



COMMONWEALTH OF AUSTRALIA

**JOINT STANDING COMMITTEE ON
ELECTORAL MATTERS**

Reference: Conduct of the 1996 federal election

CANBERRA

Wednesday, 9 October 1996

OFFICIAL HANSARD REPORT

CANBERRA

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Present

Mr Cobb (Chair)

Senator Abetz

Mr Griffin

Senator Conroy

Mr Nairn

Senator Minchin

The committee met at 7.38 p.m.

Mr Cobb took the chair.

RANDALL, Mr Donald James, MP, Parliament House, Canberra, Australian Capital Territory

CHAIR—I declare open this fifth public hearing of the inquiry into the conduct of the 1996 federal election and matters related thereto, and I welcome the first witness, Mr Randall.

Mr Randall—Thank you very much, Mr Chairman, and committee members. I am the member for Swan.

CHAIR—I remind you that the proceedings here this evening are legal proceedings of the parliament and warrant the same respect as proceedings in the Senate and the House. The deliberate misleading of the committee may be regarded as a contempt of the parliament. The committee prefers that all evidence be given in public but, should you at any stage wish to give evidence in private, you may ask to do so and the committee will give consideration to your request. We have your brief submission before us, which is now a public document. Are there any corrections or amendments or additions you wish to make?

Mr Randall—Could I see a copy of what I sent you? Thank you.

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

Mr Randall—Yes. I would like to draw this committee's attention to several matters regarding what I consider to be a rotting of the exhausted preferential situation with votes at the 1996 election in particular, and give you some sort of trend which led to that.

I am sure everybody here understands what the exhausted preferential system is. I just show you, from the *Scrutineers' Handbook*, where it is the case that this example gives you 1 in this box and 2 for all other candidates. It is accepted by the Australian Electoral Commission as a legitimate vote because every box is filled. However, as a result, no preferences are distributed. I also refer you to several articles I have here. This is from the *Australian* of 31 January 1996. It also gives some insight into the problems associated with exhausted preferential.

CHAIR—Would you like to table those newspaper clippings for the benefit of the committee?

Mr Randall—Yes. This one is from the *Age* on 5 March 1996, three days after this election. The heading indicates that both parties' last vote jumped since the last election. The important part there is highlighted that about 0.4 of one per cent of votes were exhausted in 1996 compared with 0.06 per cent in 1993. I will table that, and I will table this other one when I have finished with it, if you do not mind.

CHAIR—Sure.

Mr Randall—I will go, in particular, to several examples in Western Australia.

Naturally, one is the electorate of Swan. In 1990, I am informed, the Electoral Commission did not record the number of votes exhausted. I could be corrected here but that is the information I have. In 1993 in Swan, for example, there were 56 exhausted preferential votes, which, of the total votes cast, was 0.08 of one per cent. In 1996, of all votes cast, there were 454 exhausted votes, which is 0.6 of one per cent. Just by way of comparison, in the neighbouring electorate of Pearce, in 1993 there were 42 exhausted votes, which is 0.05 of one per cent, and in 1996, there were 623, which is 0.8 of one per cent, so a substantial increase.

For Western Australia overall—I am sure that this trend could be shown right throughout most of the electorates of Australia, but I do not have all those examples—as a trend in Western Australia, in 1993 there were 551 exhausted votes, which was 0.05 per cent of the total, and in 1996 there were 6,207, which was 0.58 per cent of the total, again a huge jump.

My concern with this is that it is a legal quirk under the Commonwealth Electoral Act of 1918, as it currently stands. The celebrated case, as you would know, was the Alby Langer situation before the last election, where, even though it was illegal to advocate voting this way, Mr Langer challenged this convention and was subsequently gaoled. There is a fair bit of information on that which I will give you in a moment. What I was more concerned about was the covert way in which people were trying to get others to vote in my home state and beat the legalities of it. This included ringing talk-back radio stations and asking the question: is it true that if I vote 1 and put 2 in the rest of the boxes it is illegal? It was a way of getting the message across. Letters to the paper were doing the same thing.

In a marginal seat like Swan, for example—which is why I took particular notice of this—where we had 0.3 of one per cent, which was what the current member was hanging on by, 0.6 of one per cent was the total amount of exhausted votes cast. So it leaves it open to cause some manipulation of the vote if people are reasonably organised.

CHAIR—Do you have any breakdown of where they were casting their first votes? Was there any trend?

Mr Randall—I do have, actually, but I do not have it with me.

CHAIR—I do not know whether it favoured you or the opposition.

Mr GRIFFIN—It would not matter.

CHAIR—No; I realise that, but just as a matter of interest.

Mr Randall—I could find that out, but I have not gone to that extent yet. It is the general principle that I am wishing to bring before this committee to see that something is done. My point is—this is probably my closing point but I will make it now—that either you support a proper preferential system of voting or you support first past the post. I personally

would not mind first past the post; but if we are going to have a preferential system then we should take away the potential for manipulation that this particular anomaly in the act allows, because it does not happen in the state elections. It certainly does not in my state and I believe it does not happen in other states. The preferences are distributed, as they should be.

I will just finish with a couple of other points before the committee starts asking questions. Between the 1993 and 1996 elections, the exhausted vote dropped significantly. That goes against what I said. It was not recorded, actually. I am sorry; I may have misled you. In 1990 there were 18,771 votes around Australia that were cast, out of the 11 million voters. So I suppose what I am saying is that these are Australia-wide figures. I was looking more at Western Australian figures. In 1993, out of the 11.4 million voters, it dropped to 7,325. But in 1996 it increased Australia-wide to 46,000 votes, which was a substantial increase, from 0.06 per cent of the vote to 0.4 of the vote in 1996.

Section 329A was enacted and published between those two elections of 1990 and 1993. I believe that may have contributed—and it could not be proved conclusively, but it seemed quite logical—to the drop in the vote in 1993, but because of the promotion of it in, as I said, either overt or covert ways in 1996, it jumped up to 46,000 votes approximately of the total votes cast around Australia. The point is that, as I said a moment ago, I think it is something that needs to be tidied up before we vote again, because it is seen as an anomaly and it is open to manipulation and I would hope that this committee would take it on board.

CHAIR—Thank you for that. I am interested in your thoughts as to why the vote increased. It appears from the figures you have given us that the rise in Western Australia was significantly higher than for the rest of Australia. Was there a particular campaign in Western Australia and what reasons were people giving for advocating to vote this way? Was it disillusionment or was there something else more mischievous?

Mr Randall—I can only give you my opinion on this, but I believe, as you know, in Western Australia in the last federal election there were a high number of independent candidates and the message they were trying to sell was, 'Don't vote for either major party, they don't deserve your vote, just vote for one person and don't distribute your preferences. Nobody eventually deserves your vote.' That was the message that I believe was being sold and that is why it may have contributed to a higher vote of that sort in Western Australia because of the high number of independents, as I was saying.

CHAIR—Sure.

Mr NAIRN—Can I just clarify that. With the votes that you say that were put in that way—1, 2, 2, 2, et cetera—is that the total number that were recorded in that way; because if anybody voted for you, for instance, in that form, it would not be included in that vote, would it?

Mr Randall—It would not be included in that number.

Mr NAIRN—So it is only the exhausted ones. What you are saying is that there were about 6,000.

Mr Randall—They could have voted for me and put 1 and 2 for everyone else.

Mr NAIRN—But it would not be classified as exhausted, because you won.

Mr Randall—Yes, that is right.

Mr NAIRN—So what I am getting at is that the 6,000 votes are the wasted votes that did not end up being recorded against either yourself or the person who came second, which was the ALP.

Mr Randall—You are saying total wasted, as opposed to someone, say, voting 1, 2, 3, 4, 4, 4, 4.

Mr NAIRN—Yes.

Mr GRIFFIN—It is a question of where the total comes from. If it is formally exhausted in terms of the count, then it would have been for a minor candidate. If it is a question of a total of the ballot papers that were marked in that way, then that would include the ones that were cast for either of the major parties.

Mr NAIRN—But you would not have that—

Mr GRIFFIN—It is unless there has been a total reached by the Electoral Commission because they knew this was an issue which was going to come up. I do not know what the basis of the figures is—that is what I am saying.

Mr NAIRN—As I understand the way the Electoral Commission records those, the exhausted ones are the ones that are exhausted and do not get allocated in the final preference.

Mr GRIFFIN—If it is part of a count, what I am getting at is I think they may have done some checking of papers to work out exactly what was the full extent of that occurring, which would take into account votes cast in that way for the major parties. I am not quite sure whether these figures include those or not.

Mr Randall—I would like to table this, Mr Chairman, because the source of the Pearce one is from AEC Pearce Division and Swan is from AEC Swan Division. The figures are accurate, I believe. My concern is that it is a trend that is growing and could be a problem unless someone takes some steps to see that it does not continue.

CHAIR—Sure, so just to be clear what you are advocating again, you are saying we should knock back section 329A?

Mr Randall—I am saying that where votes are not distributed properly, it should be an informal vote.

Senator MINCHIN—You are effectively suggesting to us the repeal of section 270 which allows otherwise informal votes to be counted as formal. Section 270 is the source of the problem, not 329A, in fact.

Mr Randall—Can I say, Senator, that I do not know all the sections of the act and, if that is the section of the act that is the relevant one—

Senator MINCHIN—That is the section that allows the votes to be counted as formal.

Mr Randall—In the research that I have been able to do, 329A—

Senator MINCHIN—Section 329A just says that you cannot go around telling people that under section 270 a vote that would otherwise be informal is, in fact, formal. The Labor Party brought in 270, frankly, in order to get more votes into the pool that would otherwise have been informal. But then it did not want people running around saying, 'We have got an optional preferential voting system.' So they thought they had better have another section which prevents people going around advertising the fact that you can cast an optional preferential vote. That is the silly position we are in.

Mr Randall—I certainly agree with you then that if 270 is the initially offending part of the act, that has to be addressed.

CHAIR—I think that you have made a very good point on that, particularly regarding the fact that the number of votes was twice the 1993 margin. Are there any other—

Mr Randall—I think it was 10 times, actually.

CHAIR—Twice the actual margin. Going from 0.3 per cent margin to 0.6 per cent.

