral roll reviews. If a lot of objection action was taken just prior to the announcement of the election and those deletions matured, that would be a reason.

**Mr LAURIE FERGUSON**—With regard to your advertising performance, knowledge of the electorate is obviously fairly positive, but there was a divergence with regard to the level of public knowledge of the ads. I noticed that one of them had a 60 per cent acknowledgment level and another one had 84 per cent. That is a fairly significant difference with regard to what people do recall. I was watching the *Sunday* program a few weeks ago and it was about California health advertising tobacco and the effectiveness of different ads. Have you had a look since then, from the advertising agency, at whether they perceive any difference in what ads were good and the reasons for that kind of difference?

**Mr Willson**—We have certainly been reviewing very closely each of the products we used in the advertising process. It is very difficult for us to learn a more direct link between the effect of a particular ad and another. We know which ads people remembered more clearly. Separating the creative element of that ad from the actual content and determining how important it was for the elector to focus on is sometimes a little difficult.

Another element in the election period is the possible confusion that can arise in an elector's mind between an ad of ours and an ad from a political party, which in a sense is also telling them how to vote. So, if we were out there asking people whether they had seen something about how to fill out a ballot paper, we would have to try to get the message through to them as clearly as we could that we mean from the Electoral Commission about the process of voting. I point to that simply as an indication of how difficult it is to go much beyond what we have already learnt in terms of measurable statistics.

**Mr LAURIE FERGUSON**—If I were conducting this I would be impressed with 84 per cent and question 60 per cent as being significantly lower.

**Mr Willson**—The people who did that survey for us assured us that both figures were exceptional, given the length of the campaign. They can, of course, make comparisons with other public awareness campaigns, but most of them run over a much longer period. I understand that the high 40s is regarded as a very good figure for impact.

**Mr LAURIE FERGUSON**—We have the figures here for the election period with regard to enrolments. Can you just give us some feel for how substantial that growth is? I know it is going to be almost higher. Can we get some figures on previous months of that year just to give us some kind of balance on the growth?

**Mr Dacey**—The 12 months before?

**Mr LAURIE FERGUSON**—Yes, something like that. You say here that 80 per cent of people thought the various materials produced were very good, and that is a high level, as you say. Could we have some feedback on what the negatives were from the others?

**Mr Willson**—Certainly. I can provide detail from that survey for you.

**Mr LAURIE FERGUSON**—Finally, I notice what seems to be a fairly abnormal growth in people voting in Hong Kong—48 per cent growth between elections. Is there any particular reason you can give for that?

**CHAIR**—And in particular the difference between Hong Kong and Singapore.

**Mr Dacey**—We had advice for some time that the number of Australian citizens now resident, or having returned to reside, in Hong Kong was expected to be much higher than in the past. In fact, the figures show that. It was not a surprise to us. We had geared up for significantly more because we understood that there were a lot of Australian citizens returning to Hong Kong. As I said, those figures do reflect that. That is the reason we have.

**Mr GRIFFIN**—On the question of the supplementary submission and the Langer issue, when do you expect to be able to get that submission to us?

**Mr Gray**—In a fortnight.

**Mr GRIFFIN**—It just seems to me that of most issues that is probably something we need to try to resolve as quickly as possible and get into legislation as soon as possible. It may be something we need to push forward.

**Mr Gray**—I appreciate that, and it is for that reason we are giving it some considerable attention. The detail is important but it does go to the very system, as you know, and we have to get it right in terms of the advice we provide this committee.

**Mr GRIFFIN**—I agree totally. I guess I am suggesting to my colleagues that we may need to move that up the list in order to actually resolve it.

**Mr Gray**—We will do what we can to accommodate your requirement to get it as early as possible.

**Senator MINCHIN**—Can that give us the statistics on the number of voters who voted according to the provisions which are effectively allowed but not allowed to be advertised?

**Mr Gray**—We have sought to do a survey of both informal and exhausted voting. Those figures will be made available to this committee. That is why the survey is being conducted.

**Mr Dacey**—As Mr Gray said, we will have those figures and some commentary on those available at the same time as the Langer submission because, as you understand, there are some relationships.

**CHAIR**—I would be interested to hear some comments on the processing of the enrolment cards. I see in your figures 400,000-odd came in that final week before the cut-off and 100,000-odd of those were new enrollees. You said the system worked fairly faultlessly with some minor exceptions. You say the delays were caused by the large number of complex inquiry transactions conflicting with the large number of input transactions and in some cases other telecommunications problems. Could you just expand on that, please?

**Mr Dacey**—Our system is such that when enrolment cards are being entered, if you are entering the details from a previous enrolment rather than a new enrolment, the more details you enter the faster the system will match against a previous elector. At election times we employ a lot of casual staff who are new to the system. If, for instance, they were entering an enrolment change for Mr Cobb they may enter C-O-B-B and perhaps no Christian name or given name. The system has to then take a lot more time to match.

Also with inquiries, as you can understand, during the lead-up to the election, the close of rolls period in particular, we have a lot of people inquiring and ringing up to see if they are in fact on the roll. That inquiry load was quite significant for us, and that did at times have implications for delays in the system. If we had a group of, say, 20 or 30 people in Sydney, they would be tied up most of the day on inquiries, particularly in that week of roll close. That could put delays in the system in some areas. But, overall, the system, as we said, did work fairly faultlessly given the number of enrolment transactions and, added to that, the number of inquiry transactions, which were significant.

**CHAIR**—On fax enrolment, which has only been in for the last year or so, I guess

a high percentage of the population would be a little alarmed with concerns about the integrity of being able to enrol by fax. Generally, you seem to say it worked okay except that the machines were getting clogged up and some of the enrolment forms did not come through fully and those people missed out. Do you have any figures on how many missed out and, in particular, any comments on difficulties of fax enrolment from your first experience of this procedure?

**Mr Dacey**—I am not aware that we have any figures. We can certainly ask around our offices. Certainly we do not have any here in central office. I guess the difficulty was that we were caught a little bit unawares in that we did not expect the fax traffic that we got. Some of the radio stations very graciously started advising people on the last day of close of rolls that electors could fax in their enrolment forms, and that was not on the advice of the AEC.

If we were asked, the advice was that, yes, we would accept a faxed enrolment. But when you had some of the youth radio, for instance, advertising all day, 'Here's the fax number and fax it in,' you could expect that some of the machines would clog up and that the technology was not quite ready for the load that we had. We are certainly very aware of that, and we need to negotiate with the communications suppliers and resolve that issue for the next election.

**Mr GRIFFIN**—There is a reference in the report to the fact that an element of that traffic probably came from candidates and campaigners and the political parties. Do you have any idea how much of that was the problem?

**Mr Dacey**—No, I do not. It certainly is an element where campaign workers or parties would stockpile enrolments and then fax them in. It is an education process for all of us.

**Mr Gray**—Clearly, there are difficulties associated with that technology. As is the case with any document you may send by fax, it is not always automatically the case that it is received. There are often cases that we would all be aware of where we thought something had been faxed and it had not been received as a result of that technology.

The other thing that has to be recognised is that it is nevertheless part of our communications system now. Fax is a very ordinary piece of technology which people use. We have to come to terms with that either by providing more faxes by which to receive that information so the clogging problem that we had and had not anticipated could be resolved. As to how we can overcome, for example, someone at a very late moment in the process sending off voter information, enrolment applications and so on by fax and our not receiving it, it is a little difficult to know just what it is you do in that regard. All we know is that there were some who put forward information via the fax and, as our report indicates, it was such that we were unable to proceed with it.

**CHAIR**—Do you have any concerns about the integrity of enrolments by fax, such as signatures and this type of thing? Do you have any thoughts with the benefit of hindsight in that regard?

**Mr Dacey**—No, we have not come to a view. It certainly has not been raised with us before as a major issue. If there is a change to enrolment, and if there is any challenge to that, there is certainly the opportunity to check previous signatures. But it is certainly not an issue. It is an accepted form of communication.

Just continuing on from what Mr Gray said, the other difficulty that can arise—it did not particularly arise in 1996 but we had instances in 1993—is candidates or parties waiting until the last minute or so to fax nominations on nomination day. If you are waiting until a few minutes to 12 and our fax machine is tied up, we are looking at trouble, as you are aware.

**Mr LAURIE FERGUSON**—It was mentioned that there are difficulties sometimes with things not being filled in, et cetera. As it is a hectic period, what is the normal process? Do you try to contact that person?

**Mr Dacey**—Yes, in all cases. That is why on enrolment forms we ask for electors' phone numbers. If the form is not complete or there are some problems, we do everything we can to contact the elector. But, as you have admitted, it is a hectic period and it is often difficult to get to everyone within the time before close of rolls or close of nominations.

**Mr GRIFFIN**—So, if a form is received and it is only half complete and contact is not made and the matter is not resolved before 8 p.m. on the day of close of rolls, that change is not included on the role because it is not complete?

**Mr Dacey**—If it is not complete to the extent that the law requires, yes, that enrolment could not be accepted.

**Dr Bell**—Frequently people would post in the form later and then you would match up the fax and the form at a later stage.

**CHAIR**—You say too that there will probably need to be some upgrading of office fax machines. What does that actually mean? Does it mean more fax machines? If so, do you have any idea of costs that would be envisaged at this stage?

**Mr Dacey**—No, it is a project we need to look at. With technology the way it is going, it may not mean more machines; it may mean better technology such as fax streams and a 'never busy' fax system. We have not looked at it in terms of costings yet, but it certainly will be something that will obviously increase our costs.

**Senator CONROY**—Would you be looking to lease?

**Mr Dacey**—For that period we would certainly be looking at lease arrangements. We would not be looking at permanent arrangements because there is really a much reduced requirement in a non-election period.

**Dr Muffet**—Maybe a Telstra operated system where they will take the whole lot if your machines cannot handle them.

**CHAIR**—The other area of new enrolments is new citizens. Previously there was provisional enrolment for applicants of citizenship and you seem to have switched the emphasis now to making application forms available on the day of the citizenship ceremony, particularly in the larger centres. Do the smaller centres and country areas tend to miss out? Why has there been the shift in emphasis?

**Mr Dacey**—To answer the second part first, the main reason for shift in emphasis is that the previous system of provisional enrolment really was not working. It was very much dependent on the AEC getting formal advice from the department of immigration that in fact citizenship had been conferred. We could not put people on the roll as non-provisionals or permanent enrollees until we had that advice. Because of the immigration system and Immigration centrally having to get information from all citizenship ceremonies, that could take up to three or sometimes five months. That would have meant for the last election, for instance, that all those people whose ceremonies were on Australia Day would not have been on the roll for the close of rolls because we would have had to await the formal advice from Immigration. It was not working.

People were assuming once they became provisional enrollees and attended the citizenship ceremony they were on the roll whereas in fact they were not. So in partnership with the department of immigration we commenced the new procedures on Australia Day this year.

**Mr GRIFFIN**—On that matter, can I suggest another thing that needs to occur? Basically, there needs to be an education campaign of councils and shires with regard to what is required in those circumstances.

**Mr Dacey**—It is happening slowly, but we are quite encouraged by the reaction we have been getting more recently from shires and councils and their support for the changes to procedures.

**Mr GRIFFIN**—The capacity for smaller ceremonies to be done properly in that way is very clear if you are in that circumstance. The problem with the bigger ceremonies is the number of people going through. Even the current system as it stands with the adjustment is a vast improvement on what it was but, from my experience and from what I have seen, it still has a way to go.



**Mr Gray**—Just on that particular matter, you indicated that the smaller groups miss out. In fact we do seek to service groups of 10 or more.

**Mr Dacey**—It is 10 or more that we seek to service—that is, with the AEC actually having officers there. But with groups of 10 or under, the procedure with the department of immigration and also the local councils is that enrolment forms still go out with the citizenship certificates. So they still have an enrolment form; it is just that in most cases for the smaller ones there is not an officer from our organisation there to encourage and collect. But with educating the councils we hope the council will take a more active role.

**CHAIR**—So that is happening now to some extent?

**Mr Dacey**—It certainly is.

**Senator MINCHIN**—Who witnesses the enrolment in those cases?

**Mr Dacey**—It is usually someone who is with the elector. They usually have family or more than one from the family is receiving citizenship.

**Mr GRIFFIN**—Or AEC officers.

**Mr Dacey**—Or an AEC officer can, if they are prepared to. But quite often it is the family and/or a friend of an elector.

**Mr LAURIE FERGUSON**—In my electorate there are three councils. The process is that they tell them actually during the ceremony to witness the person next to them.

**Mr GRIFFIN**—Just on enrolment, you say that the growth has been 2.7 per cent. Do you have any figures from the Australian Bureau of Statistics on the growth one would expect on the number of people coming in the 18-year category and the number of people who gain citizenship, et cetera? I am wondering whether we are keeping pace. I know that my electorate is abnormal, but the number of people not on the roll who come into the office is surprising, although they are mainly NESB new arrivals. Have we done any statistical work on what it should be growing by?

**Mr Dacey**—No, we have not at the moment but we can certainly talk to ABS and look at some figures.

**CHAIR**—You talk in your submission about changing names on rolls, a lot of which is females becoming married and changing their surnames, et cetera. It states:

Electors have every right to change their names and have their new names registered on the Commonwealth Electoral Roll if they can establish that the new name has been accepted in the

community.

Why does it need to be accepted in the community? Someone could be living the life of a semi-hermit and want to change their name.

**Dr Bell**—The underlying philosophy is the same as that used by state registrars of birth, deaths and marriages when they are looking at name changes in that the use of the name is to identify the individual. The published roll is to enable the public to satisfy themselves that people are entitled to be enrolled where they are. If they are enrolled under a name which is not that which is commonly used, then you do not achieve that end. Obviously, there are lots of gradations as well as difficulties in it, but that is the broad philosophy underlying it.

**CHAIR**—You are having increasing problems with these funny names being enrolled, and one of your recommendations is that you have a review of this. How would that actually work? I can see that in some places it would be very clear cut but in other cases on the margin it could be difficult to make a decision.

**Dr Bell**—Do you mean like an AAT review?

**Mr Gray**—That is part of the review.

**Dr Bell**—There is simply no provision in the act for any review of the divisional returning officer's decision in respect of a name change, although there is in many other areas. It is just generally administratively appropriate that, when an official like that makes a decision, there should be an opportunity for a person to contest it in a competent forum—for example, if he thinks the official has got the facts wrong or has applied the law wrongly, without having to go straight into court under the ADJR act. The sorts of grounds could be mistake, misunderstanding of the law or overlooking relevant evidence.

The problem we are encountering now, which led to the some of the AAT proceedings at the time of the last election or just before it, is not any inherent problem with a person changing their name even to something which you might think was outlandish, and that happens from time to time. Simply, the issue was: was that really the name by which the person was known? If he had come in and said, 'I am changing it from Smith to Brown' or 'from Bloggs to Jones' or something like that, that would not ordinarily raise questions in the divisional returning officer's mind. But where a person comes along two days before nominations close with something quite unusual and politically related, it just raises the question as to whether this is genuine or not.

**Mr Gray**—What is being suggested is in fact the provision of a degree of equity here where the divisional returning officer, for example, chooses not to accept the name change so that there is a process of review. That is not available under the legislation at the moment.

**CHAIR**—The other question relates to the Norfolk Island enrollees. They may only enrol in the division of Canberra at this point, which seems to include the division of Namadgi with the redistribution?

**Mr Dacey**—No, the case is that by default it is the division of Canberra, but the Norfolk Island enrollees can enrol in a division of their choice.

**Senator MINCHIN**—A choice in the ACT or anywhere in Australia?

**Mr Dacey**—No, anywhere in Australia.

**Mr Gray**—The suggestion is that that be constrained.

**Senator MINCHIN**—What do Norfolk Islanders want?

**Mr Dacey**—We are suggesting that we liaise and communicate with territories as well. We would need to seek the views of the people from Norfolk Island. We indicate that, given that 90-odd of the 120 or whatever we have are enrolled for Canberra, one could make the assumption that the majority do want that enrolment. But it still needs to be negotiated.

**CHAIR**—The reason you make that recommendation is to maximise their voting power in the federal parliament. I did not find that reason overly convincing. If someone living on Norfolk Island now—they may have come from another electorate, had an attachment to that electorate or had relatives living there—is suddenly forced to enrol in Canberra, which most of the time, if I may say so, is a fairly safe seat, it just seems a bit heavy-handed to me. Do you have any thoughts in this regard?

**Mr GRIFFIN**—Isn't Norfolk Island part of the Canberra seat, though, in terms of its boundaries?

**Mr Dacey**—No, it is not. Lord Howe Island is part of the division of Sydney. This debate occurred back in the early 1990s, I think, when these provisions were inserted. As we are suggesting, the whole issue needs to be raised again and talked through. I am sure the department will also want to talk to the Norfolk Islanders.

**Senator MINCHIN**—Why does it need to be raised again? What is wrong if 20-odd people want to be enrolled somewhere else? What policy problem is raised by that? I do not quite see it.

**Mr Dacey**—The policy issue that we have is that the Norfolk Islanders do wish to maximise their vote as a group.

**Dr Bell**—I think this came up and was initially proposed in 1992. At that time

there were some quite complicated politics on Norfolk Island, with perhaps some tax-related issues underlying them, as to whether they wanted this to happen in any way at all. There were arguments, the accuracy or correctness of which I cannot judge, as to whether it was better to be in there as a lump or to be so dispersed that you could not be said to really have representation. A very strange logic went through it, but that may have changed.

**Mr LAURIE FERGUSON**—Decisions were delayed because of this supposed consultation with the department. That seems to be quite some time ago. We are now saying that we will basically find out where they are up to. Hasn't there been any liaison in that period? I am just wondering whether you have had anything back from the department as to what is going on.

**Mr Dacey**—I have just been advised that the department, actually at its request, has said that it would wait to look at the deliberations of this committee on the issue and, in fact, may wish to appear before the committee. I certainly have not seen a submission.

**Mr Gray**—They have not responded to us because they want to have a view expressed here, and I think that is fine.

**Senator MINCHIN**—If they want to maximise their voting power then they have that choice. At the moment they can all enrol in Canberra—if they want to; if that is their desire—to maximise their voting influence. So I cannot really see the need for a change to that.

**Mr Gray**—I merely make the point that it is a debate that has run before committees which I think you have been a part of, so you are aware of the discussion behind it, and it was recommended. They were going to proceed with it. It was deferred because it was felt that there should be further discussion with the relevant department. That department has now said it would like to talk with you and, indeed, see the results of your deliberations and participate in that process. I think that is where it stands at the moment.

**Senator MINCHIN**—I think we would like to know where you are coming from. Are you responding to what you believe is their desire to maximise representation or is there some reason you independently think it would be better if all the Norfolk Islanders were all required to be in one electorate for some particular reason?

**Mr Gray**—I am not going to just off the top of my head try to, in a sense, provide you with a view at this moment because I think that there are issues which need to be made known to the committee, which will then inform its deliberations. I will provide a supplementary submission on that specific issue with as much detail as we can dredge up.

**CHAIR**—Could I suggest that you also address the general principle? Cocos and

Christmas Islands are attached to the Northern Territory, and I think that is highly logical. But Lord Howe Island has traditionally been connected with Sydney, and I do not totally see the logic of that. You could argue perhaps that it should be the closest electorate geographically, which may be a central coast one. I do not know off the top of my head what the situation is with other islands, whether people live permanently on Macquarie Island, for example.

**Senator MINCHIN**—Kangaroo Island is part of Barker.

**Mr Gray**—We will address that in our supplementary submission.

**Mr LAURIE FERGUSON**—I was not here in 1993 when it was seemingly discussed. When you look at the figures actually on the roll at the moment, it is basically peanuts with 133 electors. Are there far greater numbers that are not enrolled? Is that the essential problem? Ninety-two out of 133 are already on there, so it would not seem to matter very much, quite frankly. Are there large numbers who are not enrolled or something?

**Mr Dacey**—It is not compulsory for Norfolk Islanders to actually enrol in Australia.

**Mr LAURIE FERGUSON**—How many are we talking about in the population?

**Mr Dacey**—There are about 1,000 to 1,200 locals.

**Mr LAURIE FERGUSON**—That includes people under 18?

**Mr Dacey**—Yes. Certainly, there was no compulsion. Part of the previous debate on the process was whether to make it compulsory or not. There is no compulsion on Norfolk Islanders to enrol for Australian elections.

**Senator MINCHIN**—Once they enrol, are they required to vote?

**Mr Dacey**—Yes.

**CHAIR**—When you come back to us on this, it would be interesting to see if you have figures for other islands too.

**Mr Gray**—You would like to us to deal with all of those territories?

**CHAIR**—Yes, please.

**Mr LAURIE FERGUSON**—And maybe the history of Lord Howe Island going into Sydney and what that was about.

**Mr Dacey**—It is a very long history. It may be administrative more than just the AEC. There may be a lot of other purposes, but certainly we can have a look at it.

**CHAIR**—Turning to eligible overseas voters, we have this problem of the Pococks that has been raised. You have had somewhat of a training program with consular staff. But what about other areas of the community? There are Australian citizens who are not connected with embassies and high commissions and who are just working overseas generally with Australian companies, non-Australian companies and so on. What sort of attempt, if any, is being and can be made to inform them of their rights? The reason I ask this is that I guess most people going overseas are not even aware of what the situation is.

**Mr Gray**—I am not sure that is necessarily the case, but Trevor will just give you the information that we have.

**Mr Willson**—There is no organised attempt on behalf of the commission to try to reach people overseas. Clearly, that would be quite a challenge. In our public information pamphlet series, we have one pamphlet that deals with what happens if you go overseas. It looks at the various options for overseas postal voting or for registering as an eligible overseas elector.

We have much closer liaison with members of the defence forces because there are larger groups of people. We have contact officers in those departments that we work with closely in the election period to assist them in providing the service, and they assist us in providing the service. But in terms of individuals, it is very difficult. We have a large number of people who ring us as individuals before they head off overseas to ask what happens. They are the people that we provide the information to by sending them the pamphlet.

**CHAIR**—Do we have any numbers on those who are overseas for substantive periods of time?

**Mr Dacey**—Not that I am aware of.

**Mr Willson**—No, we do not.

**CHAIR**—And approximately what percentage of those vote? Presumably, it is a lot less than the 96 per cent who vote on the mainland here.

**Mr Willson**—I would expect so.

**Mr Dacey**—During the election period we actually significantly increase our awareness campaign for electors overseas. We put information out through all travel agents in Australia and also through the passport offices, so that people going overseas during the election period are advised of their rights and responsibilities in terms of voting

and where voting overseas can take place.

**Mr Willson**—We also have set up pre-poll voting centres at major international airports in Australia. But they are clearly aimed at gathering the short-term people rather than the long-term, which are the ones that would be gathered under this heading.

**CHAIR**—Just so that we are clear on this, can you give us a quick run through what you have to do if you are going to be overseas for a period of time? Can you register both before and after you go?

**Mr Dacey**—That is correct.

**CHAIR**—What are the cut-offs?

**Mr Dacey**—If you are going overseas and intend to return to the address in Australia from which you left, you do not need to register as an overseas elector. You can inform your divisional returning officer, and they will notate the roll accordingly that you intend to return. If you intend to return either to an unknown address or to another address when you return or perhaps you may not know where you are going to return to, you can apply to become an eligible overseas elector. That can be done prior to your departure. More recently, through legislative amendment, it can also be done within 12 months of actually arriving overseas. So you can have that status as an overseas eligible elector, which is a special elector category.

So there are two categories: first, if you intend to return to the address for which you are on the roll, you do not need to formally become an eligible overseas elector, which is a notation; and, second, if you do not have a fixed intention to return to that address, then you need to apply to be a special category elector as an eligible overseas elector.

**CHAIR**—What is the rationale for having the 12-month cut-off period? A lot of people would go overseas for a year and then suddenly find themselves staying on for two or three years.

**Mr Dacey**—In fact, before the amendments, once you left Australia you could not enrol. You had to make that enrolment approach before you left. The amendment now gives people the flexibility to be able to apply for that status within the first 12 months they are overseas.

**CHAIR**—Do you think it should be extended to two or three years—or indefinitely for that matter?

**Mr Gray**—It flowed, as I understand it, from a recommendation of the joint standing committee, which was followed, endorsed and effectively put into legislation.

From our point of view, I think 12 months is appropriate. I do not think we have anything to add in relation to the discussion that took place and led to that recommendation which was, as I understand it, for a period of 12 months.

**Senator MINCHIN**—Is it an honesty system when they say that they have left within 12 months? You do not verify that at all?

**Mr Dacey**—No, it is an honesty system.

**Senator MINCHIN**—The criterion really is that they express an intention to return.

**Mr Dacey**—Yes.

**Mr LAURIE FERGUSON**—Is there a maximum period of absence for those who say they are going to return to the original address?

**Mr Dacey**—There is a maximum period of three years for this overseas eligible elector status, but it can be extended on return to Australia. An elector can apply for extensions if their circumstances change.

**Senator MINCHIN**—What is the criteria for that?

**Mr Dacey**—Their posting may have been extended or their holiday may have been—

**Senator MINCHIN**—No, in terms of the commission applying criteria as to whether you accept that.

**Mr Dacey**—We accept on face value what the elector says.

**Senator MINCHIN**—If they say that they are still overseas but do intend to return?

**Mr Dacey**—Yes.

**Senator MINCHIN**—Do you understand it to be a common practice internationally that most countries follow? This is an interesting issue and with so many more people working overseas it is going to become more and more of an issue. I am just wondering what the international practice is.

**Mr Dacey**—I am not sure. We can look into it and get some examples for you. I think we are fairly unique with our overseas voting in comparison with a lot of other countries in terms of the facilities that we provide.



**Mr GRIFFIN**—I think the Greeks and Italians can vote whenever. You can live in another country for 20 or 30 years and still be eligible to vote—

**Mr LAURIE FERGUSON**—A lot of countries, such as Malta and the Cook Islands, are like that.

**CHAIR**—On average, how many complaints do you get from overseas people who say they cannot vote and who felt they should have been able to?

**Mr Gray**—Mr Pocock clearly is one.

**Mr Dacey**—Probably half a dozen—not very many.

**Mr Gray**—It is not a large number.

**Mr Dacey**—In the main, people understand that if they are not close to an Australian mission or embassy or if they are out of postal voting range from that mission or embassy or from back to Australia then they just cannot vote if that facility is not available, particularly if they are in remote areas. People are very understanding. So the number of complaints is very few.

**Senator MINCHIN**—While we are on that, can we touch on the Mundingburra situation and the voting of soldiers? Could you summarise exactly what you are suggesting is the way in which we should seek to prevent such an occurrence federally? I think you also said that you would not want to prevent the Court of Disputed Returns being able to order a new election on the basis of a Mundingburra situation federally.

**Mr Maley**—The issue that arose in Mundingburra was that there was apparently a statutory requirement in the Queensland legislation for postal ballot papers to be posted to certain electors.

**Senator MINCHIN**—Interpreted as meaning Australia Post or something?

**Mr Maley**—That's right. In the case of Mundingburra, because it was known that the postal service in Rwanda was non-existent, the Queensland commission attempted to put in place what should have been a more effective service to try to ensure that the electors got their votes. There were problems with that service which meant that some of those electors were not able to vote, the up-shot of which was that the election was overturned in the Court of Disputed Returns.

The concern is that if that situation were to prevail at the federal level there would be great pressure on the administration simply to drop the envelopes in the post box, knowing that they would not possibly reach the soldiers. There would be a disincentive to adopt procedures which would have some chance of enfranchising the people. The concern

is that there not be a disincentive to adopting procedures which would ensure that the voters were properly enfranchised. That is the basis for our recommendation: there should be no practical problem associated in those circumstances where Australia Post can say that the mail service is not working in another country by adopting another mechanism. In fact, that mechanism should be deemed to have been a fulfilment of the requirements of the act.

**Senator MINCHIN**—That is not currently the case federally? Are you saying that the federal situation is the same as Queensland, that they have to be posted?

**Mr Maley**—Yes. There is no specific provision in the federal act for complying with the requirement to get postal votes to electors other than by using the normal post. This is increasingly unrealistic in situations where we have had people in places like Cambodia, Somalia and Rwanda.

**Senator MINCHIN**—So the Mundingburra situation could occur if a group of soldiers did not get postal votes? What do you normally do?

**Mr Maley**—We try to work cooperatively with the defence force, which would have mechanisms in place for the expeditious transmission of mail. In these sorts of war situations, things can go wrong and it may not be associated with anything that is predictable. You may have airports closed and so on. We think it would be most unfortunate if good faith attempts to ensure that people get their votes in really extreme circumstances could then result in an election being overturned where the problem was really not of anyone's making.

**CHAIR**—Under difficult geographic situations, what sort of minimum time do you like to have? Is it four or five weeks? Is that sufficient?

**Mr Maley**—It is not something I can express a view on. I think the circumstances vary so much from case to case, particularly in peacekeeping situations. One usually has to work in with whatever logistical arrangements are on the ground. Usually one would expect that it would be feasible because in those sorts of missions there is an ongoing requirement for resupply of logistics for troops on the ground. Circumstances can arise when airports are closed. Sarajevo airport is still not functioning as a commercial airport, for example.

**Senator MINCHIN**—It is also a good reason not to shorten the election cycle.

**Mr Gray**—I was about to say that if you've got only 33 days in which to actually do all of this, then you have got yourself a difficulty. When you say it is only geographic, it is also timing. The extent to which the electoral period goes beyond 33 days clearly would assist, but that is not usually the case.

**Mr Dacey**—With the 33 days as it currently stands, even getting to our 100 missions, which we have given details on, is very tight. These are places which are considered to be easily accessible.

**Senator MINCHIN**—You are not submitting that it should be longer, but what is there is the bare minimum, in a sense?

**Mr Dacey**—We are not submitting that at all. If I could just make a clarification on the eligible overseas elector status from discussions with Senator Minchin. For the special category status to be granted, the elector must already be on the roll. It is not a matter of applying to be enrolled from overseas. It is a matter of applying to have that status. So you must be already on the roll.

### **Short adjournment**

**Senator MINCHIN**—You mentioned that there were four petitions to the court. I was only aware of Lindsay and the Northern Territory.

**Mr Gray**—There are two others.

**Senator MINCHIN**—Do you have the details?

**Mr Dacey**—There is Snowdon and Dondas, and Free and Kelly, as you are aware. There is Abotto in Victoria where Mr John Abotto is challenging the Senate election for Victoria on the grounds of discrimination against ungrouped Senate candidates on the Senate ballot paper.

**Senator MINCHIN**—Because they are put down the end?

**Mr Dacey**—Yes. There is Stevenage vs Filing in WA. Mr Paul Stevenage, the Liberal candidate for the division of Moore, filed a petition with the CDR challenging the election of Mr Filing on various grounds including bribery, misleading advertising, interference with political liberty and defamation.

**Senator MINCHIN**—They are both listed? They have been accepted for hearing?

**Mr Dacey**—They are filed. That is as far as they have gone. There is no further progress in either of them.

**CHAIR**—We have no idea at this time when these cases are likely to be concluded?

**Mr Dacey**—Not those two, no.

**Mr Gray**—Nor, indeed, the others. It is in the hands of the court.

**Senator MINCHIN**—What is your status in those four actions? Are you respondents?

**Mr Gray**—Not in all. In the Snowdon petition we are second respondent. We are second respondent in Kelly. We are first respondent in Abotto, but we are not involved at all in Stevenage and Filing.

**Senator MINCHIN**—You made the comment when you started that it was, from your point of view, the most successful election you have conducted since 1984.

**Mr GRIFFIN**—It was the worst result, though.

**Senator MINCHIN**—We in the coalition would agree that it is certainly the most successful election, but our criteria might be different from yours. I am interested in your criteria for that.

**Mr Gray**—Indeed. I think it needs to be made clear. We are looking at our operational mechanisms and our administration. For example, information technology and the very complicated systems that keep our processes together worked extremely well on this occasion and did facilitate the conduct of the election in a way that we had not been able to do in 1993, for example, and before that. I think the general consensus was that the IT stayed up and facilitated our processes in a way that had not been previously achieved.

**Senator MINCHIN**—Do you mean election night?

**Mr Gray**—That's right, but it is not just election night. It is all of the applications which are effectively our electoral management systems—pre, during and post election. We have a very wide range of applications which assist our people in the very complex conduct of this process. That, as I say, stayed together and facilitated those processes in a way which was considered by all to be much more effective than it had in previous times.

Certainly communication of the results of the election to the community was done in a way which I think most people recognise as being extremely not only timely but also accurate. The applications there which underlie that particular process operated in a way which was highly successful and in a way which those expert in the area deemed to be more successful than it had been in past elections.

It is on that basis and for other administrative reasons within the organisation that we believe we can, from our perspective, say that it was the most successfully conducted election. We do not say, however, that it was necessarily the best election for individuals in our management area, the most comfortable or the least stressful. In fact, in order for it

to be the most successful, people have had to work with very high levels of stress. I do not deny that for a minute, but the reality is that people were able to rely upon the systems. They were able to rely upon the administrative organisation, which responded such that we conducted the election most successfully. As I say, that was the general consensus within our organisation.

**Senator MINCHIN**—We touched on this issue of enrolment in the period between calling and close of rolls. I think there are still a number of people around who think the rolls ought to be closed when the election is called. In that vein, can you remind me whether there is evidence that the level of enrolment in that period does change in a sense proportionately depending on whether the election is relatively early or whether it is on time?

This election was due and everybody expected it to be in February or March. By and large, there should have been wide community understanding of that, but you still get half a million turnover through there, which is huge and does put massive demands on your resources and, for those of us who are concerned about the integrity of the system, there is this problem of your absolute capacity to check any of that. I just wondered whether there is variation.

Also, I am interested in whether it is possible to undertake any sort of random survey of the 100,000 new enrolments, which you have admitted—we cannot criticise you for it—are unable to be verified in any way at all and have to be accepted at face value. Is there any way of going back and checking by some kind of random survey the extent to which there is enrolment that should not have occurred because they are not citizens, they are not eighteen or they have not resided there for a month? Is that possible or is it anything you have ever contemplated doing?