Mr NAIRN—The increase in exhausted votes was 10-fold from 1993 to 1996.

CHAIR—Are there any other aspects of the election campaign that you would care to comment on?

Mr Randall—Just one other and it is quite different. I just draw to your attention—it is a personal opinion—that this accepted way of voting where someone has ruled out all the boxes to vote in and then written his or her vote in order outside and away from the box leaves it open to some sort of rorting, as well. It sounds clandestine, but you could theoretically have a dodgy scrutineer who just ran along and wrote the figures in afterwards.

CHAIR—So you are saying that the votes should be within the box, or not counted at

all?

Mr Randall—Yes. That is what the boxes are there for.

Mr GRIFFIN—I have been in a few polling places in my time and in a whole range of forums when scrutineering. In terms of AEC-run ballots, normally, there are plenty of polling officials around and, if you go near a ballot paper with anything resembling a pencil or pen in your hand, there is danger of amputation. It is just not that easy for that sort of thing to occur.

Mr Randall—My opinion is that it is just a messy way of doing it. You could go back and get a paper if you messed up your ballot paper. Why should someone who has ruled out the boxes in that way, first of all, knock off the boxes in that precise way—

Mr GRIFFIN—It is very hard for me to see with my bad eyes. It is strange, but let me give you an example in terms of aspects of this. In some countries, crosses are considered a vote. In terms of crossing all of them, it could also be done as a statement saying, 'I think that you are all no good, but I am going to vote anyway.'

Mr Randall—I just bring the committee's attention to it. I personally think it is not much—

CHAIR—We probably need just to clarify whether that is formal or not by identifying the section of the act that covers that.

Senator MINCHIN—The act refers throughout to putting a number in a square opposite the name.

CHAIR—How many polling booths do you have in your electorate?

Mr Randall—It is not a straight answer. There are 34 polling booths, but then we have a couple of polling booths, one at the domestic and one at the international terminal, which are for all voters. There is also the central polling booth, because the AEC is housed within my division. So potentially there are 37, really.

CHAIR—Fair enough. We may be able to clear this up actually.

Mr NAIRN—Because a number can be written outside the box?

Mr Randall—May I ask the committee one more question before I leave? It is something like this, in the terms that you are dealing with it: would it have the potential to be dealt with before the next election?

CHAIR—Yes. This is the whole purpose of the committee. I am pleased you have raised it. Would you like to leave with us that page that you—

Mr Randall—I will give it to your staff. I would not mind photocopies of the material I have left with you.

CHAIR—Yes, we can photostat it and return it. Thank you very much for your attendance, Mr Randall.

Resolved (on motion by Senator Minchin, seconded by Mr Nairn):

That the documents that were tabled be accepted as an exhibit and that the extract from the AEC scrutineers handbook be incorporated in the transcript of evidence.

The document read as follows—

[7.58 p.m.]

GASH, Mrs Joanna, MP, Parliament House, Canberra, Australian Capital Territory

CHAIR—Welcome. Do you have any comment to make on the capacity in which you appear?

Mrs Gash—I am the federal member for Gilmore.

CHAIR—Thank you for attending. I remind you that the proceedings here this evening are legal proceedings of the parliament and warrant the same respect as proceedings in the Senate and the House. The deliberate misleading of the committee may be regarded as a contempt of the parliament. The committee prefers that all evidence be given in public, but should you at any stage wish to give evidence in private you may ask to do so and the committee will give consideration to your request.

We have received your submission, for which we thank you. It is now publicly available. Are there any corrections or amendments you wish to make to that submission?

Mrs Gash—No, thank you, Mr Chairman.

CHAIR—Would you like to make an opening statement, brief or otherwise, before we proceed to questions?

Mrs Gash—The statement I would like to make is that some of these issues can be stopped, and stopped quite easily, by perhaps a little bit more scrutiny by the people who are appointed on the day and perhaps a little bit more consideration to some of the people who work on the booths by those who are appointed to supervise those activities.

CHAIR—Thank you for that. You talk about candidate behaviour and letters written by constituents. You say that none of these letters were endorsed by the people who signed the letters. Can you just explain what that means?

Mrs Gash—Yes. The candidate, about four or five days prior to the election, distributed letters signed by constituents—some were no longer constituents, we later found out—and they were not endorsed, nor were they authorised by anybody, as well as the constituent themselves.

CHAIR—But how can they be signed by the constituent if they are not—

Mrs Gash—They were letters that were written as a personal endorsement to the candidate many, many months ago, prior to the election.

Senator MINCHIN—They were not endorsed for publication as advertising material?

Mrs Gash—Correct.

Senator MINCHIN—Written in a private capacity?

Mrs Gash—Correct.

Mr GRIFFIN—Similarly as was done by a number of candidates in a range of different electorates.

CHAIR—It is said to happen on both sides, but it should not. What sort of numbers are we talking about being distributed? Are you saying that they were mailed out to electors?

Mrs Gash—There were thousands mailed out, as targeted mail. It was only by chance that we had the complaints from the people themselves and it was picked up.

CHAIR—So you are saying that in some cases they did not even live in the state, let alone the electorate?

Mrs Gash—Some of them did not even live there anymore, nor did they have current telephone numbers.

CHAIR—Let me be clear what your complaint is. If someone wrote to the member saying that he was a good bloke and they have subsequently left the electorate, there is no hassle or worry with that person distributing the letter, providing they have got the permission of the candidate and it is clear to the constituent.

Mrs Gash—Absolutely, and I think it should be dated as well, to see how current it is.

Senator MINCHIN—Are you suggesting that the act should provide that it is an offence to distribute or publish a letter that a candidate receives, unless specific permission has been granted?

Mrs Gash—Absolutely. That is what I am saying.

Mr GRIFFIN—Are you aware it was done in most marginal seats in the country?

Mrs GASH—We certainly sent some out as well. They were certainly authorised by the person who wrote the letter.

Mr GRIFFIN—There were a lot that were not in other areas.

Mrs GASH—I cannot comment on that. I am just saying what happened in our electorate—

Mr GRIFFIN—Sure.

Mrs GASH—and the pain it caused. And I think it did harm to the particular candidate as well.

Senator MINCHIN—Don't you think the political marketplace, so to speak, looks after this? Peter Duncan did it in Makin and it backfired very badly on him. I think it was one of the reasons he lost the seat. Someone who had written to him privately suddenly found a glossy brochure going out with their letter printed in it, and went public and said, 'This is outrageous.' It really did him a lot of damage. So, in that sense, the marketplace was a corrective force.

Mrs GASH—It also tarnishes all candidates. It does not matter who it is. It certainly benefits the opposite candidate, as you are saying, but it also tarnishes candidates that these sorts of things happen in politics. That is the sort of thing that I am trying to get at.

CHAIR—You suggest that there should be a code of conduct for candidates. Who would actually draw that up and how would it be distributed to candidates?

Mrs GASH—I am not sure whether it should not be the Electoral Commission itself. They are the ones that give us our guidelines prior to an election—we all have an information session prior to going out—and I think there should be more criteria as to what one should and should not be doing. It is very flexible what they say, and they will have a little giggle and say, 'We all understand this never happens.' When you are a new candidate you try to do the right thing by everybody concerned, particularly the constituents. To then have this sort of thing, saying with a wink, wink, nod, nod, 'You can do this even though we say you can't,' I find a little bit hard to accept.

CHAIR—You also make a complaint about removal of electoral posters. One or two other submissions have also made that point. The Electoral Commission themselves say, if I am correct, that it is not so much a matter for them, it is more a matter for informing the local authorities.

Senator MINCHIN—It is a police matter. I have often referred those sorts of thefts to police and people have been prosecuted.

Mrs GASH—I understand that and we did do that—we reported it to the police. But we were also informed where they were. We also located them and, as you will read further on in the submission, it rather annoyed me to think that that was just politics when one knew and saw where they were located.

CHAIR—You informed the local police of this when—

Mrs GASH—I did personally.

CHAIR—you found the 100 posters at the DMR. What was the reaction to that?

Mrs GASH—They then went after I had informed them, because they had been tipped off that we had found them and they disappeared.

Senator MINCHIN—The point is that it is theft. All we can do is recommend what the Electoral Act should contain in relation to offences or otherwise. Where the law already covers something that you believe should be an offence what do you gain by putting it into the Electoral Act?

Mrs GASH—I understand that.

Senator MINCHIN—Given that it is theft and that the law should be used to prosecute it, is it your submission that the Electoral Act should additionally cover this in some way?

Mrs GASH—No, you cannot. It is too hard to police.

CHAIR—You also say that Richard Jones was distributing a how-to-vote Democrats card. Did you report that to the Electoral Commission?

Mrs GASH—Most definitely, and nothing was done. We were told it was quite legitimate to do so.

CHAIR—Why wasn't anything done? Were you given any reason?

Mrs GASH—There were two Democrats how-to-vote tickets. The official one which was agreed upon was changed just prior to the booths opening and replaced with one that Richard whatever his name was—I cannot remember his surname—

CHAIR—Jones.

Mrs GASH—Jones authorised. That caused great confusion both amongst the candidates themselves, particularly the Democrats candidate, and also for the people who were coming into vote.

CHAIR—You are saying the federal Democrats candidate did not know of this?

Mrs GASH—Correct.

CHAIR—Did the federal Democrats candidate also complain to the AEC?

Mrs GASH—Yes.

CHAIR—Did he or she get a reply, to your knowledge?

Mrs Gash—I do not know, I did not carry it any further, but there was a lot of consternation on that day with a lot of people because it was totally changed. It was authorised by Richard Jones and 'from the Democrats' was written underneath it. As you would understand, he was expelled from the party anyway over one of those issues. At the time, who do you report it to when it is so close, and where does one go?

Senator MINCHIN—What exactly is the offence, too? Is it a common law fraud? What is it?

Mrs Gash—It was not authorised.

Senator MINCHIN—It was authorised though, was it not?

Mrs Gash—It was authorised by an individual, not by the party.

Senator MINCHIN—It does not require authorisation by the party. It is just advertising material and all it requires is the name and address of the person—

Mrs Gash—It also stated that it was printed in Sydney by a printing company when in fact it was printed by the Labor candidate's—

Senator MINCHIN—But the distribution of misleading how-to-vote cards could be done quite properly in terms of the authorisation. It might have the legitimate person responsible and the printer and therefore there is no offence in relation to the authorisation requirements. The question is what is the offence and if there is not an offence, do we create one and what is that?

Mrs Gash—It was misleading information as far as I am concerned. It was not printed where it was said it was printed.

Mr GRIFFIN—From looking at the submission from the AEC, the suggestion is there that it may be an offence under section 329(1). It is not a matter of whether it is or is not an offence; it is more a question of how do you act on it quickly.

Mrs Gash—Exactly; I agree with that.

Mr GRIFFIN—If you go to the question of what the AEC is saying, the matter has been referred to the DPP and then on from there to the Australian Federal Police and allegedly, according to this submission, it is currently under investigation by the AFP on the question of whether there has been a breach. That is still to be determined but the real question here is the matter of what do you do at the time rather than resolving the matter some months later.

CHAIR—Did you say this instance is being investigated or were you referring to another instance?

Mr GRIFFIN—Effectively, yes. I am referring to the AEC submission dated 20 September and the response to submission No. 38 from L. J. Wallace of the Cheltenham branch of the Liberal Party. There are several paragraphs there on the question of alleged Democrat material. It says:

. . . how-to-vote material allegedly printed, published and distributed by the ALP in the Division of Gilmore to the DPP on 15 March 1996, following a formal complaint.

Further on it says:

On 2 April 1996 the DPP advised that the facts alleged in Mr Graham's complaint may have amounted to a breach of section 329(1) of the CEA but that an investigation would be necessary to establish the facts.

On 16 April the matter was referred to the AFP for investigation. On 2 May 1996 the AFP advised they could not accept the referral due to other priorities. After further correspondence, on 12 June 1996 the AFP advised that they could now undertake the investigation. The AEC is awaiting the outcome of this investigation.

The matter is being looked into but the point that Mrs Gash is making in particular is what do you do on the day when something actually could impact on the result. One thing I would say is that in some examples that I have seen where there has been this sort of breach and it has been seen to have in any way affected the election result, there has been a new election after the date. I still think you have a legitimate point about what do you do at the time.

Senator MINCHIN—That is right; in Victoria there was that by-election as a result of a fake how-to-vote card.

CHAIR—It would be interesting to hear from the Electoral Commission as to whether they have a comment on that point you raised about having some effective action to take on the day.

Mr GRIFFIN—The problem is that on the day it is a question of whether or not it is a breach because if there is an element of doubt about it then what do you do on the day. If it is found to be legal then you could be open to charges the other way around.

Mrs Gash—I certainly see that as the main point. But the other point I am making is: when it is authorised and it is printed somewhere where it is not actually printed, how do you react to that?

Mr GRIFFIN—It is a question of proof in the circumstance as to what actually did occur. I do not know.

Mrs Gash—Well, we do.

Mr GRIFFIN—If you go to the question of the act, under that particular section it says:

A person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or

cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.

There is some more stuff on that. As to the question of where something is printed, there is an argument about how significant that is. To me, anyway, the question would always be about what is, in fact, printed and whether that is misleading. If that is misleading, then there is a question mark over whether it is legal. But I do agree with you. It is often a problem on the day. When something like that happens, what do you do about it?

Mrs Gash—Not the question of where it is printed. That is just another incident. That is a blatant lie as to where it is coming from. But the other question is very significant; you are quite right.

CHAIR—Sure. You also raise a serious matter of intimidation at polling booths.

Mrs Gash—Yes.

CHAIR—I guess no election goes by without a skirmish or two somewhere around the country, but you raise some matters of concern. A woman was assaulted. You say that the police were reluctant to do anything about it. Were these incidents reported to the police? Can you just describe what happened?

Mrs Gash—I was not there; I am only relating it as I understand it happened. A complaint was made to the electoral officer in the booth and the police were called. By that stage the incident was basically over, and it was very difficult to prove anything one way or the other. But they were very reluctant to do anything on an issue of a political basis.

CHAIR—It is a matter properly for the police rather than the returning officers, would you say?

Mrs Gash—I am sorry; I accept what you are saying, that it is a matter for the police, but by the time the police come to those sorts of incidents the momentum has gone; whereas the returning officers, if they have been called and actually witness this, I believe, should pull aside the offending parties until the police do come.

Mr GRIFFIN—The officer in charge has some responsibility for the conduct of people at the polling booth; but, if it gets rough, it is a different question as to what happens then. From the same submission, the AEC said that the DRO for Gilmore had reported that all returns from officers in charge of polling booths and all reports of scrutineers and party workers had been checked, and there was no mention of any instances of assault or intimidation. They were saying that it did not happen, or that it was not reported to them.

Mrs Gash—We are saying that it did.

Mr GRIFFIN—I know. If you have some specifics on the incident—which polling booth and all that—it would be worthwhile our approaching the AEC about that. If there is

clear evidence that it was, in fact, different from what they are saying, then I am sure they would be interested in finding that out too.

CHAIR—That is a good suggestion.

Senator MINCHIN—It would remain open to the Electoral Commission to ask the police to be present at booths where they thought there would be trouble, and it would be open to the police to actually be there.

Mrs Gash—You do not know the booths that are going to be a problem. You do not know the people who are going to be on the booths on the day, apart from your own. You certainly do not know what the opposition is going to be putting on the booths. It was our first election, and we had no concept that it was going to be as heavily unionised as it was. They are the sorts of things that you do not know until they occur.

CHAIR—You say that posters, wraps and materials were just taken down willy-nilly as well.

Mrs Gash—Yes, absolutely.

Mr GRIFFIN—As one who has been savaged by lovely old ladies from Toorak, I understand what you mean. It is not always unions, though.

Mrs Gash—I knew you would say something like that.

Senator MINCHIN—In South Australia, I always had a flying squad of heavies with mobile phones.

Mr GRIFFIN—Is this on the record?

Mrs Gash—It is not a bad idea.

Senator MINCHIN—Yes, in marginal seats. I had them on the road all the time, cruising. If there was trouble, they could be there in a couple of minutes.

Mrs Gash—We had reinforcements called in at that particular time. It was just one of those things. To come back to the issue, I feel that the Electoral Commission and the returning officers, as Mr Griffin has said, have some responsibility. If it has been reported to them, I believe that they should call those offending parties aside and keep them there until such as time as the—

CHAIR—Was it reported to them?

Mrs Gash—Yes, it was.

CHAIR—Did they come out?

Mrs Gash—I understand that they did but, by that stage, it was—

Senator MINCHIN—All they can do is tell them what the law is. They have no powers of arrest, or anything like that.

Mrs Gash—So I understand.

Mr GRIFFIN—They can request, but they cannot detain.

CHAIR—That is the problem.

Mrs Gash—But you can give them those powers.

CHAIR—It is not appropriate.

Mr GRIFFIN—They are not police officers. If you are suggesting they be given powers and be made temporary constables or something for the day—

CHAIR—They could come out and have a look, and perhaps act as a witness to the police later. That may be reasonable.

Mr GRIFFIN—The problem is basically that they are not trained to play a policing role and, therefore, you cannot really get them to play a policing role. What would be required to do that would be phenomenal, resource-wise. To me, the interesting question here is that you are saying that in fact this occurred in the circumstances you have outlined. I am not doubting you, but it is in direct contrast to what the AEC said, so I was just interested to pursue that.

Mrs Gash—That is right. I have actually asked them to do a statutory declaration on that basis, because I think it needs to be reported and officially recorded.

Mr GRIFFIN—Particularly if you have the names of any officials they spoke to.

Mrs Gash—Yes, we have; and I think that needs to be done.

CHAIR—You also raised the matter of direct mail that was sent out and was returned—presumably, it was some of yours. Subsequently, if I read your submission correctly, these people—who presumably did not live in these places—in fact voted. Is that what you are saying?

Mrs Gash—Actually that is the part that Michael Baume added to the submission. They came back to him, as he was the senator who put the mail out.

CHAIR—Is it possible that this could be explained, for example, by people recognising political mail and not wanting it and returning it somehow?

Mrs Gash—I cannot comment on that.

Senator MINCHIN—How do you know they voted?

Mrs Gash—Michael checked it out. I cannot comment there.

Senator MINCHIN—One of the issues in this area is the fact that there is no access to the marked rolls, so one of the issues is whether there should be access so that you do know who voted and who did not. In the absence of access to the marked roll, I am not sure how it can be asserted.

CHAIR—I hope we are not casting aspersions on Senator Baume. I would not like to do that.

Mrs Gash—I will have to abstain from that one. I cannot comment on it. He added that bit to it.

CHAIR—What would you like to see done about people being enlisted on the roll and on voting day? Would you like to see the integrity improved?

Mrs Gash—Absolutely.

CHAIR—Have you any suggestions as to how that could be done?

Mrs Gash—I am just wondering if people should show proof of identity on the day of voting, when they have their name ticked off the roll.

CHAIR—And at the time of enrolment?

Mrs Gash—I had not looked at that one. Certainly, I had thought of it for at the time of voting.

CHAIR—What are you thinking of: just the production of a driver's licence or a birth certificate?

Mrs Gash—Yes, the same as you do when you pick up an airline ticket or wherever you are going: you have got to show proof of identity. I do not think that is too difficult to do.

Mr GRIFFIN—What sort of proof of identity: a driver's licence? What if you do not drive?

Mrs Gash—Have you got a credit card of some sort? Are you going to say, `What if

you do not have a credit card?' Doesn't somebody have an ID of some sort anywhere, be it a social security card or whatever? They have to have some form of ID.

Senator CONROY—Anything with a bit of a name on it.

Mrs Gash—It is better than nothing.

Mr GRIFFIN—Have you got any figures on how many people you think did vote where mail was returned?

Mrs Gash—No. I meant to get them from Michael Baume. I can get them. But it is a large area: it has 57 booths.

Mr GRIFFIN—You would get quite a few people moving within the electorate, would you not? It is that sort of an area.

Ms Gash—It is a transient area. There are a lot of people from outside coming in. Identified absentee booths in certain areas would certainly assist. Maybe having some separate booths set aside would make it a lot easier as well.

CHAIR—Thank you very much for your attendance. It is much appreciated.