**Mr Gray**—I will make some general comment on some of the matters you have raised and then pass to those who are more experienced and expert in the area than I am. In relation to the late enrolments, it seems that, regardless of the effort we make in relation to advertising or indeed the targeting that we have for our advertising, there are those in the community who leave to the very last minute their obligation to enrol. When I asked the question of a person in a divisional office why they had left it so late they said, 'It is just like the bills. You don't pay them until you have to.' I think that is true of a very large proportion of the people out there in the community.

It is one of those things that they know they are going to have to do, but you do not do it because you saw an advertisement necessarily. You know your obligation is there and you leave it to the very last minute. A very large number of people do that. I do not think it is necessarily going to be mitigated by better advertising, advertising more often or seeking to persuade people in whatever way to meet that obligation earlier. I really do not think it is going to happen.

**Dr Muffet**—It is an interesting phenomenon. We had in Victoria a third of our enrolments in the last day. That was over six days and on the last day it was extremely hectic. That was a different pattern from the previous election where we probably would have had a quarter. We had 160,000 enrol in 1993 and this time 120,000. A third of those did it on the last day. It is just the way people behave. I agree with the commissioner: people are probably relaxed about compulsory voting. Sure, they will vote, but when they get around to getting on the roll is a different matter.

**CHAIR**—Is there any merit in bringing it forward on the logic that they will enrol at the last minute anyhow? That then gives you a little more leeway to check out the validity of some of the enrolments. Or do you think that would unfairly disenfranchise people?

**Mr Gray**—Are you in effect saying that you extend the period of the close of rolls, or shorten?

**CHAIR**—Shorten.

**Senator MINCHIN**—The option is cutting it off the day the election is called.

**CHAIR**—Or even halving the period that exists now after the election is called to give a few extra days to check these things out. My point is, if you did that to give greater time to check out the validity of the enrolments, would that unfairly disenfranchise anyone?

**Dr Muffet**—It would because people have an expectation, after many years, of having a week to enrol. If it were to be suddenly changed, it would not matter what you did in the press or how you advertised it, they would still have that expectation built in.

**Mr Dacey**—Without the figures in front of me, I would say that probably 60 per cent to 70 per cent, or perhaps even more, would have enrolled in the second half of that week. Even with an advertising campaign, if you picked up a significant number of them in three or four days that would certainly increase our administrative function. I do not know whether we could front up and say, 'Our system has performed flawlessly,' when we had to process that many enrolments in a much shorter period.

**CHAIR**—Put it another way, then. Of those who enrol late and do so fraudulently—if we have figures for this at all—do they differ in any way from those who enrol earlier on, which presumably would contain the odd fraudulent enrolment as well? Is there any difference?

**Senator MINCHIN**—You don't know whether they are fraudulent. That is why I am asking about the survey.

**Dr Bell**—We have done a whole series of studies over the past few years which have been made available to the predecessors of this committee. None has produced evidence of fraudulent enrolment of any significant amount—or at all, I think—including comparisons of marginal and secure divisions on both sides of the political divide. Sure, one could look at a random sample in principle. How big it would need to be to catch anything of significance is another matter.

On the matter of closing the rolls a little earlier, people would still enrol on the last day, by and large. At most, you would get very few days to do any sort of checking because there is enormous pressure to do the certified lists and get them out so people can start pre-poll voting and parties can start their processes and so on. There is a whole range of things there. I think the real answer to these concerns lies in a suggestion which is reflected in a number of submissions, which is getting more towards continuous roll updates so that you do not get this flood at the last minute—one is using data from all sorts of sources to try to maintain the rolls. There is a big public interest in that because they are used for local government elections, state elections and a range of other things. As you know, a lot of work is being done on that possibility at the moment. It may be that changing the nature of the process is the real answer to this.

**Dr Muffet**—As against fraudulent voting, after the roll is closed and up until polling day, and during polling day particularly, another 30,000 enrolled in Victoria. That is 30,000 over 120,000. A few days after polling day the Victorian state election was announced. In that week, of which we had about three days, we picked up another 20,000 enrolments. That is 50,000 within a month after the close of rolls. I guess what I am implying is that people are probably fairly casual about when and how they get on the roll. Then they might miss out and they come running in. If you were to shorten it to three days, say, then I do not know what consternation you might cause or otherwise. I do not know what pattern might develop.

**Mr LAURIE FERGUSON**—I asked earlier for a pattern over a year. Maybe the people who do have some doubts about this might question the Victorian figures, given the fact that there was the onset of an election. Could we get the enrolment figures for two or three months after the last federal election in the various states?

**Mr Willson**—It should be remembered, too, that of the 428,000 cards that were processed during that period only 100,000 were new enrolments. The others were changes of address. If those cards had not been processed, had not been received through an earlier close of rolls for example, then clearly we would be running a less accurate election in terms of where electors were voting for. If they voted in respect of their earlier address in a different division—

**Senator MINCHIN**—Well, they should not be voting. That is a question of onus. The onus is on them when they move to change their enrolment. If they do not, there is an argument that they should not be on there at all.

**Mr Willson**—But they would be able to vote for the address at which they were at that stage enrolled. The other point is the build-up of cards that Dr Muffet referred to on the last day for the close of rolls. For the last three elections we have had a Monday close of rolls. To some extent, although our offices are busy processing and open certain hours over the weekend, we may be pulling together enrolment activity for three crucial days and receiving them and trying to process them in that one day. So the statistics could be a little skewed because of that.

**Mr LAURIE FERGUSON**—Let us say people continue to have doubts about what is going on. Let us take Victoria where there was one-third enrolling in the last day. Are they on computer? Can you extract the people that enrolled that day?

**Mr Dacey**—Yes.

**Mr LAURIE FERGUSON**—What would be the ballpark cost of checking whether those people are still enrolled at those addresses?

**Mr Dacey**—You are looking at 40,000 people that enrolled on the last day. You effectively would need to review those residences somehow and it would be a fairly significant cost to see if those people are still at that address. Obviously some of those people may have changed address since and you will have records on that, but it would be a significant task to check those that appear on the roll still for that address.

**CHAIR**—That would be done, though, in the course of an electoral roll review in the next three years?

**Mr Dacey**—Yes.

**CHAIR**—It would be interesting, perhaps at the end of that time, to compare those 40,000 with the normal one.

**Dr Bell**—Some of that was done in relation to Gilmore. Senator Baume raised various issues at different times. We did careful studies of what came out of roll reviews before and after the previous election and also where people voted and things like that. Again, no evidence came out of any serious problem. In Macquarie there were concerns about people's eligibility to vote or about whether they really existed. Again, by putting in enough resources we were able to find people—it gets more costly as you try to screw the number down towards zero. By and large, it can be done.

**Mr GRIFFIN**—On page 22 of the submission at paragraph 4.3.4 there are some figures which refer in to the number of electors enrolled to vote in 1996, an increase of 306,223 persons or 2.7 per cent from the 1993 election. So it is an increase of less than one per cent per annum, effectively, given it is over a three-year period. If you like, that incorporates the 100,718 figure of first-time enrollees in terms of that, which is again less



than one per cent in an overall sense.

When you look at the number of new citizens in a 12-month period and when you look at, effectively, the three years worth of 18-year-olds over that period, it seems that we are not talking about anything extremely massive. If anything, I would have thought the figures ought to be higher.

**Mr Dacey**—What figures should be higher?

**Mr GRIFFIN**—The increase of 306,000 in the previous election when you work on the basis that normally a proportion of the population has passed on, if you like.

**Senator MINCHIN**—The population growth rate is only a bit over one per cent, so it is roughly comparable.

**CHAIR**—There was an increase in voter numbers of 600,000 between 1990 and 1993, and that halved between 1993 and 1996. It is a pretty significant drop.

**Mr GRIFFIN**—Hence, the inference that maybe something has gone wrong on this occasion is a bit hard to sustain.

**CHAIR**—Do you see that figure as being unremarkable?

**Mr Dacey**—It is a figure that we have commented on, but I do not have a reason for why there was that huge increase from 1990 to 1993. But, as I said earlier, it may well have to do with the timing of electoral roll reviews and the timing of objection action that is taken in relation to the calling of the election.

**CHAIR**—So you are saying that figure was abnormally high?

**Mr Dacey**—I cannot say that.

**Mr Gray**—It is a possibility.

**Mr Dacey**—It is a possibility, but it could certainly have to do with the timing of objection action.

**Mr Gray**—Certainly there is a view amongst a number of the states at the operational level that the habitation reviews that were conducted during the last couple of years were particularly successful. It may be a reason but we will not say that it is the only reason. We have been drawn to speculate on it as well, but we have no better answer.

**Mr Dacey**—In the timing of objection action it is often difficult because once an election is called or a writ has been issued those objections cannot mature and you cannot

take electors from the roll. That could have been the case in some circumstances in 1993. There could have been lists of people ready to be objected to on the basis of their being non-residents but the election was called before they in fact could be taken from the roll, which would give you inflated 1990 to 1993 figures.

**Mr Maley**—When one looks at the transfer figures from the recent roll close one is looking at the order of 300,000 transfers, which is on average 2,000 transfers per division. These represent individuals who have moved on the ground but have not updated their enrolment. So if a regime were adopted under which the rolls were closed almost instantly on the announcement of the election thereby depriving them of the opportunity to put those transfer transactions through, one is left with two situations.

Firstly, you have people in one place possibly trying to vote against a certified list for a place where they are no longer resident, which is feasible. Secondly, you have situations where people are still on the roll for a division but are known to have moved. That is the classic case of deadwood being on the rolls. Therefore, I think it needs to be recognised that the capacity for these sorts of transfers to be processed has a major roll cleansing effect and enhances the integrity of the rolls.

In making a policy assessment as to whether it is desirable to close the roll on announcement, the question really is whether there is a belief that the number of potential fraudulent enrolments which might go through, of which we have no evidence on the basis of the surveys we have done, will be outweighed by the detriment of having deadwood retained on the rolls because these transfers have not been able to be processed.

**Senator MINCHIN**—Of course, you could allow changes of address but not new enrolments after the calling of the election.

**Dr Bell**—We are talking about 2,000 for the division. If my arithmetic is right, that is only about three per cent, which is not a lot of people leaving their change of address to the last week.

**Mr GRIFFIN**—On the new enrolment situation, you are talking about, say, 100,000 people, which is well under 1,000 per division—in fact, it is closer to 700 or 750. When you look at the question of 18-year-olds, new citizens, et cetera, again it is a drop in the ocean.

**Mr Dacey**—It does not seem a remarkably high figure.

**Mr Maley**—Another question which might arise in that context is the classic case of when the roll was closed on announcement, or virtually one day after announcement, of the 1983 election. That election was called prematurely so there is a question of equity as to whether in circumstances when an election is called unexpectedly voters may not really have been able to anticipate that the time was coming and get on the roll.

**Senator MINCHIN**—The obligation is on the citizen to enrol when they became a citizen and turned 18 and to notify a change of address when that occurs. In a sense, you are allowing them to get away with not complying with the law. There are arguments on both sides.

**Dr Bell**—Again, they have to have moved for a month and then they have a month in which to tell you. When 20 per cent a year are moving—two per cent a month—you should expect figures of this order.

**Senator MINCHIN**—I am really pointing to a legitimate distinction between those who move and those who enrol new. I just think there is a fundamental problem with the fact that you cannot conduct any kind of scrutiny of all the new enrollees. We just do not know.

**Mr Dacey**—Particularly in that period, as Dr Bell pointed out before, if the current timetable of 33 days minimum is maintained, anything later than two weeks after the issue of writ is getting too late for us to produce certified lists to get to polling places in time. So you really have a limited time and with our staff doing all sorts of other things time is not available to do any sorts of checks.

**Mr Gray**—You say it would be preferable if you could do such checks. From our side, we would say that during the time that is given and the resources we have available it is quite impossible.

**Senator MINCHIN**—I accept that you cannot possibly do them. That begs the question of whether new enrollees should be able to come on after the election is called.

**CHAIR**—On a related point of enrolling in subdivisions, which some are still advocating, have you had a chance to see Dr Amy McGrath's submission? She sent us a supplementary one, which you just received today, where she claims it is illegal to disregard references to subdivisions in the act. Does her claim have merit or not?

**Senator MINCHIN**—I was going to suggest that the commission respond specifically to what Dr McGrath is saying on this subject rather than just responding now, unless you have a full response now. I would not mind a specific response to her submissions on this issue of subdivisions, including the pros and cons of subdivisions.

**Mr Gray**—As I indicated, we are preparing a supplementary submission which will go to the issues raised by other people who have made submissions to your committee. We are aware of the submission made by Dr McGrath. Clearly, we take a view which does not accord with some of the propositions that are put forward by Dr McGrath.

If you wanted some preliminary indication of some of our views, I am willing to

make those available to you, but I merely indicate that these would be preliminary and general views and that they are to be supplemented, as I say, with submissions to you which will go to the detail of what she has raised. So, if you want some general comment or initial comment made in respect of those matters we are happy to do so, but we are giving further attention to those matters and the supplementaries that she will be putting to you.

**CHAIR**—Without taking up much time on it, I would be interested in your general overview thoughts on it.

**Mr Maley**—I would like to address the specific allegation made in the submission that the AEC adopted an unauthorised and illegal policy in relation to subdivisions. The claim is incorrect. Prior to the amendments made to the Commonwealth Electoral Act in 1918 by the Commonwealth Electoral Legislation Amendment Act 1983, there was indeed a provision in the act, subsection 26(1), which said that ‘each division shall be divided into subdivisions and the boundaries of each subdivision shall be as specified by proclamation’. That provision was, however, repealed in the 1983 amendments and replaced with a provision which reads as follows:

. . . the Electoral Commission may, by notice published in the *Gazette*:

- (a) divide a Division into such Subdivisions (if any) as are specified and set out the boundaries of each Subdivision so specified; and
- (b) divide the Northern Territory into such Districts as are specified and set out the boundaries of each District so specified.

In our view, the words ‘if any’ in the paragraph that I just quoted make it clear beyond any doubt that the 1983 amendments removed any general legal obligation for divisions to be subdivided, and that is supported also by the fact that the 1983 amendments inserted in the act a new subsection 4(4), which provides that:

Where a Division is not divided into Subdivisions, a reference in this Act to a Subdivision shall, in relation to that Division, be read as a reference to that Division.

Subsection 82(2) of the act, which Dr McGrath quotes in her submission, does not require the continued existence of subdivisions. Its effect is only to require that there be subdivisional rolls for subdivided divisions. So we believe that there has been a misreading of the act.

**CHAIR**—Such as exists in the Northern Territory?

**Mr Maley**—Yes.

**Mr Gray**—We will, as I say, go into further detail. It is more appropriate that we go to that detail and address each and every one of those matters Dr McGrath has put to the committee. Clearly, she makes what we would see as very serious allegations where it

is alleged that we have operated illegally. We would wish to dispel that particular proposition very directly and in such detail as would be of comfort to this committee.

**Senator MINCHIN**—It would be good if that response did canvass or remind us of the arguments for and against subdivisions. The main argument is the extent to which subdivisions can reduce the extent of multiple voting. But, as you have always argued, you do scans which identify them. On the other hand, to the extent that there is multiple voting where the voter just says, 'It wasn't me. Somebody else did it,' you are not really in a position to pursue that. So I think there is still an argument for subdivisions.

Can you just tell us the background of this story in the *Australian* on 11 July about the police investigating multiple voting in New South Wales and interviewing 55 people? The article is entitled 'Police act on multiple voting allegations'.

**Mr Gray**—Yes, there was a press release on that.

**Mr Dacey**—It is just a normal AFP inquiry that is undertaken when we have any reason to believe that there may have been instances of multiple marks which led to the possibility of multiple voting. We certainly show by instigating those inquiries that we take the issue seriously and we refer matters like that to the AFP, as you are aware.

**Senator MINCHIN**—Does this submission say how many multiple votes there were this time and how many were referred? Does it give the statistics?

**Mr Dacey**—We will be coming forward with those. We will be able to give the committee some preliminary ideas.

**Dr Bell**—We recently asked the AFP for an update on the state of their investigations, and we are waiting on them.

**Mr GRIFFIN**—If you went to subdivisions and the requirement was that you were registered for enrolment at the subdivision you lived in, would that be the case? Wouldn't you have a hell of a time in terms of enrolment changes multiplied by five, I suppose, or something like that?

**Mr Gray**—The fact of the matter is that people are mobile within the country. We have a highly mobile population. 'Subdivision' means that you would be effectively amending your enrolment more often than would otherwise be the case. There is no question about that, and that of course provides an administrative load to this organisation of a kind that I am not sure that we would quickly welcome.

We find it a sufficient challenge to keep up with the changes as they are. Without making any political comment, it takes resources to do things and to respond to the demands that might be made of us by parliament, and that would be one factor in looking

at it. But Mr Maley might have a further comment on the detail that Mr Griffin has put to us.

**Mr Maley**—Coming back to the issue of subdivisions as they existed in the early 1980s, the point has to be made that as at the 1983 election, which was before the legislative changes I mentioned earlier, the sizes of subdivisions had increased very substantially. In fact, 85 per cent of people were enrolled in subdivisions of a size greater than 5,000 and 43 per cent of people were enrolled in subdivisions of a size greater than 10,000. It becomes clear if one looks at the submissions from a number of the people advocating the return of subdivisions that they have a concept of what would be subdivisional voting which is very different from that which applied before 1980.