FILING, Mr Paul Anthony, MP, Parliament House, Canberra, Australian Capital Territory

CHAIR—Welcome and thank you for appearing before us. I remind you that proceedings here this evening are legal proceedings of the parliament and warrant the same respect as proceedings in the Senate and the House. The deliberate misleading of the committee may be regarded as 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. Are there any additions or amendments you wish to make to your submission?

Mr Filing—I can just make a verbal submission, Mr Chairman.

CHAIR—I might just give a cautionary word beforehand. You will appreciate that we should be cautious in discussing matters connected with the Stevenage petition to the Court of Disputed Returns. With that in mind, would you like to make any additions or an opening statement before we proceed to questions?

Mr Filing—In fairness, the only matter that really relates to Mr Stevenage would be the case of the midnight sign incident about which he has made an allegation to the High Court in his petition. I will tread warily there, Mr Chairman.

This verbal submission to the inquiry into the conduct of the 1996 federal election is additional to my written submission. In that document, I outlined the number of serious matters of misconduct which took place during the Moore election campaign, and I will elaborate on these in a minute. I just draw your attention to the fact that, at present, in my view there is no effective mechanism in place to rapidly respond to complaints of alleged abuses of the Commonwealth Electoral Act, an act which is designed to provide fairness and accountability in Australian elections. There is a perception in the community that abuses of the act are not and cannot be effectively policed at the time of the election. That is the nub of my submission—that there is apparently no place where you can effectively go for a rapid response.

I will spend just a few minutes encapsulating the situation which saw the campaign waged in Moore develop into the dirtiest I, or anyone else I have spoken to, have ever seen. As I said in my submission, the real failure here is that today, almost six months since the election, not one of the matters which I have identified has effectively been resolved by the AEC or the Federal Police, to the best of my knowledge, where I am aware that the Federal Police have commenced inquiries into a number of the allegations as a consequence of complaints we made in February this year. But some of them took a fair few months before they even initiated any effective investigation.

During the March campaign, as I have identified in my written submission, the Liberal Party in WA—and I use that qualification there because I think it is a particular trait of certain sections of the party in WA—conducted a campaign of deceit and dirt which included the

following: push polling, personal denigration, my alleged breaches of the Electoral Act—in fact, I have asserted there have been breaches of the Electoral Act—harassment, stealing, dummy candidate and misleading literature.

I do not want to address each of these matters at length as much of that argument is contained in my written submission, but just say that individually I consider these breaches of acceptable standards of campaigning very worrying; together, they paint a picture which cannot be put down to simple electioneering heat of the moment episodes. In other words, there is an overall picture given by these incidents that is unpleasant and outside what I think most people consider the traditional robust Australian election campaigns.

As I said, the tragedy is that no real effective mechanism exists whereby these breaches could have been swiftly tacked down and investigated. I say also that I make no reflection on the divisional returning officer for the seat of Moore, who I consider to be a very fine individual, diligent and conscientious, and nor do I make a reflection on the Chief Electoral Officer for Western Australia, Mr Young, who I consider also to be a very good officer of the department and someone who takes his job very seriously. The difficulty is with the process. This is the thrust of my submission.

It is quite probably too late to have my complaints effectively dealt with, given the passage of time since the alleged offences occurred, but what I would request of this committee is to consider taking the first steps to make recommendations for effective controls that could prevent these abuses happening without being able to be immediately investigated.

I suggested in my submission that a team of AFP officers could be assigned in each state, specifically during the election period, to deal immediately with complaints. The current situation whereby the AEC pass on the complaint to the AFP is unsatisfactory. In fact, my complaint was not attended to for many months. By then, when I made inquiries again, it was put to me—it was certainly put to one of my staff—that it was probably too late and it would end up in the too-hard basket. In other words, it just seemed too difficult.

CHAIR—Who told you that?

Mr Filing—One of the officers mentioned that to my staff member when he rang to make inquiries about how the investigation was going. If I can just enlarge on that, I think the process is the problem. I believe, going on recollections from my discussions also with Australian Federal Police officers, that the complaint is given, as part of a whole range of complaints on a whole range of different issues, to an officer who then allocates complaints to be investigated by individual officers. Sometimes they are assessed over a particular period of time and sometimes that process can take longer than in my view is desirable with matters that arise from election complaints.

Mr GRIFFIN—What sort of fair timetable do you think there should be to actually try to resolve and investigate some of these matters properly?

Mr Filing—The specific instance that I am referring to is where we became aware of the circulation of a publication in the electorate called the *Moore Report*. There was a person identified as having authorised it—and I will come to this in a second—by the name of Mr Crook.

Senator CONROY—Clearly part of the WA Liberal Party.

Mr Filing—There was a publication of two editions of a slanderous and libellous news-sheet that was distributed throughout the entire Moore electorate—to every household, as a matter of fact, as far as we can ascertain. We know the extent of the distribution because a member of my staff interviewed the manager of the distribution firm who confirmed the items had been distributed in this way.

Interestingly and importantly for the work of this committee, that person expressed the view that he would distribute the items regardless of what authorisation they had on them—and he was a printer-distributor. In fact, he said that he would distribute these items even if they had no authorisation on them. In other words, he felt no responsibility for the actual forms of the authorisation process, possibly because he was not aware of the seriousness of them or he may have—

Senator CONROY—Are you able to table them?

Mr Filing—Yes, I have got a couple of copies here. Unfortunately, the originals are with the Australian Federal Police. I have got a couple of copies, one of which is not complete, I believe. I apologise for that.

Given the requirements of the act and the lengths to which the WA Liberal Party campaign in Moore went to cover up the distribution of these items, the attitude by the distributor is particularly disturbing. It could lead, in fact, to the distribution of completely untraceable material into letterboxes during a campaign.

The manager of the firm concerned on this occasion expressed the view that it was not up to him to ensure the validity of authorisation, that is, that this process should have taken place before the item arrived at his warehouse and therefore he would accept no responsibility if the information contained in the items was false, misleading, defamatory or in any other way in breach of the law. This is another anomaly that must be addressed as a matter of urgency. Distributors must be subject to some regulation in a manner which enables the Electoral Commission to discover the origins of the information they distribute if the need arises.

To make matters worse, both news-sheets titled the *Moore Report* contained articles that were false—in some instances completely false. Others were simply distorted in an unacceptable way to give an inaccurate impression of myself and the independent position I had taken. Both newsletters bore false authorisations, the first a Mr Crook, the second a Mr Nagi. Mr Crook, to the best of our abilities, never existed.

The fact that the residential address given for Mr Crook happened to be that of the co-director of the firm that produced the newsletter is interesting. More interesting is that the other director of that company, which is called Lightning Distributors, was in fact the campaign coordinator of the Liberal's campaign committee in Moore.

CHAIR—I am hesitant to interrupt you here, but you have indicated there is an AFP investigation into this. I am a little uncertain as to the sub judice aspect of it. We do have your submission here which we have all read in some detail. Our time being a little limited, I am just wondering if it would be more proper to get to the principles that you are raising rather than the detail, in that I do not think at this stage we are competent to assess the detail, but we are competent to talk about the broad principles of interference and misrepresentation.

Senator CONROY—Mr Filing, were you able to ascertain from the distributor who was paying for the distribution?

Mr Filing—In the second instance we had from the actual printers an order which we gave to the Australian Federal Police, which in our view established clearly that the publication had been ordered by the campaign chairman of the Moore campaign, notwithstanding the fact that it said that the publication had absolutely nothing to do with the Moore campaign, the candidate or the Liberal Party.

CHAIR—To your knowledge, the AFP are taking this quite seriously and investigating it thoroughly? If so, do you know where it is up to?

Mr Filing—The last I heard was that they thought it was not going anywhere in the sense that they had made some inquiries and they believed they had satisfactorily identified the people who had allegedly authorised the newsletters. The interesting thing in the case of the second one is that my staff member went racing down to the address which was given, which was to the south of Perth, and actually managed to find a Mr Nagi at the address, who completely denied he had anything to do with the publication, did not know anything about it.

I am informed by the Federal Police that there is now an allegation that Mr Nagi's son was in fact the person concerned. That is what the Federal Police reported to me verbally. I have not had a written response that I can use, as far as I am aware anyway.

Mr NAIRN—Also a Mr Nagi, presumably.

Mr Filing—Yes, it was; there was no doubt about that. That was what has been asserted.

CHAIR—There are a couple of things you are obviously interested in. First, you are concerned that the Federal Police pursued this to the absolute degree that they are able to. Secondly, you are concerned about the mechanism so that these things can be investigated as quickly as possible.

Mr Filing—Yes.

CHAIR—You have made some suggestions as to AFP members being allocated. Why that in particular, as opposed to them being called in? I take your point that perhaps they could be called in and initiate these things quicker than they have, but is it not possible to—

Mr Filing—In this case we made the complaint when the first one was published. Then they published another one with another person who we believe was falsely authorised, or—

CHAIR—What was the time factor there?

Mr Filing—Within several weeks of each other. It was during the actual campaign proper of the election campaign.

CHAIR—Nothing was acted upon after your first complaint until the second newsletter came out.

Mr Filing—When we complained about the first one, the complaint was accepted and referred, presumably, through the normal processes. Then the second one arrived and we did the same thing.

Mr NAIRN—What was the complaint about the first one?

Mr Filing—The complaint about the first one was that in fact the person concerned, Mr Crook, did not exist. It had not been authorised by anybody.

Mr NAIRN—So it had not been authorised by a relevant person. You were not complaining that it was called the *Moore Report*? Is the Moore report title used by you?

Mr Filing—No. But it gave the impression to some constituents that in fact it was an official publication. It says, 'Election information, free to all residents in Moore.'

Mr NAIRN—There is nothing particularly illegal about that.

Mr Filing—No. All I am saying is that nobody is denying anybody the right to publish information. We made assertions of fact in our publications but we were prepared to identify ourselves. In this case, where you are in the thick of an election campaign, there is a publication of documents or a publication—

Mr NAIRN—But it is the authorisation by somebody who is not a real person that is the complaint.

Mr Filing—Yes. In the second instance, where we had actually gone down and visited the Mr Nagi we believed had been identified in the authorisation and he denied it, then we

found through out through our processes that the order had come from Lightning Distributors, which was the company owned by the director of the Moore campaign, then obviously it looked to us as though they had published it and that in actual fact they had tried to conceal that fact by having somebody else falsely authorise it—

Senator CONROY—The second one rather than the first one.

Mr Filing—No, both of them. It is just that on the second one we had more information, because we actually found the person. The first one we could not find.

Senator CONROY—The thing you are holding in your hand there.

Mr Filing—That is for the second one.

Senator CONROY—That is for the second one; you do not have one for the first one.

Mr NAIRN—There is nothing illegal about somebody placing an order to have something printed, it is the fact that it is authorised by somebody who did not exist.

Mr Filing—Yes.

Mr NAIRN—Or was not really the person authorised to authorise the document.

Mr Filing—Just to clarify it, the allegation is that the sheet which contained untruths or distortions—

Mr NAIRN—Alleged.

Mr Filing—Of course. That is my view; all of this is my view. The sheet was published and distributed with an authorisation from a person who, we believe, was either non-existent or it was falsely authorised. When we went to investigate the matter further to find out where it had come from, we found that the order for the second one, because we could not get to the bottom of the first one, it was a different printer; the second case we found that in fact Lightning Distributors, which is a company of which the campaign chairman of the Stevenage campaign was a director, had made the order. This is notwithstanding the fact that in the newsletter itself it made the allegations completely. It had nothing to do with the campaign. It was a third-party publication.

Senator MINCHIN—Paul, if someone intends to breach the law and print something with a false authorisation—

Mr Filing—Here is one case. It is headed 'Filing appointed law & order chief on probation for stealing'. There was a whole range of other stuff there. It was a silly beat-up story from something that occurred, allegedly, in 1991. I will tell you the context that this

came out in. It came out after one of Mr Stevenage's campaign workers had been charged for stealing my signs. It became notorious in Western Australia because it was publicised everywhere that this campaign worker, a member of his committee, had been out over two nights stealing my signs and had been apprehended by the police. He was later convicted and the charge dismissed under section 669 of the criminal code. This was distributed to try and even up the balance, although how and why I do not know. The point was that, when this was distributed, it said on the bottom that it was authorised by M. Nagi in Coodanup and printed by Vanguard Press. We raced around to try and find it, and found out that Mr Nagi knew nothing about it and knew no-one who had. Then we found that the publication was, in fact, ordered by Lightning Distributors.

Senator CONROY—Have you approached Lightning to ask them who paid for it?

Mr Filing—No. We merely reported the matter to the Electoral Commission on the basis that we believed that there had been a breach of the electoral act.

Mr GRIFFIN—I would like to raise a couple of points. I am looking again at the response from the AEC on this matter. There is one thing regarding this that I view with some concern, and I quote from the response:

On 15 March 1996 the AEC sought advice from the DPP on a complaint by Mr Tom Herzfeld, campaign director for Mr Filing. . .

I am bemused. I imagine you made the response some weeks prior to the election on 2 March. These copies of the *Moore Report* would have been distributed prior to the election, obviously. The election was on 2 March, so I take it that they were distributed some time during February.

Mr Filing—Yes.

Mr GRIFFIN—Yet it was not until 15 March that the AEC sought advice from the DPP on the matter. I am just wondering what the AEC had done in the meantime? There do not seem to be any details here as to that, and certainly I wonder why it took them so long to refer the matter.

CHAIR—Do you know?

Mr Filing—Mr Herzfeld wrote on my behalf on 16 and 27 February in relation to it.

Mr GRIFFIN—So, essentially, from the first letter, it was a month before the DPP was consulted regarding the matter.

Mr Filing—Yes. It was at least, in my view, two to three months later when we made inquiries of the police and found they still had not, in effect, investigated the matter.

Mr GRIFFIN—Again according to the AEC's response, the matter is still under

investigation and they are awaiting the outcome of the AFP investigation. The matter was referred to the AFP on 10 May, following advice from the DPP, which was on 26 March. From what I can tell from the chronological date order, what we know so far is that on 16 February and, following on from that, 27 February, your campaign notified the AEC regarding this particular issue. The next official comment seems to be that on 15 March the AEC sought advice from the DPP on the issue. That advice was provided back on 26 March and then it was 10 May before it was referred to the AFP for investigation and they are still waiting to hear back. So they are a couple of questions about which we might need to seek further information from the AEC. There may be good reason for it; I do not know. But I would be interested to find out why it took them so long to actually even refer it to the DPP in the first place.

Senator MINCHIN—Yes. Paul, if someone is breaching the law in distributing a document like that, there is bugger-all you can do about it once it is out. How do your propositions in relation to specially designated AFP officers, et cetera, actually resolve the problem from your point of view: is it that, hopefully, someone will be exposed as having breached the law, prior to election day? Is that what you actually projected?

Mr Filing—There is that aspect. The other aspect is whether they intend to repeat it. In the first instance, when the first one was published, we did what we thought was a necessary action, which was to try and identify who had authorised it and then make a complaint to the Electoral Commission. Then, of course, it appeared again and, in each case, it was distributed widely in the electorate. I know that in the Australian tradition the practice is obviously that, when an election result is close and sufficient voters could have been influenced by something like this, one might consider petitioning the Court of Disputed Returns.

But, in the other analysis, you might have a case where a publication is distributed, and then another one, and that may make a profound difference to the election. You would never be able to quantify it. If there were a false authorisation, in that it in some way purported to be something it was not, in order to mislead electors—and in this case it was clearly designed to mislead electors—then there is little you can do before the election.

CHAIR—Did this get any media coverage along the lines that this was a dirty tricks campaign against you?

Mr Filing—From memory—and I have not got all the media reports, as we had a fair bit during the campaign—it was reported upon, I think, in the *West Australian*. I do not think this particular instance was in the electronic media.

Senator CONROY—Is an alternative that the Electoral Act be amended so that the publication distribution be an offence, so that companies who distributed material like this, without authorisation, would know that it would be an offence and that they could be charged under it?

Mr Filing—The main object of a change of this sort would be to make the responsibility more onerous on somebody who acts as the printer or distributor. If you can merely put somebody's name on a thing and pass the thing off as something that it is not, and there appears to be no recourse, then my view is that you could just continue to do it. Why would you stop? I would have thought that, under normal circumstances—given that this was a bit of an abnormal election campaign—it might be a particularly effective campaign tactic, a bit like the Zinoviev letter in the 1927 elections in the UK: something that sways people on the basis of a completely misleading assertion of fact. There is nothing you can refute in time to influence the outcome of the election.

Mr NAIRN—It could also backfire and have the opposite effect and you would never know, either. I guess that is one of the dilemmas of a court: if it was a close election and you took it to court, there is an aspect that you could never quantify. In fact, if it had not been there, you may have lost by more. You could lose by 100 votes but, in fact, it could have had the opposite effect, and you might have lost by 1,000 votes if the thing had not gone out. No-one would ever know.

Mr Filing—It may well be the case that, in our election, that happened: in my view, there clearly was a backlash against the style of campaigning. The difficulty is that the particular circumstances of the Moore election make it difficult to draw conclusions of any sort about how it might have affected the outcome. But I was conscious of the fact that there is no apparent avenue to get swift action, and that adds to the frustration. Our supporters and fellow travellers, people who were sympathetic, read it, rang in and were blusteringly angry and demanded to know what was going on and how this was being looked into.

Knowing, as we did, that it was a put-up job, all we could do was assure them that we had referred it to the AEC. Of course, as we have seen from the AEC's response, that took a fairly lengthy period of time to work out. That adds to the process the perception that you can get away with it, so long as you can hang out long enough; and I do not think that does the process any good.

Let's just say that the Federal Police had immediately acted upon it, raced down to wherever the person was supposed to have been and identified the person as being in existence. The fact we could not find them was neither here nor there. They could have said, 'Too bad, he was away on holidays or something, but he had authorised it.' At least then your concerns or suspicions could have been allayed reasonably swiftly. I am conscious that you do not want people going on wild goose chases, running around at the whim of any particular candidate. That would be counterproductive. But where you have something that I consider to have substantial potential to affect the election outcome, it would give all participants in the election process the reassurance that there is some avenue from which they can get a response more swiftly.

Senator CONROY—It is possible to argue, given the size of your victory, that you are overstating substantially the impact of this attempted smear when, clearly, you had a fairly comprehensive victory.

Mr Filing—Well the other aspect of this is that somebody might publish this type of thing so that it looked as though it was designed in a crude way to purport to damage the campaign of somebody else.

Mr NAIRN—Counter-intelligence.

Mr Filing—Yes, a counter-tactic. That is not beyond the realms of imagination.

Senator MINCHIN—Is it your experience that the police generally do not like getting involved in this sort of stuff, that they see it as electoral law and say, 'Okay, it is a federal act, but we don't really want to be involved in this sort of stuff'? Is that your experience, or do you think that is part of the problem?

Mr Filing—I think electoral and political matters are generally seen as being, let us say, unattractive to the police officers doing the inquiries, because of the sensitive and complex nature and the fact that often there are motives associated with complaints—and I recognise that—just as there are motives associated with the actions that gave rise to the complaint.

Senator MINCHIN—So what is your solution? Are you suggesting that perhaps a special investigations unit should be created that seconds police officers for the period of the election?

Mr Filing—Yes; I think there should be somewhere where the returning officer from Moore or Barry Young can ring up and say, 'There's a complaint here. It's a substantial one—or it looks as though it could be a problem. We have got an alleged false authorisation. We don't know who has done it. Would you please send some officers—we want you to go and hunt this down.' Then they can come back and reassure the chief electoral officer or divisional electoral officer that there is nothing in it, or there is something in it and it may require further action.

CHAIR—What were the newsletters titled that you undoubtedly sent out in the lead-up to the last election? They were not called the *Moore Report*, were they?

Mr Filing—No, they were called the *Independent*.

Senator MINCHIN—You have talked about the issue of dummy candidates. I guess that it the oldest trick in the book. But are you really suggesting that there should be some mechanism for preventing that, and if so, what?