**Mr GRIFFIN**—They appear to see it as a CCD size.

**Mr Maley**—Of that order of magnitude. One of the reasons within the electoral administration for an inclination to move away from subdivisions in the 1980s—as I mentioned earlier, this was done with the authority of the parliament—was simply that they had ceased to be of any value for the sorts of purposes their advocates now contemplate because they had become so large. This was a very long-term historical trend going back well before the time most of us were voting.

**Senator MINCHIN**—Was that by regulation?

**Mr Maley**—It used to be done by proclamation. Over a long period of time, subdivisions had blown out to the point where people were enrolled in such large units that the possible benefits of limiting them to voting in groups of 5,000 or 10,000 were disproportionate to the possibility of scrutiny. We were thereby significantly disadvantaged in being able to identify likely impersonational multiple voting.

**Mr Dacey**—It is fairly obvious from reading some of the submissions, and also from what some of the advocates who have returned to subdivisional voting are saying, that there is confusion between the old subdivisional voting, pre-1984, and precinct voting.

**Senator MINCHIN**—What they are really advocating is precinct voting?

**Mr Dacey**—They are quite different given the size, as Michael has quoted, of the pre-1984 subdivision.

**CHAIR**—Can you give us a quick summary of the difficulties you are running into in the Northern Territory now with subdivisions?

**Mr Gray**—It is an issue which is now the subject of a petition. Whilst I do not wish to prevent anyone here from providing you with some response in relation to that, the difficulties have arisen more as a consequence of a perception that people who are

seen by some to have an entitlement to vote were not admitted to the scrutiny. That is questioned.

I do not know that it is appropriate to go into too much detail on the issue given that it is now before the courts. Our supplementary submissions to you will, nevertheless, provide you with the detail arising from those petitions. Perhaps it is more appropriate that we pick up those matters then.

**Mr GRIFFIN**—Although it is probably worse in the Northern Territory than elsewhere, I can give an example of what a variation on subdivisional precinct voting would actually lead to.

**Mr LAURIE FERGUSON**—Just on the people voting twice—or claims of it—what was the ballpark figure nationally?

**Mr Dacey**—We will provide the committee with final figures. These are the figures that I have here at this stage. Nationally there were 727 cases where electors admitted to voting more than once. Of those, 659 were explained by such factors as ignorance of electoral procedures, language problems or problems of the aged. So far, 68 cases have been referred to the Australian Federal Police for investigation. Of these, two have since been referred on to the DPP.

**Mr LAURIE FERGUSON**—That is admission.

**Senator MINCHIN**—How many were identified?

**Mr Dacey**—From our scanning, which is not identified multiple voters but multiple marks, we sent out 13,000 letters asking people to please explain.

**Mr LAURIE FERGUSON**—Can we have figures later on, given the theory about why we have subdivisions in the Northern Territory and Kalgoorlie, of seats around Australia to see if there is any distinct pattern?

**Mr Dacey**—They can be provided by division, yes.

**Senator MINCHIN**—Can that give us an indication of where multiple voting is more than twice? Do you break it down into where people have six votes, for example?

**Mr Dacey**—We can do it by number of marks. In fact, of those cases that we referred to in New South Wales of 55 going to the AFP, I think the AFP accepted 20 for investigation because there were four or more marks.

**Senator MINCHIN**—That was the criteria?

**Mr LAURIE FERGUSON**—In your submission you refer to the exclusion due to official errors of multiple votes. Can we find out how you conclude that—at an early stage, I should note? I would like to know what they are and how that is so easily determined.

**Mr Dacey**—We can provide detailed information on that to the committee.

**CHAIR**—How did the figures end up for 1993 with multiple voting?

**Mr Dacey**—We have provided them to the committee before. I do not have them with me.

**CHAIR**—As far as the final figure for absolute proof at the end—

**Mr Dacey**—I do not have those figures with me, but we can provide them to the committee.

**Senator MINCHIN**—A lot deny it, don't they? Many may not have voted more than once. Someone may have voted in their name or it was a polling booth error.

**CHAIR**—Was anyone gaoled for multiple voting from the 1993 election?

**Mr Dacey**—No-one was gaoled that I am aware of. There were certainly prosecutions, but I am not aware of anyone being gaoled. In 1990 there was a prosecution, not 1993.

**CHAIR**—Not in 1993.

**Dr Bell**—Without looking up the act on that, we have previously raised the issue of having the word 'wilful' in there, which makes it very difficult to prosecute people unless they admit or in the rare event there is some other observation. The parliament decided to retain that word in there and this is, in part, a consequence of that.

**Senator MINCHIN**—Have you previously submitted?

**Mr Dacey**—We have previously submitted to get rid of the word 'wilful'.

**Senator MINCHIN**—I think it would be useful to have that proposition formally submitted to us again.

**Dr Bell**—This is one reason the police find them very difficult to investigate. A number of us have had lengthy discussions with the police recently about prosecution policy, investigation policy and things like that. They have been persuaded that things that might look at first blush like a misdemeanour really have some democratic consequences.



They have agreed with us to apply some priorities and resources to it.

**Senator MINCHIN**—Good.

**CHAIR**—If everybody is finished with that subject, I will turn to the nominations of candidates as opposed to voters enrolling at the last minute. You raised the point that there were 1,163 candidates at the last election, and a significant number of those chose to enrol at the last minute, so to speak. Do we have any figures on how many there were that nominated in the last day and in the last hour?

**Mr Dacey**—We can provide those figures. We do not have them with us.

**CHAIR**—You asked for a period of 24 hours to check those out?

**Mr Dacey**—That is correct.

**CHAIR**—There was a recommendation put to parliament, which was not passed, that nominations close at 12?

**Mr Dacey**—The AEC's position post the 1993 election was that we reduce the nomination period from the current minimum of 11 to 10, which is only cutting one day off, and then declaring the nominations 24 hours later. That certainly gives us the time to perform all the administrative and checking functions that should be performed. I am not saying they are not performed, but at least they could be performed in a more relaxed way without the pressure of conducting the draw immediately. It would also give us time to seek any legal advice that we need to in terms of the nomination process.

**CHAIR**—The situation now is that, if someone nominates at the last minute, technically you have no time at all to check—

**Mr Dacey**—We have to conduct the draw as soon as practicable after the close. There is pressure from the candidates and media once it gets to 12.30 or 1 o'clock as to why we have not declared the nominations for the ballot paper and conducted the draw. It certainly does put pressure on us to make decisions on what could be doubtful nominations or nominations that may be in error in some way.

**Senator MINCHIN**—Having done the draw and subsequently finding that someone is ineligible to nominate, can you delete them?

**Mr Dacey**—Once nominations are declared, those candidates stand.

**Senator MINCHIN**—Even if someone subsequently finds an error before polling date?

**Mr Dacey**—Yes.

**Senator MINCHIN**—We agreed with your recommendation last time, and I still support it. I cannot recall the then government's argument against it. What was the argument against it?

**Mr Dacey**—They are suggesting that there was a gap of five hours until 5 p.m.

**Mr Gray**—Rather than the 24-hour period.

**CHAIR**—With closure at noon, that would give five hours. Is five hours sufficient?

**Mr Dacey**—We argued that, whilst it may be sufficient, administratively it creates difficulties for us—particularly in Mr Willson's area—where you need to get the list of nominations out that night to the media. It just would not be achieved to get into the national press the next day, and all parties would not have access to the full list of candidates.

**Mr GRIFFIN**—Have you had an occasion of a nomination being accepted and subsequently found to be ineligible? You probably have not conducted the checks, have you, because you know you cannot delete anyone?

**Dr Bell**—They have gone to the High Court first.

**Mr GRIFFIN**—I do not think 24 hours would fix those ones.

**Mr LAURIE FERGUSON**—Is it possible that you do not bother checking?

**Mr Dacey**—We have a requirement to check under the law.

**Mr Gray**—There is a check.

**Mr LAURIE FERGUSON**—You would say that, apart from the ones that went to court, there are not any others. Is that what you are saying?

**Mr Dacey**—My colleague has just pointed out that, once we accept the declarations, those declarations cannot be looked behind. We just check that the nomination is formal in terms of the nominating process. But Mr Cleary comes to mind as one that went to court and, of course, was overturned for constitutional reasons.

**Mr GRIFFIN**—It would have taken longer than 24 hours to sort that one out, though.

**Mr Dacey**—But if a candidate such as Mr Cleary made a declaration that he or she was entitled and qualified to nominate, the law does not give us the power to look behind that declaration.

**Senator MINCHIN**—What would you do in 24 hours?

**Mr Dacey**—The 24-hour period is to resolve other difficulties with the nomination: where the form itself may not be formal, where candidates are nominated by electors rather than through the party system, where we need to check the enrolment details that the electors are qualified to nominate candidates and to resolve any other issues.

**Mr GRIFFIN**—Are they checked now?

**Mr Dacey**—They are checked, but it takes time. It puts pressure on our staff to do it in a short period.

**Senator MINCHIN**—If you had a 24-hour period, would that give a candidate whose nomination was technically deficient time to correct that?

**Mr Dacey**—If there was a nomination that was technically deficient, it depends how we would structure the law, but I would think that we could get back to the candidate and seek clarification because it gives us 24 hours before the returning officer declares the nominations.

**Senator MINCHIN**—Presumably we should legislatively allow you to enable a candidate to correct their nomination in that 24-hour period?

**Mr Dacey**—For technical matters, yes.

**CHAIR**—What things would you check out, just so that we are totally clear on this?

**Dr Bell**—I can give you two examples of things that came up in 1993. One candidate declared he was an Australian citizen because his mother was English or British or something like that. If they come in very late, you do not even have time to ring Attorney-General's or someone and see if that is enough. Our DROs or whoever is dealing with it do not necessarily know off the top of their heads. You might get a citizenship claim which you had some reason to want to check with Immigration. There might be some evidence to make you worry about it.

**Mr Dacey**—The law allows that for citizenship it is by birth, by naturalisation or by other means. If a nominee or a candidate ticks the 'other means' box and we say 'specify', we need to check out whether that other means is acceptable to fulfilling the Australian citizenship requirement.

**CHAIR**—Twenty-four hours is barely enough.

**Dr Bell**—It is a very important decision because we cannot go back.

**Mr Dacey**—That is all we are asking for. It does take the pressure off our staff.

**Mr Gray**—I just make the comment that the nominations part of this whole process is absolutely critical. If you get that wrong, it can all come apart. Frankly, I think that the request for 24 hours is not something that should be seen as difficult, awkward or outlandish. It really goes to the very centre of the process. We have got to get it right.

I do not think it is proper—certainly as the case is now—to close off at 12 and have people hammering at your door, which effectively does happen, saying, ‘Why aren’t you declaring it? Why aren’t you standing in front of us and getting this process on its way?’ In relation to whether it should be 12 p.m. and 5 p.m. or 24 hours, from our point of view we would say that it is more appropriate for the process and for the system to give us the 24 hours that is necessary.

**CHAIR**—Is there any disadvantage to cutting it off a day earlier?

**Mr Dacey**—It shortens the nomination period by one day, which I do not think is a major issue if there is an awareness campaign and the potential candidates are aware that it is 10 days.

**CHAIR**—The other problem is those who do nominate legally and are subsequently disendorsed, such as Pauline Hanson. You say that the name of the party or affiliation must stand beside the candidate. These incidents are quite rare and this may have been unique. I am not sure.

**Mr Dacey**—It is unique, as far as we are aware.

**CHAIR**—Why can’t you, in that one rare instance, reprint those ballot papers?

**Mr Gray**—Because the legislation does not provide for the removal of the nomination.

**CHAIR**—So if legislation can provide, is that a hassle—seeing that it is a most uncommon occurrence?

**Mr Dacey**—It may not be a hassle. But one should ask: if this is unique and it is the only case that we have recorded, is it worth legislating for a one-off situation?

**Mr LAURIE FERGUSON**—Whilst you say it is rare, there could be a situation where a split does occur in a party.

**Mr Dacey**—It is possible.

**Mr LAURIE FERGUSON**—Then we could have a fairly significant problem, couldn't we?

**Mr Dacey**—There could be a significant problem if you cannot change the party affiliation on the ballot paper.

**Mr LAURIE FERGUSON**—There is this situation with the Western Australian Democrats. As I understand it, it did not affect nominations, but I think there is that kind of potential there.

**Dr Muffet**—Then it becomes an issue of timing. When do you stop and print again?

**Mr Dacey**—After the close of nominations we print ballot papers over that weekend to get them overseas and for pre-poll and postal voting the following Monday. Those ballot papers are printed with party affiliation names on them. You can't get them back.

**CHAIR**—What should be done then? Nothing?

**Senator MINCHIN**—There is a good argument for not having party affiliations on ballot papers. It never used to be. Then you would not have this problem. It is for the parties to advise voters who their candidates are, not for the Electoral Commission.

**Mr LAURIE FERGUSON**—I have one other point. On pages 39 and 40 you raise the interrelated matters of increasing the fees. Let us just say for the sake of argument that a compromise was reached whereby some people thought it was very nice for the majority parties but a bit onerous for other groups. If there was a compromise which saw, for instance, an increase in the number of signatures short of the 100 and 500 suggested last time and if you received that 24-hour period, how difficult would it be to have some increase in the signatures to accompany that?

**Mr Dacey**—It would certainly make the task easier, provided it was not in the hundreds. If there was a reasonable increase in the number of signatures, the 24 hours would then give us that capacity to check the enrolment details.

**Mr LAURIE FERGUSON**—What is the number for the House of Representatives? Is it 20?

**Senator MINCHIN**—It is six at the moment.

**Mr LAURIE FERGUSON**—If, for instance, the ballpark went to 40 or 50 and

you did get the 24 hours at the same time—

**Mr Dacey**—That could be checked.

**Mr LAURIE FERGUSON**—That would not be too big a difficulty.

**Dr Muffet**—What happened if there were a few that were not—

**Senator MINCHIN**—That was the point I was raising before whether—

**Dr Muffet**—And the person cannot get the numbers.

**Mr Dacey**—That is what happens now. We would get back to the candidate and say, ‘There is a problem with the nomination.’ It is very difficult now with the short time whereas if we had longer time it would give us more capabilities to do that.

**CHAIR**—But ultimately it is going to be up to the candidate, is it not?

**Mr Gray**—It is now, but the reality is that they nevertheless come within the legal time prepared and then it falls to us to do the check. It falls to us and our resources to meet this very tight time limit. Even with an extension to 24 hours, on all that I have observed and all that I have been told by those who are responsible for the operational side of things, I suspect that that would continue to be a pretty hard press on our resources trying to do that check. Nevertheless, if people are looking for those sorts of compromises, as Mr Ferguson points out, we are willing to entertain any propositions that may come to you or, indeed, explore with you what we think might be achievable having regard to the sorts of resources that we have to bring to this.

**CHAIR**—If someone now has the six signatures, what happens if one of those is not valid and you could not contact the candidate? Does the nomination fall through?

**Mr Dacey**—That is correct.

**Mr Gray**—It falls.

**Senator CONROY**—Other than the ones that have been to the High Court, have you found subsequently that you have admitted someone incorrectly?

**Mr Dacey**—Not that I am aware of.

**Senator MINCHIN**—You would not check that.

**Mr Dacey**—We do not look behind it. I mean, someone could give you subsequent advice that they believe that a candidate illegally nominated or had not fulfilled the

requirements. Without going behind it, we would suggest that the remedy for that is a petition to the Court of Disputed Returns.

**Senator CONROY**—So you are asking for a change not on the basis of a mistake that you have made?

**Mr Gray**—No, but on an increasing pressure that we are experiencing, particularly in 1993 and during 1996, with a larger number of people leaving it to the last moment—as they are entitled to do, although we advised them in the candidate's handbook that they should not do so.

We try to provide them with sufficient information. We say that it is a very dangerous thing to do in the event that there is something untoward or something that may impede their eligibility. But it has not seemed to have the effect, so we are looking on the other side of that time line and saying, 'Can we have more time to do the checks and ensure that the nominations are valid,' so as to avoid the election coming apart in the event that the nominations are found to be defective.

**Senator CONROY**—What is the percentage increase in candidates nominating on the last day?

**Mr Dacey**—We would have to provide those figures.

**Mr Willson**—There was slightly less pressure in 1996 than there was in 1993 in terms of the last hour and a half of nominations.

**Mr Dacey**—I think from memory in 1996, with however many groups there were for the New South Wales Senate, it was 20 or 21. I am sure that about half of those groups nominated on the last day, which caused significant problems and pressures.

**Senator MINCHIN**—Would we need to make sure that the 24 hours was not on a Saturday or Sunday to make this work, if you have to make checks with other agencies and things like that?

**Mr Dacey**—It would be preferable. As the current timetable for the last two or three elections has stood, the close of nominations is on a Friday at 12 noon, which means that if we bring it forward to the Thursday we have until Friday 12 noon. We would prefer that timetable because it gives us the weekend to produce the ballot papers.

**Mr Willson**—We have printing presses around Australia lined up to start working from late that Friday afternoon so that we can have the ballot papers available as widely as possible on the Monday morning for pre-poll voting, which we have to make accessible at that time.

**Senator MINCHIN**—In any amendment to this, should we seek to provide in the legislation that nominations not close effectively on a Friday or Saturday?

**Mr Dacey**—That raises a conflict in terms of looking at maximum times rather than a minimum timetable because there is flexibility within the law for the time for close of nominations. From memory I think it is between 11 and 27 days. But for the last few elections we have been working on the minimum timetable. If you have an issue of writ on the Monday then close of rolls is on a Monday, it gives you a Friday for nominations.

**Mr Willson**—The close of nominations or, as we are discussing here, the declaration of nominations midday Friday is an ideal time for us. It gives us that weekend of non-business days to get ourselves geared up for the Monday.

**Mr Dacey**—We were talking before about the problems with the faxing of nominations. It does occur and there have been problems. I do not recall any particular problem in 1996, but certainly in 1993 there was a problem in one division where there was a dispute as to whether a fax nomination was received a minute before or two minutes after 12. Having that 24-hour period is also an advantage to us in checking where there is a problem with the transmission of a fax or where certain information is left out. It gives us time to get back to a candidate.

**CHAIR**—At recommendation 11 you say that the act should be amended to prohibit the enrolment of an elector with a politically or electorally significant name which has the potential to confuse or mislead voters. That reads very well. In practice, is it going to be as easy as it seems?

**Mr Gray**—Effectively, I think we are drawing attention to the fact that some people seek to change their names and nominate under names which are, in effect, political slogans.

**Senator MINCHIN**—There is a question of where you apply this prohibition, though. Why would you not apply it at the nomination stage? Hardly any electors actually go on to become candidates. Why not apply that prohibition at the candidate point of nomination?

**Mr Dacey**—Because candidates must nominate under their enrolled name. If they are already accepted on the roll with that name, then they have a right to nominate with that name.

**Mr Gray**—Effectively you have to get them back at stage one before they come forward to stage two.

**Mr Dacey**—Our state colleagues are looking at this issue in Tasmania. It has caused a problem with an individual called 'Informal' in Tasmania. We would be happy to



look at what legislation they may have drafted and give this committee more information. Perhaps we could be guided by what they are doing in terms of looking at this.

**Senator MINCHIN**—What is the law relating to names? You always used to talk about people changing their name by deed poll. Has that all gone by the board? Can people just call themselves what they like?

**Dr Bell**—It is a matter of state or territory law and that varies around the country. Some require deed polls and various other kinds of process. At common law, as you know, there is a range of possibilities. Marriage or usage may be enough. What we need, for the sort of reasons I explained earlier, is evidence that that is how the person is known in the community so that the electoral functions are then served.

**Dr Muffet**—We had two cases in Victoria, one for our own election, where a person came up with what you might say is a political slogan. That name is listed. For the state election a person used the name of some merchandising organisation and wanted to nominate in that state election. In both cases they wanted to change their enrolments to effect the nomination in those terms. We did not enrol the person in that name in the federal election and in the state election the constitutional amendment act allowed the state electoral commissioner to say no to our divisional returning officer because he was a registrar of the state.

Recommendation 11 goes to that point of saying that we cannot necessarily stop people from changing their enrolments under what we might think is a crazy name or a name that is a slogan, but it might be more appropriate to affect the nomination conditions.

**Senator MINCHIN**—If ‘Mr Labor’ nominated after the election was called and before the close of rolls and he is part of the 500,000 or something, you are not going to have the opportunity to apply this prohibition and you cannot delete him once he is on. So he gets enrolled in that period—just automatically because that is how you do it—and then you cannot delete him and you are stuck with him. So the easy way around it, if you are so inclined, would be to just enrol in that name the minute the election was called. Then you would get around this prohibition, would you not?

**Mr Dacey**—What you are saying is that, for instance, if the candidate we are talking about—Mr Abolish Child Support and Family Court—did supply sufficient evidence that he was known by that name and we did accept that name and he was enrolled, for the next election he could nominate under that name?

**Mr GRIFFIN**—If he comes in in the rush with the name ‘Abolish Child Support’, would he in fact be picked up or would he go through in the tumultuous shouting of updating of rolls?

**Dr Bell**—He is now enrolled under that name.

**Senator MINCHIN**—I am talking about a hypothetical situation where someone like that comes in after the election is called.

**Mr Dacey**—We are coming from the direction that people choose to attempt to change their name in the election period to have some sort of political advantage, perhaps by having that tag on the ballot paper. You are saying that if they are smart enough they may have that name accepted and enrolled much earlier than that period?

**Mr GRIFFIN**—No. Let us say this change goes ahead. The question is compliance with that change. For example, if I want to be sneaky and I decide I want to enrol as ‘Honest John Abolish Child Support’, I might turn up after the election has been called, on the day the rolls close, and fill in my form accordingly and shove it into the local AEC office. That name as it stands would trigger under this legislation if it got through as you are proposing with the recommendation.

Would it be picked up through your internal processes at that time during the checking process, or would it be that, because you were processing so many in a hit of several days, it may be missed? When would that enrolment be counted? When is an enrolment accepted? Is it accepted when you take the form and confirm it and put it on the computer? I know it took several days before the last-minute rush was actually put onto the computer. When are you enrolled and when are you not enrolled in those circumstances?

**Dr Muffet**—When you are not rejected.

**Mr GRIFFIN**—And that can be some days afterwards?

**Dr Muffet**—Yes.

**Mr GRIFFIN**—So the question relates to the actual process of consideration of the forms. They are examined by the clerk who is doing the data entry, and if there is any query at all it would then go to the divisional returning officer?

**Dr Muffet**—Something like that.

**Mr GRIFFIN**—And the divisional returning officer would then make a ruling?

**Mr Dacey**—The divisional returning officer would decide whether or not to accept.

**Mr GRIFFIN**—And those clerks would normally have an instruction that any name that is odd or unusual—any question at all—should be referred to their divisional returning officer?

**Mr Dacey**—Yes.

**Mr GRIFFIN**—Therefore, on that basis it should be picked up post the day because the process is the same as what happens previously. It is just that it happens over several more days and it happens in a larger volume. But the consideration is the same.

**Dr Muffet**—Yes.

**Dr Bell**—If it is obscene or bizarre, there is a good chance it will be picked up. Then they would have to argue after the close of rolls and it would be too late.

**Mr Dacey**—The point has just been made that both of the instances we talk about here—Mr Abolish Child Support and Mr Legalise Marijuana—were both picked up in that period. So they attempted to enrol under those names during that close of rolls period.

**Dr Bell**—The only risk, I suppose, with applying it at nomination stage is that you get a person who has been enrolled under a bizarre name for a year or more and he gets rejected. If that is the law, it is another trade-off of all the pluses and minuses.

**Senator MINCHIN**—You are just saying there is an equity argument?

**Dr Bell**—He might say that he is well known in the community as ‘Mr Normal’ or ‘Mr Abnormal’ or whatever it is.

**CHAIR**—You propose some changes to authorisation of electoral advertisements. You seem to be relaxing in relation to whether it is clearly intended who is doing the advertising or who is advocating what. They do not have to put the authorisation on. Are there any dangers in this in that when you go to prosecute someone because you think it is not clear they can argue that they thought it was clear?

**Mr Gray**—I think it comes to the point of the original intent of that legislation. It was to overcome what was said to be this mischief by way of anonymity. It is to try and ensure that people are aware who are the authors of or who is responsible for material. What we have found in the operation of the act is that there are many instances where the intention is clearly met but technically the act could be said to have been breached. It is a question of addressing this issue of what amounts to technical and whether it is the case that it offers opportunity for people to, in a sense, put forward what might be seen by some to be a petty complaint when it clearly is identified as to who is responsible for this material.

In some other submissions the point is made: what is technical and not technical? If things are all technical and they do not seem to have offended the main intention of the legislation, then what is the point? Or is there a way in which further clarification can be given, or is it needed? We have sought to address that particular problem by way of the

recommendations that we have put in our submission.

**CHAIR**—What actually is the penalty that was applied?

**Senator MINCHIN**—\$1,000 and \$5,000.

**CHAIR**—Has it ever been applied? You seem to say that there is a discretion there in which you just use a commonsense judgment.

**Mr Gray**—It is not so much a commonsense judgment. Information is given to the Director of Public Prosecutions and decisions are taken there as to whether or not, under Commonwealth prosecution policy and so on, the public interest is properly served by way of pursuing the prosecution in relation to those particular matters in the event, of course, that they have sufficient evidence to proceed on. It is there that advice is then given back to the Electoral Commission in respect of that matter. Often it is the case that the Director of Public Prosecutions will indicate that, whilst there may be some sort of technical breach, they would not suggest or recommend any further action being taken on it.

**Mr Dacey**—Certainly in the public interest there is no suggestion that prosecution action should occur, given that there is probably no doubt as to who is in fact the author of the article or who has authorised the article.

**CHAIR**—I am actually attracted by your suggestion. It just seems to me that the only danger is whether it will be extended further and give licence to those who are doing something a bit mischievous to argue a successful case on their behalf.

**Mr Dacey**—I guess it is a matter of drafting and the way it is done. We are suggesting here that it be amended to provide that there is no reasonable doubt as to the individual or body who is responsible or who authorised the publication, and that should satisfy us. It all comes down to the drafting of it.

**Senator MINCHIN**—I would have to say, as a former state director—it is probably true in the Labor Party—that one of the ways you do keep some party control over the advertising process is by means of these sorts of provisions. In terms of ensuring that whatever the party is doing is properly authorised, you have recourse to the legislation.

**Mr Gray**—On the other hand, it is not going to limit the number of times evidence or complaint is made and we are going to come back and say, ‘That is a technical breach but we will not proceed to prosecution.’ That does seem to be an irritation to some people from time to time, but it nevertheless is an objective assessment made by people and it is consistently applied from one election to the next.

What seems to be put by way of submission to this committee—not our submission

but others—is that this is unacceptable, that we ought not to be having these so-called technical breaches. Either it is a breach and it should lead to prosecution or it should not. I think we would be saying that the only way to go here is to amend it in the way we have suggested.

**Senator MINCHIN**—It is almost providing for a defence.

**Mr Gray**—Yes. Otherwise you will continue to have the irritation that has been brought to the committee's attention and there is not a great deal we will be able to do other than continue to address it in an objective way, make the assessment, receive the advice of the Director of Public Prosecutions and respond accordingly.

**Dr Muffet**—It needs to be clear from an AEO's point of view because we get lots of complaints, usually from party secretaries but sometimes Mps, about, obviously, the other side. Sometimes they are wrong in their complaint and they have got the bull by the horns. Sometimes they are right and it is just a very minor thing—the guy has got his name at the bottom rather than the top, for instance. We really do not proceed with it except by seeking compliance of the people who have done it or whatever it is. They do need clarifying. They are difficult to read and get any sense out of.

**Dr Bell**—You warn people and let them know what the law is and ask them to comply. If they keep on repeating and it is serious enough, you can take them to court and they can try to persuade the court.

**Mr Gray**—In respect of most cases where it is brought to our attention that there is a technical breach, that is brought to the attention of the person who is causing the technical breach. It is not that we sit on our hands and ignore it. I think some submissions might imply that having judged it a technical breach that is the end of the action. It is not. In most instances that I am aware of, at least in my short experience, it has not only been consistent with the way we have approached things from other elections but it is also the case that people then comply with the indication that they are in technical breach and we have not had cause to go chasing people beyond that.

**Mr LAURIE FERGUSON**—Just remind me of the situation where there is no authorisation whatsoever of materials around polling booths and this kind of view, apparently, that you have no power to do anything.

**Mr Dacey**—We certainly have the power under the act where there is no authorisation. I think you might be referring to a submission that we do not have the power to remove signs. We do not have that power. I do not think we would be suggesting that that is a power we would want, to send our people out removing signs. We have the power to expect that the signs or the advertisements be authorised, but the AEC does not want to have that power. If it came to a stoush, that is something for the police, not the AEC.

**Mr LAURIE FERGUSON**—Do the police have the power?

**Mr Dacey**—That is a matter for the police, but I am sure they would.

**Mr Gray**—It is a local ordinance.

**Mr LAURIE FERGUSON**—You are certain that around Australia police do have the power to remove all of them, in every polling booth around Australia?

**Mr Dacey**—I don't know; I am assuming. If we had demanded that someone remove a sign or advertisement because it was not authorised and it got to the point where there was a stalemate, we would need to inform the police, but I am not sure whether they would have the power to remove those signs.

**Mr LAURIE FERGUSON**—I thought you said earlier that you do not want the power.

**Mr Dacey**—We do not want our staff physically removing signs.

**Mr GRIFFIN**—The police would have the power. It would be a question of, like a range of things in this area with technical breaches, what you would do about it. For example, if you have signage up at a school, technically it should not be there. If it is elsewhere in the community, on roads and so on, it is often a question of private property as to where they are placed. There is also a question with a lot of councils these days of local ordinances, about what you can place and where you can place them.

**Mr Dacey**—They are the sorts of issues we often get. We are involved in terms of its authorisation, but placement is a matter between the person placing the sign and the property holder.

**Mr GRIFFIN**—For example, if a candidate goes door knocking, technically they could be charged with trespass. It is just not going to happen.

**Mr Dacey**—I should add that in terms of unauthorised signs it is normal practice—this polling day is probably one of the quietest we have had in terms of complaints—to get compliance by the people authorising the offending sign.

**Mr LAURIE FERGUSON**—The general response I had in my electorate was that your officers were not interested, had no power and weren't going to do anything about it.

**Mr Dacey**—Certainly not power to remove.

**Mr Gray**—There is a question about being 'not interested' or 'disinterested' or indicating to people that they do not have the capacity to remove and it is no good

keeping on telling them to go down the road and remove something.

**Senator CONROY**—Are you saying that you have the capacity to direct them to remove it?

**Mr Dacey**—We have the capacity to point out to them that they are in breach and because of that breach that sign should be removed or changed to be authorised.

**Mr LAURIE FERGUSON**—I am putting to you that they did not even think they had that power on a large number of polling booths. What concerns me is that if we do not do something about this we are going to have a proliferation of this all around the country, of unauthorised stuff in every polling booth. I am just indicating that because I think something has to be done about it.

**Mr Gray**—We do have to be careful also what it is we require of our polling officials. They are all going to have to look like bouncers soon if we are going to achieve all of those particular constraints. There is one job we have to complete on that particular day and it is the taking of the vote. We really do have to concentrate on that.

I appreciate that there will be people who feel we should be doing more in relation to what they see to be our obligation. I can only say that out of the 65,000 people we employ from time to time I suppose there will be people who have not got a clear impression as to precisely what the act requires of them. We do our best to try and ensure that at least the task is undertaken in compliance with the act.

If you feel that there is more that we should be doing, I think we have to look very closely at whether it is us or whether you rely upon some other person, body, organisation or authority to do that. I think we are doing as much as we are able to do currently with polling officials. The demands made upon them are pretty extreme on that particular day and certainly made no better by people who are squabbling or having an altercation about signs out on the street.

**Mr LAURIE FERGUSON**—It is not a matter of squabbling. There is a law that things are supposed to be authorised. I think it is pretty clear cut. It concerns me still that not in one polling booth or two polling booths but in my electorate—it is seemingly in most polling booths—people do not seem to think they have the powers you have to even direct. I do not think it is a matter of squabbling over wording; it is a matter of things being authorised.

**Dr Bell**—It is one thing for our people to say, ‘That is an unauthorised sign and illegal.’ Our people are not law enforcement officers. I can say to somebody, ‘You’re speeding. Stop it.’ They might ignore me but I cannot do anything. But we do take it seriously.

**Mr Dacey**—In the case of certain unauthorised signs, who do you approach to remove it? Who should have authorised it so who do you ask cease and desist? The polling official does not know who to approach.

**Mr GRIFFIN**—It might be worth while making some contact with Reid.

**Mr LAURIE FERGUSON**—This is not restricted to Reid. It covers a significant number of seats in western Sydney.

**CHAIR**—You recommend repealing section 332 on names and addresses being on electoral matter because letters to the editor, talkback radio, electoral commentary, et cetera, is all too hard to make comply with the law. Presumably the rationale is that it is all too hard to police. Is there some danger in opening it up to people to make mischievous comments?

**Ms Dawson**—The DPP's view, which we asked for, is actually better expressed in paragraph 6.6.4. It is true that we have not ever prosecuted an offence under that provision. Usually you run to section 328 rather than section 332, which generally covers the same sorts of things. In relation to letters to the editor, there is provision in the bill that was before parliament before it rose last year to delete the requirement for full address on letters to the editor. So that resolves one of those confusions in the provision.

We get a lot of complaints from editors of newspapers who get very worried about how they should apply this provision. It is an old fashioned provision, if you like, and it is the DPP's view that 328 would cover most of what it is meant to cover. If you look at the terms of the provision, you will see some very old fashioned terms like handbills, which in fact is in a lot of those provisions, but it confuses the issue for those who are trying to comply with the law.

**CHAIR**—I can see the practical logic of what you are advocating. It just raises with me, though, an inconsistency in that you have to authorise some stuff for practical reasons, and perhaps commonsense reasons, but you do not authorise other comment. There just seems to be a bit of an inconsistency there. Before we accept this recommendation, I think it should be bounced around a bit.