Mr Filing—I have thought long and hard about this one and how you would do it. From the perspective of having been a former campaigns officer in the Western Australia Liberal Party, I know that it is a practice. In local government elections it is a perennial practice. I think the difficulty is where, because of the preferential system, there is a

completely bogus operation where the entire thing is set up, paid for and effectively manipulated by one of the other candidates or their supporters to try to distort the election result. Now in this case it did not make any difference at all, I would have thought. The person concerned got about one per cent of the vote. Ironically, she appeared in the newsletters lauded as the honest independent and making comments about the election, although nothing of any particular note. I thought it was just another feature of campaigning that seems to be more frequent.

Senator MINCHIN—Do you think significantly increasing the deposit could make any difference, or requiring signatures or anything like that?

Mr Filing—No, because if the person is set up and paid for, presumably whoever is doing that would pay for it.

CHAIR—On an extension of that point, there have been a couple of submissions to us from other independent candidates that donations are not tax deductible to independents because they are not to a registered political party. Do you have any comment on that?

Mr Filing—I do. I think that the differentiation between minor parties, major parties and independents is completely unfair, because it effectively allows one form of donation to be made with a subsidy from the taxpayer.

CHAIR—We are nearly at the end of our time. Do you want to table any of these documents?

Mr Filing—Yes, I will just table those and that distribution list.

Senator CONROY—In your written submission you talk about push polling and you state:

The polling was in fact admitted to have been organised and run from the campaign office of the WA Liberal Party candidate.

Do you have evidence of that?

Mr Filing—Only the verbatim evidence of people who had been polled who had said that they had identified as ringing from that in some instances. There is a fine line, in my view, between quite legitimate endeavours to influence opinion, as is part and parcel of an election campaign and quite proper, and where a person is being misrepresented in a conversation on the telephone which purports itself to be part of a polling exercise. That is the difference only.

Senator CONROY—So if they identified themselves as 'We're phoning on behalf of X candidate from the Liberal Party,' does that not put them on the other side of the line? It is obvious that it is a political phone call.

Mr Filing—But what was presented was, 'This is an opinion survey. We are

interested in knowing your views about particular issues in the electorate.' At the conclusion, they were asked how they are going to vote and then, if they identified themselves as likely to vote for me, they were told, 'Of course, you realise that voting for Filing is voting for Keating.' That was the sort of message going across.

Mr NAIRN—Is that any different to doing doorknocking? Say a Liberal candidate is doorknocking somebody and in conversation the person said, 'I am going to vote for an independent.' I am not saying for you as an independent; it could be some other independent whose preferences are ultimately going to Labor. They might say, 'Look, do you realise by voting for that independent person, because of the way the preference system works, you're effectively voting for Keating? Your vote is really a vote for Keating.'

Mr Filing—I would have thought if that is the case, if that is a fact, that is fine.

Mr NAIRN—But it is no different to somebody doing that on the phone as well, is it?

Mr Filing—All I am saying is that, for a lot of people, the preferential system, unfortunately, is still a mystery as to how it works completely. A lot of people understand the basics but, in many cases, they are not completely sure of how it works. The intent of the campaign that was being run was to try to convince people that somehow I was going assist Mr Keating get re-elected by sending my preferences to the Labor Party. The point I was making was that people were approached on the basis that they were being asked to participate in a polling exercise, that is all. We already have, in a number of instances, serious concerns about telemarketing: substantial concerns, sufficient to warrant perhaps some means of allowing people to be able to differentiate between what was clearly something else—a marketing exercise or a polling exercise. That is all. As I mentioned earlier, individually these items could well be explained away; but together they constituted a general type of campaign which, as I mentioned, was in my view an underhanded campaign.

Senator MINCHIN—As you know, we had a push poll inquiry where we identified the sin as conducting the telephone canvassing operation under the guise of an opinion poll. All agreed that it was political sin, but we really could not see how you could possibly legislate to eradicate it.

Mr Filing—No. Again, it is one of those things I agree with you on; it is a difficult thing. I have actually looked at the problems of telemarketing—in particular, the case where individuals wish to inform the telemarketers that they do not want to be contacted. I am all for self-regulation in this case, and the Telemarketing Association of Australia has taken upon itself to introduce particular methods, including a list which people can actually apply to be put on to and which is circulated to their members. Unfortunately, the trouble is the cowboy operators—

Senator MINCHIN—They are not all members.

Mr Filing—They are the ones who are problem. In this instance, sensible campaigners

in the Liberal Party recognised the problem, but it was the cowboys that were pushing the thing.

CHAIR—We have run out of time. As there are no other pressing questions, we thank you very much for your attendance. The documents that you have tabled are accepted as an exhibit. Thank you again.

[9.05 p.m.]

TUCKEY, Mr Charles Wilson, MP, Parliament House, Canberra, Australian Capital Territory

CHAIR—Welcome, and thank you for coming. I remind you that the proceedings here this evening are legal proceedings of the parliament and warrant the same respect as proceedings in the Senate and the House. The deliberate misleading of the committee may be regarded as a contempt of 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 your submission, which is now a public document. Are there any corrections or amendments to be made to the submission?

Mr Tuckey—No.

CHAIR—Would you like to make an opening statement, brief or otherwise, before we proceed to questions?

Mr Tuckey—Thank you, Mr Chairman. I wish to speak briefly to the two issues that I have drawn to your attention but, primarily, to ask that the committee give serious consideration to the construction of the Commonwealth Electoral Act and its performance in terms of sections 328 through to 332, which are those sections that require the authorisation of political advertisements. As I point out in my submission, this goes right down to publishing your own photograph. We are often pursued as political activists for our failure to do so, when of course it is no more than that.

In fact, my experience, as I have explained to you in this submission, is that during the election a very substantial campaign was funded, which in my view at least verged on defamation, to do me great political harm. My substantial electoral majority protected me from it, but in the case of someone with a much more marginal seat it could have been quite effective; it could have been an absolute smear campaign and one which a candidate would have found very hard to rebut, for instance, in the last week of an election campaign.

We drew the whole matter to the attention of the Federal Police. We were dealing with a person who had no evidence of existing. In this day an age, you are either on an electoral roll—and there are three that you can be on—or you usually have a telephone number, secret or otherwise. This person had none of those and yet was endorsing advertisements.

The Federal Police eventually found this person. When we inquired of the Electoral Commission as to what our redress was, they said, 'Go and sue him.' He had backing of \$150,000 for an election campaign but lived in a rented house in a relatively low standard suburb. If his name was Alan Heron as he claimed—and I do not think the Federal Police really established that point—then in fact I had no redress. We stepped up the issue in terms of the publishers—that is, the television stations and the advertising agency—and they came back with the Theophanous defence.

The point of this is that you have two choices. You have the choice of having legislation which is intended to have a purpose and, if it has, it is surely incumbent upon the Electoral Commission to administer that section of the act. Or you tear it up. And I have to tell you that when it comes to politics I am quite happy to have my opponent write the rules. If it is going to be open slather, if that is the way we perceive Australian politics and defamation just becomes part of the daily activity, then let's have it. I can handle that. I do not believe it is the way it goes. But if that is the reality, if section 328 to 332 is an ass, you should as a committee recommend its removal because it is a nuisance—it is frequently held up, with one candidate running around dobbing in the other on the grounds that he did not authorise some rather innocuous advertisement.

When somebody goes to the extent of the example I have drawn to your attention there was clearly extraneous funding. On the advice we received as to the bookings on television alone—and we got information on it which you could confirm by calling certain people—our estimate is that there was probably \$50,000 or \$60,000 on the GWN network alone and then they ran a full day on Sky Channel. That is very big money.

I have an electoral majority which made it irrelevant for me. I am putting this proposition for those people who have a genuine entitlement to be re-elected or elected in a marginal seat whose prospects could be destroyed by this simple act. In other words, my evidence is that the act failed to give me protection as a candidate; the Electoral Commission certainly did, because they just shoved it on. I think the Federal Police conducted proper inquiries and handed it over to the Electoral Commission who then decided that it was my problem. If that is the case, the act has no power at all.

CHAIR—Who did you approach first—the AEC or the AFP?

Mr Tuckey—We went to the AFP who conducted their inquiries promptly. They found Mr Heron, or the person who says he is Mr Heron. I do not believe they made any additional inquiries to establish that he genuinely was Mr Heron. People just do not have no identity and only a name.

CHAIR—Was there any reason for going to the AFP first rather than to the AEC?

Mr Tuckey—We had had a previous experience of a lesser nature and we found that, by going to the AFP, at least we found out who the person was. On the previous occasion, we had a well-known identity using his wife's maiden name to authorise advertisements; but put that aside: it was petty.

Mr NAIRN—What was the complaint that you made to the AFP?

Mr Tuckey—We complained that there had been a breach of sections 328 to 332. Initially, in fact, the ads appeared on television only naming the person and giving an address as 'Perth'.

Mr NAIRN—So it was on the basis that the advertisements were not correctly authorised under the act?

Mr Tuckey—Yes.

Mr NAIRN—Because at that stage you would not theoretically know whether—

Mr Tuckey—We also took independent action to have—

Mr NAIRN—I was just trying to ascertain what it was that the AFP were actually investigating. You cannot go to the AFP and say, 'Can you find out who Joe Smith is?'

Mr Tuckey—You can, when Joe Smith does not bother to tell you where he lives; because the law is explicit that you must give both your name and address.

Mr NAIRN—Yes; it is in breach of the law. The breach was that the advertisements were not correctly authorised in relation to the Electoral Act.

Mr Tuckey—Yes. And the net result of that was that, over time, they found Mr Heron. But we are still not convinced that Mr Heron was Mr Heron. It really raises the question of the responsibility of the authorities to police their own legislation. The police go and arrest people who break into your house, because that is a breach of the law. But, in this circumstance, my experience was that having once identified substantial breaches—and, I believe, a conspiracy on behalf of others who used this guy as a front—no action was taken and, in fact, it was declined by what I would believe were the authorities: the Federal Police and the Australian Electoral Commission.

Senator MINCHIN—The question is how you enforce the provisions of the Electoral Act. Who is the investigating and prosecuting force for the purposes of the Electoral Act? Who should it be?

Mr Tuckey—Yes.

Senator MINCHIN—I am just not sure what you think the answers are to those questions.

Mr Tuckey—The reason I bring it to your attention is that I believe that this instance identifies a substantial loophole in the legislation; it makes it an ass. In fact, the reality is that at the next election, on this experience, anyone who goes out to bag any of you in a very serious way, and who only provides the money and finds the painter and docker who is prepared to put their name on the bottom of it, has got no problem.

Mr NAIRN—Surely the committee should really be asking the AEC why they did not pursue the matter. Quite clearly, you have to give a name and a full address when an

authorisation is given, under the act. If that did not occur, surely the AEC is in a position to actually prosecute.

Senator MINCHIN—No. The AEC is not a prosecuting body; they refer matters to the DPP.

Mr NAIRN—That is right. So, if there has been quite a—

Mr Tuckey—Their correspondence is available to you in my submission. Their response was: 'You have the right of private action.' We all know that private action against someone who has got no money and who might even be funded in their defence is just ridiculous, simply on the grounds that you are going to spend \$40,000 or \$50,000 pursuing someone who in the end, you know, is not going to suffer any penalty.

My view is that the act should contain penalties if this is a breach, and it should be prosecuted by whomsoever, if the act is breached. But I think the issue is the conspiracy issue. I do not believe that someone should be punished for putting a candidate's photograph up on the wall somewhere and forgetting to put their address on it. I am saying that, when people conspire to find someone to authorise political advertising with very large sums of money—but in a method that the act allows to protect themselves from that—there is something wrong with the act. I am not here to complain or ask that someone be punished for what they did to me, but to say that your committee has got to look at the ramifications of my experience in terms of how it might affect candidates or members in the future. I point out that there are a lot more vulnerable than I am.

CHAIR—You say also that the role of advertising agencies and others should be a matter for scrutiny as well.

Mr Tuckey—Yes, the point being that someone paid the advertising agency. Might I add that—this is how questionable their processes were—they delivered all the ads to the various publishing companies, along with a legal opinion from Freehill Hollingdale and Page, I think, saying, 'You've got absolutely nothing to worry about.' As an advertiser, were I to receive that I would be pretty upset about it. Was that good advice, and was it proper for a legal firm of that standing to be issuing that sort of advice on what was pretty scandalous type advertising, to say the least?

As I said, there is a conspiracy involved to damage my reputation involved. My reputation survived it, certainly electorally. But the real question is: would somebody else's, hanging on by one per cent?

Mr GRIFFIN—Wilson, have you got a copy of that legal opinion that you can pass it on to us?

Mr Tuckey—I think if it is not here I can make it available. It is certainly in the hands of people like GWN. And the Federal Police have got it.

Mr NAIRN—There are two aspects here. One was the TV ad—

Mr Tuckey—Yes.

Mr NAIRN—Which did not carry a proper authorisation, and about which the AEC have correctly said that there is a breach of the broadcasting act. They are saying that the authorisation of political matter broadcast on television is subject to the approval of the Australian Broadcasting Authority, which requires certain information to be provided. The relevant legislation is the Broadcasting Services Act. The second matter is the hard copy advertisement, 'If you believe enough is enough'.

Mr Tuckey—Yes.

Mr NAIRN—That is correctly authorised, I think, with name, address and printer, which is what is required under the act. So then that comes to the matter of defamation, which the AEC always says is a personal thing.

Mr Tuckey—Yes, except that the person who published that advertisement was not the author of the advertisement. Clearly, he was not the author of it. He could not have afforded the cost of setting it up, let alone the huge cost of the advertisements.

Mr NAIRN—The cost aside, though, that is not unusual. I am sure Nick, when he was in this, as I was as well, had his name plastered over all sorts of things. We see 'Written and authorised by Blow Blow for the such and such'.

Senator MINCHIN—The point is that you take responsibility for the content. That is what authorisation is about.

Mr Tuckey—Yes, and possibly had some assets. This is clearly a different case. There is evidence there, published in newspapers, that people claim that as officials of the Labor Party they were asked to run the ads and carry the money. I really do not want to get into all that. Really, what I am saying is that, if somebody believes that sections 328 to 332 should be in the Commonwealth Electoral Act, and put a lot of people to a lot of trouble—honest people—it should be good enough to prosecute the crooks. In my view, Mr Heron is a crook.

Senator CONROY—But in a case where he has authorised it correctly—

Mr Tuckey—Well, that only happened afterwards. Let me take you through the chronology. I got a phone call during the election campaign from a very disturbed supporter, saying that ads had started to appear on the GWN network, which covers my entire electorate, of this nature. They are the original ones.

We immediately contacted the production, or their source, which is in Bunbury. I was fortunate, I guess, in a way, to get hold of one of the technicians, who was the only bloke

there. He was not very defensive and he gave me the full story. He gave me the name of the advertising agent and reported—because I had not heard the ad or seen it—that it was authorised by A. Heron, Perth. That is clearly an insufficient address. I contacted my lawyers that night, we contacted GWN and they withdrew the advertisement—which is some evidence of what they thought of it. But they were prepared to take the \$50,000 if I did not squeal. I am sure that is why their legal opinion turned up—to get them over their scruples.

But we also put the matter in the hands of the Federal Police the next day. We had advice. Our newspapers were ringing us telling us that these ads were going to be run, that space had been booked. We started sending lawyers. It cost me \$1,500 in lawyers' fees—and that is a big slice out of a lot of candidates' campaign funds. As I say, this is what other people are confronted with, just writing letters saying, 'Stop!'

The end result was that, of all places, it turned up on Sky Channel. We have reasons to believe why that happened. But that is all irrelevant. I am not asking you to look after me. I am saying that there is a precedent set here that shows that the act is totally deficient in giving reasonable protection to people against a conspiracy. If a known political party who has authorised an ad wants to bag me, they take the consequences as to whether it works or not. But when you are confronted with phantoms what do you do? Somewhere out there someone says, 'Well, mud sticks.'

Senator CONROY—What do you do if Mr Heron is prepared to sit there in a court—if you serve him with a defamation writ and he is prepared to take responsibility?

Mr Tuckey—He is. He has told the Federal Police he is prepared to take responsibility. He just is not a man of substance. But he is also not the author of the ads. He does not have \$150,000. And we cannot find any reason, if his name is Heron—

Senator CONROY—But that is not something this committee can do anything about if someone is—

Mr Tuckey—I am not asking you to pursue Mr Heron, although I think it would be illuminating if you called a few of the people I list, in your own interest.

Senator CONROY—We would love to.

Mr Tuckey—But I am before you on this issue to argue that, if you believe in the rights of members of parliament and candidates, you need to review this section and decide what the penalties are. In all of that, you might decide that there is no need to authorise somebody's photograph. I just think that is silly. But, once you start to say things, the authority should be the person who is the genuine author. Again, I draw your attention to advertising. There should be a responsibility on advertising agencies and there should be a responsibility on TV companies. After all, they have all got lawyers; they know what they are doing.

As I said, in this case, with the \$50,000, the newspapers told me, 'We're going back. We're not going to knock back the one-page ads, but we're going to make sure they rewrite them so we are not in trouble.' In the end, some of them published such big photographs of me I started to laugh. But the reality is that it is wrong. In its present form, if the interpretation given to me by the Electoral Commission and the Federal Police is right, then I repeat, the law is an ass. I have said all I need to say on it. It is up to you guys to decide whether it properly protects the people.

Senator CONROY—I do not quite understand what it is you are trying to do, other than what you have suggested—that we need to potentially look at increasing the penalties. If this was to be published again in your next election with the correct authorisation, the only recourse you would have is at defamation, presumably.

Mr Tuckey—Yes—that is what I am told.

Senator CONROY—Irrespective of the conspiracy that certainly seems, on the surface, to be kicking around there. But that is all you have got, so this committee could not really deal with anything other than the original video advertisement.

Mr Tuckey—I just think the law probably requires—and this is excluding political parties and such—that there should be an obligation that the person who pays is the person who authorises, even if he physically authorises the person who puts their name on it. That is, a branch president or a state secretary or someone like that. But, if they are private individuals, there has got to be some process that requires that the person who is paying the bill is clearly identified. Even if it says 'authorised by Smith, paid for by Jones', I do not care. But I just think the current act is open to this form of abuse.

Senator MINCHIN—The funding aspect of it, if everybody obeys the law, would become apparent when returns are furnished.

Mr Tuckey—They do not. It is not a donation to a political party.

Senator MINCHIN—No. The TV stations have to put in returns.

Mr NAIRN—The TV stations have to put in returns saying who they receive money from.

Mr Tuckey—They receive money from the advertising agent.

Mr NAIRN—The advertising agent also has to—

Mr Tuckey—Do they put in a return?

Mr NAIRN—Yes.

Senator MINCHIN—Yes, but it is six months later.

Mr Tuckey—Maybe I should be pursuing that, just out of vindictiveness.

Mr GRIFFIN—That would be out of character.

Mr Tuckey—The legislation is clearly deficient in giving any protection. All you have got to do, as I said, is find someone who has got no money and they can tip the biggest bucket on you that they choose, and what is your recourse? It is certainly not defamation.

Senator CONROY—If they do not advocate a vote for an individual, do they have to disclose their source of funding?

Senator MINCHIN—Yes. It is political material.

Senator CONROY—If they said, 'Vote National Party candidate,' then there would presumably have to be some sort of disclosure of that. But if they do not advocate a vote for anybody and they are just simply advocating not to vote for you, they would not have to put in a return, would they?

Senator MINCHIN—The test is: is it designed to influence the outcome of the election? So negative advertising is caught by that.

Mr Tuckey—Anyhow, I bring it to your attention as something that has happened. I think that a committee of this stature needs to look at how future candidates can be protected.

CHAIR—I think you have made this point pretty well, and we shall certainly do that. The second part of your submission is to do with your proposal on the voting in the Senate before preferences can be distributed. Would you like to elaborate on that?

Mr Tuckey—Yes, Mr Chairman. An interesting point has come to my attention since I made this submission. It is an article in the *Sunday Times* of 15 July 1996 which advises us as to the sorts of government payments that various independent candidates earned in Western Australia for contesting the election. The previous witness here got \$44,971 by way of federal funding. A candidate in another seat, who was totally unsuccessful—a person I know quite well, Brian Hilbert—got \$9,887. That is the law.

Mr GRIFFIN—It is lucky Mr Filing won then, is it not?