**Mr Willson**—Perhaps we could point to the other sort of comparison that could be made and is alluded to here in our text. Again, as Ms Dawson said, there have been changes in communication over the years. A newspaper may now carry three or four letters on a political topic each day and talkback radio may carry hundreds of comments. There is no requirement for those people to state their full name and address before they make that comment. We are expecting newspaper editors to attempt to do just that.

**Ms Dawson**—The focus of the provision is really on newspapers. As Mr Willson said, we are in a position where the law is not constant. You cannot police talkback radio.



You can, if you want to, police letters to the editor, but is that fair or useful in any case?

**Mr Dacey**—The other point the DPP is making is the majority of offences which could be seen as section 332 offences would be covered under section 328 anyway. There is a considerable amount of overlap and with a much higher penalty. So you would not really be losing anything by the repeal of section 332 in terms of catching offenders.

**CHAIR**—You do not have any reservations with this recommendation?

**Ms Dawson**—It has never been used and it is unlikely to be applied in the future. It only produces confusion.

**Senator MINCHIN**—The use of it is not so much in the prosecution under that section but in the case of, say, defamation, misleading advertising or something of that kind. At least you know who to sue for something said in the particular article or newspaper, I suppose. It may be that there could be an amendment to section 328.

**Ms Dawson**—If you have concerns about what you are losing in section 332, put them into section 328 and clarify them.

**Mr Willson**—Most newspaper editors have their own policy on requiring name and perhaps suburb address. So there is already, if you like, a degree of knowledge of who has been the author, again, compared with talkback radio where only a Christian name is usually required. So in terms of wanting to come back to that person for defamation, or for whatever reason, there is already some sort of track existing.

**CHAIR**—The other contentious issue is truth in political advertising. I see now you are saying that you could possibly live with a shift from a definition of truth to the South Australian definition of inaccurate statements of fact. Do you want to comment on that?

**Mr Dacey**—I do not think we are saying that now. I think we have said that before. Whilst the AEC has always resisted, as you know, attempts to legislate for this because of the difficulties we see in enforcement, we are saying that if the committee and any government were so minded to legislate for truth in advertising it would be administratively simpler if the South Australian model were picked up. I am not saying it is simple, but it would be administratively easier for us to look after in terms of legislation and the old section 389(2), which was inserted in 1983 and then withdrawn in 1984.

**Mr Gray**—It is not only just administratively easier. The fact is that it is a much more objective test. When that is being proposed by those who would suggest that you can somehow legislate for truth in advertising, the South Australian model is one where an objective test can be made. Indeed, it was used on one occasion in South Australia.

Therefore, if it is the will of the parliament to move in that direction, we would point to that being more appropriate because, effectively, it can be operated in a way where we believe any alternative would be quite impossible for us to do in any objective way. We note that in recent submissions to the Queensland parliament the Queensland electoral commissioner has taken very much the same line.

**Senator MINCHIN**—As you know, I am sympathetic to the South Australian provision, but what would happen in practice if it were in? The complaint is made to you but then you would refer it to the DPP anyway, would you not? You would not be prosecuting it yourself. What is the nervousness on that score?

**Ms Dawson**—It is a question of speed, of how fast you can move. In one of our paragraphs here we say that consideration should in fact be given to another body to administer such a law rather than ourselves because of the potential for accusations of political bias. It tends to entangle the responsibilities of the commission in the campaign period when things are hot, if you like.

If the commission had to, for example, make a decision that something was not a statement of fact, and if the commission had to take out an injunction in that hot period leading up to polling day, it would presumably be against one party. The commission is concerned about how that would appear, not necessarily how it might be, to the public.

**Senator MINCHIN**—That is a general statement about electoral offences. If you were going to go down that path you are saying that you would set up a separate body to manage the whole issue of electoral offences?

**Ms Dawson**—No, I do not think the electoral offences are at that level of perception. I do not think they would reach that level of concern. We deal with electoral advertising offences in that period from both sides with no problem, as you know. But new offences of getting close to prosecuting untruths or wrongful statements of facts could lead to some problems in perceptions about how the commission is operating. I might add that in South Australia where provision 113 works, it has only been invoked once. There is not a lot of experience in how this works.

**Senator MINCHIN**—But like most good laws they are the ones that are not used. They act as the constraint. That is why we have laws about drugs and other things. It is the message they send and in South Australia people understand the law and operate within it as a result.

**Mr Gray**—You asked what the unease is and it has been expressed quite clearly. It is about community perception. It is a different dimension. It is a gradation, if you like, as to what the public may expect of an independent commission such as ours and how closely we involve ourselves in seeking to determine what is factual or, indeed, truthful.

We are saying that we have made it very clear and we stay with the position that we prefer not to involve ourselves in that regard, we think it is very difficult to move in the truth in advertising situation. We stand by all that we have put before the committee. But, if we were to be directed, or if the parliament was of a view that it move in that direction, we would go to the point of saying, 'Let's make it the most objective test possible.' That goes towards the South Australian legislation.

**Senator MINCHIN**—Is there another body that you could automatically think of?

**Ms Dawson**—You could establish a tribunal for the purpose of the election with appropriate legal powers because you may well get into situations where you have to summons information that is very difficult to get speedily. So it would probably have to have fairly considerable powers.

**Mr Dacey**—The other point we made in paragraph 6.3.8 is that not only may there be public perceptions about political neutrality of the AEC if we were the arbitration body but also there would be the unknown and suspected diversion of resources which we should be better applying to the conduct and operational aspects of the election.

**Senator MINCHIN**—Would you not just take advice from the DPP? If the complaint were made to you, you would be in contact with the DPP?

**Mr Dacey**—It depends on the nature and number of the complaints. Some of the complaints have the potential to tie up some of the staff for extraordinary lengths of time.

**Ms Dawson**—The DPP would come back and say, 'Let's have a look at this.' Sure, it is an answer to your question, but what sort of evidence do you have that you are talking about an untruth or a wrong statement of fact? Then, of course, it has to go to the AFP to go out and look for the evidence. Is it rational and reasonable to be doing this in the one or two weeks before polling day?

In most cases of advertising complaints, the evidence is on the face of the material. You will have an advertisement or something of that kind but, if somebody makes a statement during a campaign that requires some looking behind, the DPP would say, 'You'll have to ask the AFP to go and investigate this.' If it goes down to parts of government policy that we do not know about, maybe cabinet decisions or something, what happens? Who goes where? How fast can they move? It just seems that you probably need a special tribunal with special powers.

### **Short adjournment**

**CHAIR**—The single initiative that South Australia has taken, where is that up to? What happened with it?

**Senator MINCHIN**—The state secretary of the Labor Party was successfully prosecuted for breaching the act and paid a fine.

**CHAIR**—From the AEC's point of view, the South Australian legislation is seen to be working.

**Ms Dawson**—There was a possibility of an appeal to the High Court. It went through a Magistrate's Court, then to a Supreme Court. It was appealed to the Supreme Court and there was a possibility of an appeal to the High Court. That did not happen but it still leaves some questions moot, if you like. Had that appeal gone ahead, maybe things might have been different. Perhaps next time it is invoked it may go that far.

**Mr Gray**—The other point to make is that, if I am not mistaken, the prosecution and the process took place well after all that occurred in terms of the electoral process—well beyond and well outside.

**Senator MINCHIN**—The complaint was lodged during the campaign but then not dealt with until after the election.

**Ms Dawson**—That is the point the Queensland commissioner is making at the moment before his committee in Queensland. He is making the point quite strongly that you cannot fix the damage at the time.

**Senator MINCHIN**—No, but they are ignoring the behavioural effect of having such a provision. That is my point.

**Ms Dawson**—I understand.

**CHAIR**—I had a question on recommendation 15 at page 54 about allowing pre-poll voters in their home divisions to cast an ordinary vote. Is that making the situation any less secure at all?

**Mr Gray**—No, we do not believe that it is making it any less secure. In this day and age when it would appear to us that more and more electors are taking advantage of the various ways in which they can vote, I think this is resulting in a fairly significant increase in the actual way in which we have to process, for example, declaration votes. Anything that will facilitate not only the making of the vote but also the handling of that vote after the event, after polling day, we should look very closely at.

We would recommend very strongly that this be considered again by this committee and by the parliament, because to do so will not only facilitate the service that is available to the voter but also provide for a more effective and timely scrutiny. Frankly, it will also impact upon the amount of time that we have to deal with declaration votes.

**CHAIR**—How would it work in practice? Someone fronts up to vote because they are going to be away on election day, they fill out the voting form exactly as they would if they had turned up on election day and they then put it in a locked ballot box without having put it in an envelope. Is that what would happen?

**Mr Dacey**—That is correct. The only difference is that there would not be a declaration as currently there is with the pre-poll vote. However, the voter would still need to have one of the grounds for a pre-poll vote as they do now. They would have to have a reason for having a pre-poll vote in that they cannot have a vote on voting day.

**Senator MINCHIN**—And just sign something to the effect—

**Mr Dacey**—It is not our proposal that they would sign something, because that would take away the ordinary voting facility.

**Senator MINCHIN**—How do you test whether they have a reasonable reason?

**Mr Dacey**—We do not now.

**Mr Gray**—We do not need it.

**Mr GRIFFIN**—It is a verbal; that is all.

**Mr Dacey**—They sign a declaration that they are entitled.

**Senator MINCHIN**—That is what I am saying.

**Mr Dacey**—You are saying those entitlements are not necessarily known to all electors.

**Senator MINCHIN**—But they do have to swear something that they believe they are entitled to the pre-poll vote.

**Mr Dacey**—That is correct.

**Mr GRIFFIN**—None of that is ever checked though, is it?

**Mr Dacey**—It is taken at face value that the elector is entitled.

**CHAIR**—I guess in the public's mind the security of the ballot box is one thing that they may query. What provisions are made?

**Mr Dacey**—We are not suggesting it occurs anywhere except in AEC premises, in our divisional offices. They would be in locked ballot boxes; they would not be in the

cardboard ballot boxes that we use on polling day. Those ballot boxes would be locked in secure storage in our divisional offices, as declaration votes that are received early are now. It would be the same security in place for pre-polls and postals that are in envelopes.

**Senator MINCHIN**—Then the roll would be marked?

**Mr Dacey**—The roll would be marked when the elector votes.

**Mr GRIFFIN**—Would those marks be incorporated on polling day or by polling day?

**Mr Dacey**—They could not be incorporated by polling day, no. They would be incorporated in the scanning process post election.

**Senator MINCHIN**—It raises the policy issue that the parliament has to address whether the objective is to have the maximum number of voters voting on polling day having had the benefit of the dignified and informative campaigns conducted by the parties or whether you want to actually allow people to just vote whenever over the course of the campaign period. I think you do have to address that fundamental issue before you go along with recommendations of this kind; that is, whether you actually in a policy sense do want to make it easier for people to vote prior to polling day. It is a significant policy question.

**Mr GRIFFIN**—That is correct. But your argument is that people are availing themselves of this and will avail themselves of it regardless. For them to do a declaration vote now might take three to five minutes. For them to do an ordinary pre-poll on the day may take them two to three minutes. The real cost in terms of time and energy is, in fact, with the commission with respect to the processing that occurs—

**Mr Dacey**—With the preliminary scrutiny post election, balancing that against the policy issues and also the potential for having those votes counted on the night—or the majority of them—there may be an earlier result for those in excess of 150,000 votes.

**Mr GRIFFIN**—To an extent I agree with Senator Minchin in that I think people should be voting on polling day. At that stage they have heard the whole campaign and they can make their decision on that basis, rather than making it one to two weeks earlier. However, I am inclined to the AEC's view on this in that I do not think the fact that it takes them five minutes versus three minutes is going to change a voter availing themselves of pre-polling. I do not think it is going to change that.

**Dr Muffet**—I do not believe that the proportion of declaration votes has changed significantly with the introduction of pre-poll voting. It has probably replaced some other form of voting like absent or postal. Our advertising for pre-poll voting is the same as for postal. The same criteria are used there. People probably do not think about the form of

voting that they will have to do when they get into the booth. They will not know that they will be able to drop it in without filling in all the forms. To them, it will be much the same as it is now. As the numbers are not changing now, I do not suppose we will see a big rush of ordinary voting taking place before the Saturday.

**Dr Bell**—And between three and five minutes is small in the context of the travel time to and from the booth.

**Mr Gray**—We believe that dealing with declaration votes is quite clearly more complex. The risk of mistake, omission or whatever is higher with declaration votes than it is with ordinary voting. We are concerned to ensure that, in a sense, the risk is minimised. It is minimised by ensuring that people have access to ordinary voting instead of a declaration vote.

The other thing we would point out is that it would not be unique. It was trialled with the Victorian state election. The reports that we have received is that it did, in fact, result in a reduction in the number of declaration votes. That is certainly an objective we would want to achieve. But it went beyond that: it went to the timely finalisation of the count as well as to savings in resources and staff expenditure. We are certainly concerned about that. We have had to expend extra training time and, therefore, cost associated with the administration of declaration voting. We would want to do whatever we can to reduce reliance upon declaration voting.

**Mr GRIFFIN**—I scrutineered some of the count in one of the Victorian seats where it was done in that way and I concur with that. The only thing I just mention in passing is that, because they had a lot of collocation of electorates, there were some problems with people doing the ballot and coming back with an Oakleigh box here and a Clayton box there. When they did a vote for Oakleigh and shoved it in a Clayton box, they were ruled informal on that basis. So there were some question marks with that. If it was a declaration vote, as I understand it, the situation is that they would all be in the one box with the details on them and they would be sorted at that stage. Because of the way they did it in Victoria there was a slight increase in informality, which was more to do with the geography of the way they operated than anything else.

**Mr Gray**—The geography of the actual?

**Mr GRIFFIN**—The geography of the offices, et cetera, and how they did it.

**Mr Dacey**—But under what we are suggesting here, there would be no potential for any error with wrong boxes because they are going to the divisional office for the division.

**Mr GRIFFIN**—That is true, although it gets back to that question of collocation later on and what might happen along those tracks. Where you have collocated two

divisions together, you would have to be very clear on those specifications in your geography, otherwise you could have that problem.

**Mr LAURIE FERGUSON**—Just on your feedback from Victoria, you say that you do not expect any increase in people utilising this before election day; is that right?

**Mr Dacey**—It is difficult to predict but, as Dr Muffet pointed out, there does not appear to be a significant increase in people now between elections availing themselves of it. I mean, the numbers are going up but they are going up slightly.

**Mr LAURIE FERGUSON**—What I would be interested in getting is the Victorian figures for this election and the previous election.

**Mr Gray**—Federal or state?

**Mr LAURIE FERGUSON**—State.

**Mr GRIFFIN**—Those figures would be a bit difficult—

**Dr Muffet**—I spoke to the Victorian electoral commissioner during this week and asked him whether he had any information on this statement in our submission. He was not able to provide me with anything at the time, but he did say that, if the secretary cared to write to him, he would be happy to do some research and provide any information that might be required.

**Mr LAURIE FERGUSON**—Can we write to the Victorian electoral commissioner?

**Mr Gray**—This was on the point of getting the figures and so on out of the Victorian state election. If the secretary would write to the Victorian electoral commissioner, he has said that he would undertake the necessary research and provide you with the figures.

**Mr McDOUGALL**—If we are going to look at figures, would it not be advisable to also have a look at the figures of before pre-poll voting was introduced?

**Mr Gray**—That is why it takes it back—

**Mr LAURIE FERGUSON**—Two elections.

**Mr McDOUGALL**—I am saying this not only on the Victorian level but also on a federal level. I hear your comment, Dr Muffet, but I think it would be good to see some hard figures as to what the percentage of increase of these votes is. Are they simply just being divided between forms of declaration voting or is there an actual increase? I would



like to see a bit more information before we look at this point any further.

**Mr Dacey**—We would need to go back pre-1984 because we had pre-poll voting by another name post-1984. They were called oral postal votes. Pre-1984 the majority of those would have been postal votes. Yes, we can get some figures out.

**Mr McDOUGALL**—What you are suggesting here would be simply that you would mark the roll at the time of pre-poll?

**Mr Dacey**—That is correct.

**Mr McDOUGALL**—If that were the case, why couldn't they be counted on the night?

**Mr Dacey**—It is our aim that they be counted on the night.

**Mr McDOUGALL**—So you would effectively be setting up another counting booth in each electorate?

**Mr Dacey**—They would be counted under this scheme in a divisional office on the night.

**Mr McDOUGALL**—So for scrutineering purposes that effectively becomes another counting booth to the political parties?

**Mr GRIFFIN**—That is fine.

**CHAIR**—They would still be identified as pre-poll votes in the break-up of the final count? They would not be chucked in with the ordinary votes on the day?

**Mr Dacey**—No, they would be identified in our statistical and return system as having been pre-poll votes.

**CHAIR**—Sure, so that we do not lose that information. If there are no more questions on that point, I will turn to postal vote application forms, which is always a politically interesting issue. You seem to recommend quite strongly that no party political material go out with those forms, and the reason you give is that it is detrimental to the overall good conduct of federal elections. Do you want to expand on that a little?

**Mr Gray**—From our perspective, again we believe it is very important—indeed, as a consequence of complaints received over a period of time—for the community to recognise that any material that is said to originate from the AEC or is an AEC document ought not to be included or attached to any other material, particularly party political material. People want to see the independence of the commission—not only know that it is

independent but see it to be independent. On those occasions when we have had material attached to the form or, if not attached, even in the same mail delivery, it sometimes gives the elector cause to complain to the Electoral Commission—sometimes very publicly—that there is party political material being put out by the AEC when in fact that is not the case.

It is an important perception to maintain; namely, the independence of the commission. We are concerned to ensure that when things such as postal vote application forms, which are AEC forms and official forms for the purposes of the conduct of the election, are sent out they are not attached to party political material of any kind or posted with party political material of any kind. These are matters which have been brought before this committee previously. They have been argued and discussed on a number of occasions.

Indeed, there were recommendations that came forward from the committee on the last occasion to address this particular issue. But those recommendations were effectively deferred by the government of the day for further consideration and did not, as a consequence, find their way into legislation applicable for the 1996 election.

**Senator MINCHIN**—I do not think I have changed my view about this. I really do not see why the political parties should not be able to provide the service to their constituents by sending them postal vote material and offering to process it for them. What evidence do you have that this is causing a major perception problem for the commission? Could you quantify that?

**Mr Gray**—No, I do not think it is easy to quantify. It is one of those situations where you have to call on whatever experience you have got. For example, with the by-election in Canberra in 1995, it made headlines for quite a few days when somebody alleged that party political material had been posted along with an AEC postal application form. It was the subject of an AFP inquiry. It was the subject of a significant amount of public consternation. It was clear that if an AEC document had been posted with party political material—even if that proved not to be the case—there would have been clear and very direct criticism of the AEC.

We are keen to ensure that that perception of independence and impartiality is maintained. We believe that our experience would demonstrate, by way of that example, that it is taken extremely seriously by the community. It is not a situation which we ought to take too lightly in terms of people's perceptions as to whether or not we are conducting an impartial and independent election.

**Senator MINCHIN**—I do not think parties should reproduce the application form in a party brochure so that it is one leaf of a party brochure. I think that is wrong.

**Mr Gray**—Yes.

**Senator MINCHIN**—But I do not think there is an objection to the form itself being sent out by parties with an accompanying letter or something. Is there a way that we could at least perhaps look at an amendment which prevented parties reproducing the stuff printed on or as part of some party political material but did not prevent them sending it out as a freestanding form?

**Mr Gray**—There is already copyright legislation.

**Senator MINCHIN**—Your copyright would prevent it being—

**Mr Gray**—It would prevent it being copied other than as an exact replica of the form.

**Senator MINCHIN**—What was your copyright action against the Victorian Liberal Party? What did they do?

**Dr Bell**—That ended up on a different note. I think we have already agreed to what you are asking on a copyright basis. We agreed that parties could copy the PVA form, provided it was an identical copy—not changed—and provided it was not attached to any party political material. If it is a question of your taking our form or one you have produced yourselves which is identical and putting it in an envelope with a letter of your own, I think we contemplated that happening.

**Senator MINCHIN**—Although you are seeking to prevent that now.

**Dr Bell**—It depends what you mean by incorporation.

**Dr Muffet**—It is a matter of perception, as the commissioner stated, but it is also a matter of operational practicalities. I think the act enjoins us to get the postal vote out to the applicant—someone might remind me here—by that same day or something. In the case of the parties, when they send them out they obviously want the applicant to send the form back to the party, for obvious reasons, and then they send it to us. It just depends on how they send it to us; it depends on the arrangements they have made. It means that, at the earliest, the divisional returning officer is not going to get it until late in the day. It creates a situation of what happens when you get down to the last day, and things like that. They are the kinds of problems that we worry about.

**Senator MINCHIN**—Except that the parties have every incentive to make sure that it is processed quickly.

**Mr GRIFFIN**—To give you an example, what happens under this system now is that quite often several hundred forms may be delivered to a divisional returning office through one of these systems. If they arrive mid-afternoon, then they are duty bound to process them that day. I know of local examples, which to some extent I was probably

responsible for, where my local divisional returning office was kept until 8 o'clock or 9 o'clock at night processing postal applications. It can get quite ugly in that respect. What tends to happen with your system as well, which I think is the main thing this is looking at, is that the forms will arrive in large chunks. When you get a large chunk, you then have a processing problem in terms of getting it out. That has got difficulties. It can lead to time-lags, if not with the AEC then with Australia Post.

**Mr Dacey**—The other concern we raise in our submission and that we have raised before is where parties blanket a whole electoral division with postal vote applications. Just looking at the figures, there were 350,000 postal votes for the last election, which is a little over 2,000 per division on average. Some parties are blanketing divisions with 150,000 per division. That leads us to believe that it may be a factor in the increased percentage of postal votes. It may seem like a small increase, but between 1993 and 1996 the postal voting rate increased by 3.17 per cent. I think it adds an element of confusion to electors. If they receive an application for a postal vote in the mail even though they may not be entitled, they are confused as to whether they can have a postal vote.

**Senator MINCHIN**—But the number of enrolments went up three per cent.

**Mr Dacey**—That is correct.

**Mr McDOUGALL**—Usually when an organisation has a problem or perceives to have a problem, they start recording the number of complaints so that they can measure. I would like to see some detail of the numbers of complaints you get. Probably the biggest problem with postal vote application forms is them going to institutions that are declared prior to polling day. I think that sort of thing causes more problem with the community over confusion. They do not need postal vote application forms because they are a declared institution. If I have seen a problem over the years, it has been a confusion because of that sort of thing happening rather than people complaining that they are getting information in with an application. I think it is about the confusion that is caused and maybe that needs to be looked at.

**Dr Muffet**—There is confusion. I did a little mini-survey yesterday of duplicate applications in your seat, Mr Griffin. There was about 3½ per cent.

**Senator MINCHIN**—Two postal vote applications?

**Dr Muffet**—Three and a half per cent of the applications were duplicates, and five per cent in another marginal seat were duplicates. It was one per cent in a safe seat. I looked at three electorates just to get a sense of it.

**Mr GRIFFIN**—You are carpet bombing and we are carpet bombing. People get confused and they put two in. It is picked up at the commission—they do not get two votes—but it does happen.

**Dr Muffet**—Someone was very generous to both parties and there were triplicates.

**Mr GRIFFIN**—The confusion is something that is going to continue no matter what. The question is the level. I do not care what we decide here; I am going to chase postal votes at the next election and you guys are going to do it, too. There are concerns in terms of perceptions in the community about what this sort of material means, given the way it is delivered. Essentially it is often anecdotal in terms of the phone calls made. Someone rings up the AEC office and says, ‘I got this bloody stuff from the Labor Party or the bloody Liberal Party which is all connected up like it is looking official.’ We certainly got complaints in our campaign office about that sort of stuff as no doubt the Liberal Party guys would have got about us in a different degree.

The thing is that this particular practice is increasing the confusion because it looks so formal and so official. I do not think you are saying for a minute that you are going to get away from all the confusion around postal voting, but the particular system of the printing of forms in a political mail-out connected to a leaflet and so on, as has been going on in the last couple of elections, does create particular concerns and increases that level of concern out in the community. I think it also increases confusion. I know that when we were dealing with people on the ground they often thought they had actually done that to the AEC. Even though it was clearly political in terms of the material, that was the sort of confusion that was occurring.

**Mr Gray**—The other thing is that with the return of that mail, not to the AEC but in fact to the party, you do not employ people any less mortal than we are. We make mistakes. People do overlook these things. I think we have to be fair dinkum and suggest that people sometimes make mistakes. Therefore, to the extent that you intenuate the process you increase the possibility of people being disenfranchised through somebody’s mistake. I think that is the case and it is one we have to take on board and consider.

If we can come to some process where we acknowledge and recognise that this practice will continue, it is a question of how it continues so that we minimise the confusion and minimise the risk that people will see this as, if you like, something that has been generated by the AEC and therefore is party political. Also, we need to minimise the risk of people being disenfranchised through the mistake of officials either in parties or in the AEC.

**Senator MINCHIN**—You are really asking us to make it an offence for a party to, in response to a request even, mail out a postal vote application form. How do you make sure it is not an offence just to hand it to them?

**Mr Dacey**—With party material, we said.

**Mr McDOUGALL**—How would you police that?

**Senator MINCHIN**—What is a Liberal Party envelope or a ‘with compliments’ slip? I just think there would have to be a demonstration of a very major problem before—

**Dr Muffet**—Would you accept posting it out and having the applicant sending it directly to the AEC?

**Senator MINCHIN**—The problem with that is that one of the reasons we want to know who is postal voting is so we can get them how-to-vote material. The trouble with postal voters is that if they are not voting at the booth they are not getting how-to-vote material.

**Mr Gray**—As you have said before and during the course of this hearing, there is a lot of onus on the voter to do the things that are required of them. I know you would indicate that you are providing a service. I suggest that the prime reason is to obtain the information that you have just mentioned, and it is.

**Senator MINCHIN**—Several motives.

**Mr Gray**—I accept there are several motives. I think I am putting certain weight upon one of them and I think that is the fact. Whilst we recognise that to be part of a campaign strategy which is part and parcel of elections, we do want to avoid the confusion and the perceptions I have mentioned and ensure that people are not disenfranchised.

**Mr GRIFFIN**—Recommendation 16, relating to the question of incorporation of material, becomes a key aspect of that. Given the lateness of time, the state of hunger and the number of other questions people are probably going to have to ask today, why do we not follow up on this at the next hearing? I think there are some things that we cannot sort out today on this issue.

**Senator MINCHIN**—Can you provide what you are specifically proposing?

**Dr Bell**—We did. With the copyright permission we said ‘incorporated’ means attached or printed as part of. If it was a separate, stand-alone sheet with a separate letter in there that would have been okay. I think perhaps this word has slipped in here without meaning in our minds. Perhaps we should have explained it more clearly.

**CHAIR**—In relation to the actual postal votes themselves, you recommend that we do away with the requirement for the postmark. I entirely agree with that. You give some rather alarming figures for Chifley of 47 per cent for one election and even higher for the previous. It has been high for the last couple of elections. Can you provide the figures for the other electorates? Are they available?

**Mr Dacey**—It would be difficult now. We did this deliberately at the time to get

some figures, but it would provide some difficulties.

**CHAIR**—Fair enough, then.

**Senator MINCHIN**—One of the downsides of that recommendation is the question of the truthfulness, I suppose.

**Mr Dacey**—Yes, the truthfulness of anyone witnessing a postal vote declaration and inserting the right date, which we rely on anyway in the absence of a postmark. The main argument is that so many are postmarked post polling day when in fact they have been posted before the close of the poll. They are then rejected.

**Senator MINCHIN**—I think we are sympathetic to that.

**CHAIR**—On the issue of overseas postal voting, you recommend that you would change ‘Queen’s dominions’ to ‘Commonwealth’. I do not have any particular objection to that. You do not make mention of expanding those who may witness the signature. Are there some circumstances where there is no JP, medical practitioner, et cetera, and that is a limiting factor?

**Mr Dacey**—The main witness to a signature is another Australian elector. While some people do travel alone and cannot find another Australian elector, in most cases we are fairly confident that, in the absence of being able to find these sorts of classes of people, there is usually another Australian elector because of the nature of travellers.

**CHAIR**—On failure to vote at page 68, the submission says that 41 people were gaoled following the 1993 election. I see that you supported the shortening of the sentence of Mr Langer. Do you have any comment or practical suggestion? It gets pretty grim when we are putting people in gaol, even if it is for a day or two, for not voting. I realise that you are only there to administer the act, but I thought you might have some comment on this.

**Mr Gray**—The only comment we make is that we hope the practice in all jurisdictions would be to have some alternative for gaoling for the non-payment of fines. Indeed, many jurisdictions do have community service type remedies and penalties. Obviously, it is that to which we would much prefer the sort of penalty to relate.

**CHAIR**—You are referring to community service work, but these people are going to gaol because of their stance. Surely they would also refuse to do community service work. They would say, ‘Up yours. I am not going to do it.’

**Mr Gray**—They may do, but as long as the situation is there it is not we that are putting these people into gaol. I think you must again make that distinction. I know that we say it is a fine line. In fact, the jurisdiction moves to the courts of the states and

territories. They impose a penalty. They are not in contempt of us; they are in contempt of the court. That brings the penalty. I do not know that we are in any position to do other than regret that people do go to gaol for whatever reason. I do not think it can be looked to us to say, 'Don't proceed in this particular way,' because it does result ultimately in some people taking a stand and finding themselves in gaol. I do not see how that can be put to us.

**Mr Dacey**—We had a couple of instances post the 1993 election where people deliberately took the option of going to gaol to effectively become martyrs. There is no control or influence over those sorts of situations.

**Senator MINCHIN**—You have undertaken, I think, to try to find out statistically how many people do end up taking that option.

**Mr Dacey**—With difficulty, but we will.

**Senator MINCHIN**—I appreciate that. You have not yet got any statistics?

**Mr Dacey**—No. We are only part way through the non-voting process because of the times involved. It is too early.

**Senator MINCHIN**—You mentioned in paragraph 8.7.5 that you conduct these surveys about attitudes on this. Because it is such a policy issue, I am a bit surprised. I think it is appropriate for the commission to do surveys, but I am surprised that you asked that question. Is that at the direction of the government of the day? Do you do it of your own volition? If so, why?

**Mr Willson**—We have asked it a number of times over many years and certainly, as far as I can recall, not at the direction of any government. We included in this particular survey a question relating to full preferential voting.

**Senator MINCHIN**—This survey being when?

**Mr Willson**—The one that followed the 1996 election was a survey of, I think, 1,400 people by telephone on the Sunday night and Monday night following polling day.

**Senator MINCHIN**—Are we able to see all of that?

**Mr Willson**—Certainly. Most of the questions are, if you like, an evaluation of our performance throughout the election—whether they received sufficient information, whether they found our staff courteous on polling day, whether they had to queue, those sorts of things. Then there are usually a few questions of a broader nature. We have on four or five occasions now included a question on the support for compulsory voting. On this occasion we asked a question related to support for full preferential voting.



**Senator MINCHIN**—As well as the question about compulsory voting?

**Mr Willson**—Yes.

**CHAIR**—What is the purpose of asking the compulsory voting question?

**Mr Willson**—It is a major element of electoral administration in Australia. It is certainly one that our overseas colleagues are extremely interested in. We recognise that it is also one we might be asked for our thinking about, perhaps in this forum from time to time, and we felt it would be professionally negligent of us not to have.

**Mr GRIFFIN**—And you have been asked for that from time to time.

**Mr Willson**—It is something that has interested members of the committee in the past. They have asked us whether we know what the support is.

**CHAIR**—Why do you ask it in that particular way?

**Mr Willson**—I do not know whether we have consistently done this with every survey. We have asked it in a number of ways. On one occasion we asked a split question to check the results—support for compulsory or support for non-compulsory—to see whether there was any significance statistically in the way the answer came forward.

**Senator MINCHIN**—It is tricky. You can get any answer you want, as you well know, by asking a question in the right or wrong way.

**Mr Willson**—It is a fairly simple question, though.

**Senator MINCHIN**—I would like to see the results of your survey.

**Mr McDOUGALL**—I see some disquiet in the community in relation to people not having to have identification to be put on the roll. A lot of people raise the question that you have to have identification to get a bank account, and a pretty strict identification. The question does raise its head a lot when you constantly find, after cleansing of rolls and after elections, that you might do a personalised mail-out and you still end up with 300 or 400 back. When you go looking at some of them you see that they are bitumen roads or empty blocks of ground. Why is there a resistance to—I perceive that there is a resistance—tightening up the identification? It is a pretty major right to be able to vote in this country. It is an area that I would like your comments on.

**Mr Gray**—The first comment is that I do not know that there is a strong resistance. It is the parliament that determines what particular requirements there are for people to exercise their entitlement to vote. It is the Electoral Commission's task to administer the legislation as it is passed by the parliament. Certainly we advise this

committee, and indeed the parliament, on these matters.

We have drawn from time to time over many years the pros and cons of seeking to tighten up, as you put it, the identification requirements of people who seek to exercise their entitlement. We are, as of this moment, looking closely at just what sorts of other benefits and disadvantages may attach to proceeding with some sort of identification.

We are not sitting on our hands and we anticipate, from listening to parliamentary debates and from recognising the position people have taken in respect of committees such as this, that it is a matter that requires us to be in a position to inform the debate. It is not for us here within the commission to say, 'This must be what is.' We do not take that position. I do not take that position. I take the position that we have an obligation and a responsibility to inform you and the parliament in the most complete way that we can so that you can take the informed decisions and the parliament can take informed decisions.

It is the parliament that is responsible for the way in which elections are to be regulated, and we will take up that responsibility as an independent commission to give effect to that. I know that from time to time there are people who will believe that our presentation would seem to suggest that we are either for or against a particular proposition. But the position I take is that I want to facilitate an objective and informed debate so that parliament can make a decision.

**Mr GRIFFIN**—The fact is the objective and informed debate which you have given, certainly at the 1993 election inquiry—and it was shown in the transcript and the submissions of that time—shows that when you look at it objectively it is a very difficult thing to do.

**Mr Gray**—I do not need to make a statement because our position in terms of the advice we have given is very clear. It is on the record. Whilst certain people in the community may express a view to you, clearly there are a lot of people in the community who also have some considerable difficulty with the proposition of having to provide identification of the kind you suggest.

It was not long ago that we talked about an Australia card. It may well be that the community has changed its attitude over the period. That is something I would have seen members of the parliament being able to reflect upon perhaps better than us. You are the representatives and, as a consequence, you make judgments about community attitude.

Clearly, it was the case that the Australia card got the thumbs down. Whether or not people believe that setting aside an identity of some kind is a better way to go because there is some disquiet in the community in respect of voting and enrolling is something that I think you can judge. We will identify the methods, the processes, what is possible, what other people are doing and how people have achieved this in the event that you want to proceed in that way, but we will not, in a sense, try to press you to go one way or

another. We will give you that information. It is for the parliament and this committee to decide what you feel is appropriate.

We have had some work initiated. Our research area is working on this. I would ask that the head of that section, Michael Maley, give you some further detail on that so you can be assured that we are not standing here with our arms folded.

**Mr McDOUGALL**—I believe that there has been a change of attitude in the community. One has only to look at how successfully the banking industry has been able to do it with, one would get the impression, very little resistance because there has not been a public outcry about identification purposes for the banking industry. Do not get me wrong, I was not accusing the commission of anything. You have partly answered the question by saying that you have worked on it. You have something that you can put towards it for us to look at from your point of view of what would be the cost.

What worries me, and what worries a lot of people, is that we go through all this detail at the voting end—and we have them all here in the book—and we have to have the law tight in relation to how a declaration vote can be done, what you have to sign and how you are going to do it all, but at the front end it is pretty broadly open. It can be said that if you get the front end right you can follow through and comply with all the regulations. So, if you tighten up the front end, is that going to help down that bottom end?

**Mr Maley**—Just very briefly, the work that has been done on this recently within the commission builds to a great extent on extensive work that has been done by the commission over the years in response to issues that have been raised in this committee and which is enumerated in appendix E to our submission. I think members of the committee in the previous parliament would recall a quite substantial submission that we made canvassing a range of options relating to voter identification at different stages of the process and other practical measures which could relate to the integrity of the election process. So it is an issue that we have consistently taken very seriously.

More recently, and taking account of concerns that have been raised on voter identification, we have been in discussion with a range of other Commonwealth agencies which have a similar interest in this area with a view to gaining their views on what might be feasible along certain lines—in particular their views, on the basis of their experience in requiring identification, on what are the relative levels of integrity associated with various different forms of identification.

We have been talking to departments about this. We have been in touch with Attorney-General's, ASIO, the Australian Taxation Office, Austrac, the Department of Employment, Education, Training and Youth Affairs, the Department of Foreign Affairs and Trade—that is, the passports office—the Department of Immigration and Multicultural Affairs, the Department of Veterans' Affairs, the Department of Social Security, the

Health Insurance Commission and the National Crime Authority. That is a fairly comprehensive coverage of the departments which have a major interest in the identification of individuals.

We have also sought information from state and territory agencies which issue identity documents such as birth certificates, drivers licences, proof of age cards and so on. We have sought some information from the UK Home Office regarding proof of identity measures which specifically apply to elections in Northern Ireland. We have even been in touch with Citibank to get information on photographic credit cards. To date, we have had some quite detailed responses from some of these other bodies which are in a position to collate.

**Mr GRIFFIN**—This is something you will be reporting back to us later on in detail, is it?

**Mr Gray**—Yes, it is. We will place it in front of you and we will look at the pros and cons. We will talk it through and then it is for you to come to some view.

**Senator MINCHIN**—What are the comparable democracies? Where do we stand in what I call international best practice? Where do we fit in?

**Mr Maley**—There is such a diversity of practice from place to place. In a large number of countries there is a requirement for identification at some stage, and very much that tends to be tied into the existence of a more comprehensive national identification system. In Sweden, for example—last year I happened to be in Sweden at the time of the European parliament elections—people acquire an identity number at birth. It is based on their date of birth and the equivalent of certified lists for elections are sorted according to the identity number. So in effect the youngest people appear at one end of the list and the oldest people appear at another, which might be seen as having some privacy implications in Australia.

Again, in my experience of a number of overseas elections, the practice which is adopted depends very much on the practicalities of what further existing infrastructure by way of identification is there. To go back 10 years in history, the attraction which was perceived at the time by its proponents in the Australia card was that to set up a comprehensive, high integrity identification scheme for any one purpose is a very expensive undertaking. It requires a massive infrastructure, particularly if you are going to issue photographic cards because you have to have some way of getting contact between each individual and the issuing process.

In many cases, it has been regarded as not being cost effective to do that for only one purpose, for electoral purposes or even social security purposes. It was the possibility of integrating all those different uses into a single operation which on the one hand made it cost effective, but on the other hand made it be seen as threatening.

The other point that would have to be emphasised is that there are different issues arising in relation to identification as part of the enrolment process and identification as part of the voting process. In the voting process, by its very definition, people are coming to the electoral administration to vote, albeit with our going out to them to make that process as straightforward as possible.

We do not have the comprehensive sort of infrastructure at the grassroots of the community. Between elections, it is comparable to have polling booths blanketing the country. The shift from a regime under which people are able to enrol by post to some sort of regime under which people would have to present personally either to go through documents, to be photographed or so on, to acquire enrolment and perhaps to update enrolment is a major transformation of the way the enrolment process operates.

**Senator MINCHIN**—The other area is whether you require people to prove who they are when they enrol. The alternative, or something which could complement it, is the Electoral Commission making use of existing databases to verify the legitimacy of the enrolment—that is, they are 18, they are an Australian citizen and they live where they do—which means Immigration, Births, Deaths and Marriages and Australia Post would be involved.

We have talked in the past about integrating with all those systems. You have said that it is a matter under review. I would appreciate a comprehensive report on where that is at, how much further that could be taken and what impediments to that kind of approach are at this point that this committee and the government might want to consider.

**Mr LAURIE FERGUSON**—I assumed that when people put down their date of citizenship you would check that.

**Mr Dacey**—No, we do not. For people who have acquired citizenship through the ceremony of nationalisation we ask for the date of citizenship and the citizenship number. We take that at face value.

**Senator MINCHIN**—You have said to us in the past that you believe that has privacy implications. For example, if someone says they are born overseas and they just tick the box that they are an Australian citizen you would just take that at face value?

**Mr Dacey**—You could by the information—that is, the date of citizenship and citizenship number.

**Senator MINCHIN**—And you do not enrol them if they do not put a number or date of citizenship?

**Mr Dacey**—We certainly go back and seek clarification from the elector where that information is missing.

**Senator MINCHIN**—Can you tell us that nobody is enrolled unless they provide all that information?

**Mr Dacey**—I cannot tell you that because I am not sure. We will get back to you.

**Senator MINCHIN**—But then there is the subsequent question of whether in fact the parliament should be saying that you actually verify that information with the department of immigration.

**Mr Dacey**—Then we go through that situation again with the verification of that information. I am not saying it cannot be done. I am not saying it is a privacy issue. It is a matter that we can take up with immigration, but that then raises the time factor issue to have that information verified, particularly in the close of rolls periods.

**Senator MINCHIN**—I am not clear in my mind what it is currently that prevents your doing those things. Is there anything in the law or the regulations that would prevent your making those checks?

**Mr Dacey**—We do not have a legal requirement to make those inquiries. We do not have indications that lead us to believe that there have been any significant problems in people giving us incorrect information.

**Mr Willson**—I realise it was not the intention to get into the detail of this topic, but we seem to have done so to some extent. Perhaps it might be useful to remind ourselves again about that one clearly documented case in Victoria last year. Had we in fact had the requirement to do that sort of checking, that person would have checked out well because he had in that false name a number of bank accounts and, indeed, a passport and a birth certificate. A lot of effort could have gone into a case of that nature and a determined criminal would not have been caught.

**Senator MINCHIN**—Again, we are not arguing that you will eliminate the problem, but it is a question of what steps are reasonable to minimise the extent to which the system is open to these problems.

**Mr Dacey**—Given that we are coming back to the committee with much more detail on this, which we are working on, we will be in a position to give some further guidance. From what I understand of this discussion, you are looking at some sort of proof of identity at point of enrolment as opposed to accepting the roll as it is and having some sort of proof of identity at the polling place. Are you looking at both issues or are you assuming that if you have one the other one follows—as you said, the front end and the back end?

**Mr McDOUGALL**—Personally, I think you have to look at both of them if you are going to consider the issue. Whether you want to make a decision on both or one, at

the end of the day you cannot make a good judgment unless you look at both questions.

**Mr Dacey**—We could go to a lot of trouble, or any administration could go to a lot of trouble, and have legislation for proof of identity in terms of enrolment. But then what do you have at the polling place? Are you suggesting ID cards? Maybe you are not clear yourselves, but it would help us in the presentation if we got some indication.

**Senator MINCHIN**—There are many in the community who believe both things should apply. There are others who think it should be one or the other. There are others who think it should be a mechanism such as I have described where there is ex post facto verification—that is, the application is made but then the commission has the capacity and the legal requirement to verify to the best of its ability the validity of the enrolment.

So certainly for the purposes of the coalition members, and the coalition generally speaking, all the options need reassessment. It is true: there is a pretty widely held view in the coalition that we would want to look at this without closing off any particular avenues.

**Mr LAURIE FERGUSON**—Could we have a fair bit of information regarding the proposal that there be identity on election day? Could we have some figures on how many people vote outside their area? I see a real difficulty with people not having identity and being forced to travel 100 kilometres or something. Personally—I am not speaking for anyone else—I have some concerns with election day requirement, quite frankly. I think we need a fair idea of the problems that might arise from that.

**Mr Gray**—We certainly propose to give you as detailed an exposition as we can on all of this.

**Mr GRIFFIN**—It is an update on what you did last time.

**Mr Gray**—It is not a repeat.

**Mr GRIFFIN**—It will be in the next submission, I gather. So we will have time to come back to you again if we have any other questions. We probably do not have to do that today.

**CHAIR**—That will come in the next month or so, I presume.

**Mr Dacey**—Yes, sure.

**Mr LAURIE FERGUSON**—Mr Maley was asked earlier about overseas situations. You responded by saying it is usually accompanied by societies where there are these particular cards. Could we still get some material, regardless of the identity systems in other countries, with regard to polling? Also, could we get information as to whether that was introduced in the last decade or so and the perceived impact in those societies

upon registration levels of voters, that kind of stuff? I do not know whether there is a country which recently went that way or whether there was a downturn in the number of people enrolling and that kind of thing.

**CHAIR**—The other thing that I was keen to get was something on prisoner voting. Our numbers have always been a bit skimpy in that area but I do not know if you know from the last election the number who voted and where they were located or not. Is that possible to find out?

**Mr Dacey**—As we pointed out before, it is very difficult to get the numbers of prisoners who in fact voted because if a prisoner avails himself or herself of a postal vote their usual enrolled address is their home address. We have no way of knowing whether in fact that person was a prisoner.

The only information we could give you is where we ran mobile polling teams through prisons. We could in fact give you the numbers of people who took advantage of that, but that would not be a true reflection of the actual number who voted because many choose for their relatives and friends to make available to them postal votes.

**CHAIR**—I appreciate the limitations.

**Mr Dacey**—Certainly, we can give you the numbers of prisoners who voted on mobile polling runs.

**Mr McDOUGALL**—On those mobile polling runs, voters could actually be warders and staff as well.

**Mr Dacey**—It could also be staff, yes. We would never be in a position to be able to tell you how many prisoners voted.

**Mr McDOUGALL**—I raise this question on the basis of it being a Queensland question. We are getting pretty sick and tired of redistributions, and we are going to have another one before the next elections. Could you give us some idea of the possibility of being able to get a bit more consistency? I will tell you who is getting really sick and tired of it: the voters, particularly the older voters. They really do not know where they are. You have one election and when you have another election you try to convince them they have changed because of a redistribution.

Because of the growth factor that is taking place, particularly in certain areas of south-east Queensland, that has an overall effect on the whole state. We go through this trauma and we are continuing to go through it. The current system triggers a redistribution and I can see this continuing, and I do not think that is best for the public.

**Senator MINCHIN**—This committee has conducted a full review of the electoral



redistribution procedures. It has made a report.

**Mr McDOUGALL**—I have just been given a copy of it. It is the first time I have ever seen it.

**Mr Gray**—I think you should read that because I cannot enhance the report in any way. The issue has been looked at very closely. There are constitutional legislative requirements that are all identified there. Short of stopping the numbers flowing over into Queensland by whatever method you might deem, you are going to have redistributions. They are conducted in a way in which your entitlements keep increasing.

**Mr GRIFFIN**—After another term of the National Party coalition government, they will probably start moving back again.

**Mr Gray**—The short answer, Mr McDougall, is that there is a report that this committee or its predecessor brought down. I think you will find it a unanimous report in that there was no dissenting report. We are happy to answer questions after you have had a look at it.

**Mr McDOUGALL**—I just thought you might have had some further comments on whether there was a way in which you felt there could be some change. I ask it in a very open way. We have a situation where we had one member of the Northern Territory with over 102,000 votes.

**Senator MINCHIN**—But you have to condone electorates getting way out of kilter; that is all. It is a policy question as to whether you are prepared to have such an outcome.

**CHAIR**—Do you have another point?

**Mr McDOUGALL**—The other point—and I know you have touched on this before I got here—is in relation to subdivisional voting. If we went back to subdivisional voting, would you see that we could possibly reduce the amount of absentee voting and end up with a better count on the night?

**Mr GRIFFIN**—You would increase it phenomenally.

**Mr Dacey**—It would increase absentee voting. One of the reasons for the abolition of subdivisional voting was to decrease it.

**Mr McDOUGALL**—Because it was a factor that did increase. Has absentee voting reduced by getting rid of subdivisional voting? I believe the perception is that, by getting rid of subdivisional voting, you decreased the absentee voting.

**Mr Dacey**—It has decreased with division wide ordinary voting, whereas before if you were outside your subdivision you had an absent vote. It has to have decreased.

**CHAIR**—Anyhow, you are coming back to us on subdivisional voting. Are there any other matters?

**Mr LAURIE FERGUSON**—Yes, I have three quick matters. The first is the Webster case. Webster had to pay costs to Deahm, but what was the basis of the judge's decision that the AEC would not pay costs?

**Ms Dawson**—What it means is that we were not obliged to pay any costs at all. There were no costs awards against the commission. Would it help if we gave you a copy of the decision? I can send one up to the committee.

**Mr LAURIE FERGUSON**—Additionally, I understood from this that Maggie Deahm got costs against Webster.

**Ms Dawson**—Webster has to pay Maggie Deahm's costs. Webster does not have to pay our costs.

**Mr LAURIE FERGUSON**—Is there a reason why he does not have to pay the AEC?

**Ms Dawson**—The court more or less decided that our position was free of the litigation between those two. We were there, if you like, to assist the court in its deliberations. We were not penalised by costs.

**Mr LAURIE FERGUSON**—Recommendation 32 refers to comparative offences. Could you clarify what you see as the comparative offences? This recommendation about increasing the penalties states:

The AEC recommends that a formal review of the level of penalties for offences under the CEA and the RMPA be undertaken by the AEC with the assistance of the Attorney-General's Department, with a view to bringing those penalty levels up to date and in line with penalty rates for similar offences . . .

**Ms Dawson**—There was a view given to us some time ago—I think it was canvassed in the 1989 JSC report—that a lot of our penalty rates have fallen behind similar offences in other legislation. Even though the Crimes Act amendment has brought those references into parity in a sense, there are still some—particularly electoral offences—that by their nature are unique. Nevertheless, they could be compared with other similar sorts of offences. Other legislation should be reviewed in terms of their penalty levels.

**Mr LAURIE FERGUSON**—Finally, in paragraph 9.3.7 on page 73 there is a one-

sentence reference to enrolment reinstatement difficulties. Could you very briefly give us a description of those problems? It says, 'The issue of enrolment reinstatements, for example, is a vexing problem the AEC believes needs reform'—end of comment.

**Mr Dacey**—It is to do with the complexity of schedule 3 of the Electoral Act where people are removed by divisional returning officers basically on the fact of non-reply to objection letters. They are removed by objection. They then come to vote at an election and they are not on the certified list of electors so they receive a provisional vote. If they had moved to a new address within the subdivision—in most cases, the subdivision being the whole division—those electors are reinstated and their vote is counted.

It is a complex issue. It causes problems, because we have some evidence of some electors who are constantly being reinstated. They are still within the division; therefore they are reinstated due to an error—or what is called an error by our staff. It is a very complex issue that we want to look at. It makes our declarations scrutiny very complex. When we have looked at the issue, we plan to give this committee a further submission on what we suggest.

**Mr McDOUGALL**—I have one other question to Mr Gray: I am aware that the commission has been working for some time on looking at electronic voting. Are you in a position now or shortly to be able to give the committee some more information on that?

**Mr Gray**—We are not in a position to identify any particular electronic solutions, if you like. We can give you advice on what we understand to be the experience in other countries and, indeed, other places. But we do not have something that we are about to seek to launch before this committee with respect to electronic voting. All we can do is provide you with the information as we currently understand it and we will be pleased to do that.

**CHAIR**—I thank all members and witnesses for their attendance.

Resolved (on motion by Mr Laurie Ferguson, seconded by Mr McDougall):

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

**Committee adjourned at 3.47 p.m.**