Mr Tuckey—He only gets paid, whether he wins or loses, on the number of votes. But the point I choose to make is that the threshold to participate in that largesse is four per cent of the vote. I will tender that, if you wish to have it, as evidence that the Australian electoral system already has provision for a threshold. I put to you that the Australian political system cannot go on saying that, to participate in electoral funding, you have got to have a threshold of four per cent of the vote but, to sit in the Senate, you do not need any threshold

at all and, theoretically certainly, you can get elected to the Senate with less than four per cent of the primary vote. So my first proposition is that, in the interests of proper representation of the people, there should be a minimum vote—

Mr GRIFFIN—Of the population of the state?

Senator CONROY—In the interests of democracy.

Mr Tuckey—No. We are talking about a system that has always been weighted in favour of the lesser sized states. What I am talking about is that, within that state, a candidate, to participate in the Senate, should achieve a minimum amount—a threshold amount—of the primary vote. They should demonstrate that there are enough people within their state that have voted for them, accepting the principles of equal numbers in each state, to demonstrate that they are a candidate with some support.

When one looks at this—and I give you the figures—the number of candidates that get elected more frequently than not from the minor parties receive more votes by way of the preference system than they do primaries. Basically, what is happening in every state now is that the two major parties share five seats. The preferences of one of them—and usually the party that has the bigger proportion left over—elects an independent or a minor party representative. In every proportional voting system that I know of in other parts of the world, if you do not achieve the threshold, you are out. The new New Zealand system has a threshold.

CHAIR—What are you proposing percentage wise?

Senator CONROY—You could always get the Liberal Party to give your surplus to us and then there would be no minors.

Mr Tuckey—Yes, that is a point of agreement, but it does not address the problem.

Senator CONROY—I would talk to the Labor Party about that.

Mr Tuckey—That is so, but that is not the solution. The solution has to be legislative recognition that nobody else accepts the principles I have just put to you and, when we got down to electorate funding, we did not accept it either. I am a great believer pragmatically in winner takes all. The government of the day should be able to get its legislation through both houses, notwithstanding the Senate in our system will always be a place of scrutiny, and the margin will always be close.

Mr GRIFFIN—Wilson, you were very tough on us when we were in government.

Senator CONROY—The road to Damascus. But what happened on 2 March? Was there a blinding light?

Mr Tuckey—I can tell you this: at that time I made a speech in the House of Representatives proposing this system.

Mr GRIFFIN—I do not deny that. I am just saying that, as someone who believed the government of the day should get what it wants, I can remember sitting there for three years and finding you had some difficulty with the concept.

Mr Tuckey—Can I address the politics of that because they are quite interesting and they will apply to you as they do to us. In my early years, I had a constituent ring me up and ask why my party in opposition had let a particular proposition get through the House. I told him that you got the government you deserved. He said, 'But I didn't vote for them, Wilson. I voted for you and I expect you to use every resource you have to represent my interests.' It is a compelling argument for two reasons. Firstly, he is right and, secondly, I needed his vote.

Mr GRIFFIN—Not necessarily in that order.

Mr Tuckey—The point I make to you is that that will continue while we have the system we have, and we are unique in the world. The South Africans, during their period of government of national unity, had a threshold. The New Zealanders, with probably the most recent scheme, have a threshold.

Mr GRIFFIN—What is their threshold?

Mr Tuckey—I think in New Zealand it might be four or five per cent. But the reality is that a party—remember we are talking about a party because I give you a draft bill—that cannot get 10 per cent of the vote—two-thirds of a quota—should not have the right to run the country. That is the fundamental issue and that is what we have to address.

Put the politics aside. In terms of the major parties, it will be your turn at one time, and I wish you well, and it will be our turn another time. But at least the legislative program will be put in place and the people will judge. I would predict that, under that circumstance, the period of office of both political parties would be shorter because they are more likely to offend the people. But that is politics.

What I am saying is that the country cannot run like Mohammed's body, suspended between heaven and earth, because people are getting up on a five per cent primary vote in the state of Tasmania where the population is half a million. I genuinely believe that the national interest demands that a threshold should be imposed.

CHAIR—Just to clarify—without putting words in your mouth—it is not unreasonable, you would say, to have a majority in the House of Representatives and still have a hostile Senate at least for the first election. What you are advocating is not a certain chance but a reasonable chance of having a majority after the second election, providing you are re-elected again. What you do not want is people with two or three per cent of the vote having the balance of power for ever, so to speak, and being able to obstruct legislation.

Mr Tuckey—Yes; but more importantly, I am opposed to a system that delivers political power to people who have not got substantial support within the community. I am not arguing for the Liberal Party or the Labor Party. I am saying straight out that this system is wrong: it does not operate anywhere else in the world and, on a preferential voting system, it is the only time we deliver preferences downwards.

CHAIR—You are advocating 10 per cent, are you?

Mr Tuckey—Yes.

CHAIR—And the rationale for that?

Mr Tuckey—Two-thirds. I thought of seven per cent as half a quota and then I thought that that was not much. The simple fact is the major parties typically get 2½ or 3½ quotas and, as I said, that is frequently more, as it transfers to a minor party, than they get in their own right. They drop out—and I have not done the sums for you—but suddenly you see preferences flowing up, not down. And the preferences will flow probably to a major party.

CHAIR—The second appendix that you attached to your submission shows there are a couple of low countries, such as the Netherlands and Israel, with 1½ per cent. But most of them, such as Hungary and Germany, are around the four to five per cent, flowing up to eight per cent for some and 10 per cent in others, where you actually need an electoral threshold in winning a seat.

Mr Tuckey—Yes. As I say, we have a preferential system in the House of Representatives which is always about the lowest being defeated and the preferences travelling up, which gives your voter the opportunity to express a preference in a logical way. In the Senate, we reverse it.

CHAIR—Given your proposal of 10 per cent, have you worked out how the numbers in the Senate would have been changed, had that applied at the last election?

Mr Tuckey—We have not done the numbers; but we give you, I think, the example of what various parties received.

Senator MINCHIN—You have to know the preference flow and trace it through and see whether—

Mr Tuckey—Yes: we lack the resources.

CHAIR—Just at first glance, would it not have tended to eliminate the Democrats and the Greens so that we would have Labor senators instead?

Mr Tuckey—You know, I find that totally irrelevant in terms of my argument. I am

not putting an argument for the Liberal Party and I am not putting an argument for the Labor Party.

Senator MINCHIN—Yes, but you get 55 to 60 per cent of the preferences.

Mr Tuckey—Yes. I do not mind where they go, and I do not mind those people participating.

Senator MINCHIN—Would it not concern you if we ended up actually having the Senate split? You see, one consequence could well be that you split every state 3:3 and end up with an absolutely split Senate.

Mr Tuckey—That is a separate issue and it partly relates, of course, to the numbers of the Senate. But it does not defeat the issue that people should not be running the country who can only attract five, six or seven per cent of the vote. It is silly.

CHAIR—I just want to be clear on that. If the Democrats and the Greens had been eliminated and there were Labor senators instead, you say it is preferable in principle to have a major party blocking, rather than just one or two people in the middle.

Mr Tuckey—I say it is preferable—because the Senate is now a party machine—that the parties that have substantial support should have the say. I am not talking about power. I am talking about the representation of the majority of Australian people.

Senator CONROY—You say that straight-facedly, when Tasmania gets 12 and New South Wales gets 12.

Mr Tuckey—No; I accept that principle and particularly as a Western Australian. I see that as the balancing factor.

Senator CONROY—You talked about the majority of Australians, a moment ago.

Mr Tuckey—But it does not alter the principle that within that state, of the representatives that are sent to Canberra, five of them come with substantial support and a full quota in their own right, as the party distributes, and one person turns up with four or five per cent of the vote of that state. Of course, that gets aggravated when you take the percentage in Tasmania and re-orchestrate it as a percentage nationally. The Green senator from Tasmania probably has about one per cent of the national vote: I do not know. But I accept the fundamental principle that there has to be one house that balances up for people, particularly in my state, because we have got to have a bit of clout somewhere. But the realities are that, putting that aside, it does not matter. The one per cent argument still applies.

Senator MINCHIN—It is a good argument. Presumably, in a full Senate election, it would be five per cent, not 10 per cent.

Mr Tuckey—I even read an article somewhere where someone had suggested that my proposition was half a quota, and therefore had to be three per cent in a double dissolution. No, I tend to argue that that is counterproductive and that you should be able to deliver a reasonable percentage of the vote. In our traditional, typical electoral pattern, that is 14.2 per cent for a quota. I am conceding them a third of that. In other words, they are still not getting elected in their own right, and we are still seeing a downward flow of preferences instead of an upward flow of preferences. I think 10 per cent is the figure.

Senator MINCHIN—You said that seven per cent is a quota. It is a bit silly, is it not, to be saying that you are thinking of 10 per cent?

Mr Tuckey—All right, then I guess I would have to talk five.

Senator MINCHIN—Yes. I think you would have to adjust it in a full Senate election.

Mr Tuckey—Yes. I concede that probably 10 to five is better than seven to three.

Senator MINCHIN—Yes.

Mr Tuckey—But it raises a question of what is a reasonable vote for a party to attract, remembering that the major parties are not getting one senator up, they are getting two or three.

Senator MINCHIN—That is right.

Mr Tuckey—So it is still—

Senator MINCHIN—On primaries.

Mr Tuckey—Yes.

CHAIR—Do you prefer to go this way rather than, say, increase the number of senators to 14 which would give you a four-three split in a half Senate election because, presumably, you have got to increase the number of members in the House of Representatives?

Mr Tuckey—If you made me the dictator of Australia tomorrow, I would reduce the House of Representatives to 100 people and I would give them decent staff. I would tell them to forget all of the little issues that we deal with and to run the country, but that is another issue. The Senate would be adjusted accordingly. But I think that is a separate issue, irrespective. If you reduce the House of Representatives to 50 and the Senate to 25, I would still argue that you should get 10 per cent of the primary vote before you were eligible to be the beneficiary of a party you hate, to get elected.

CHAIR—Fair enough. There are no other points on that. Are there any other issues that you wish to raise?

Mr Tuckey—If you will forgive me, Mr Chairman, and I presume it is within your guidelines, I do like to always make a comment about voluntary and compulsory voting. I have got to say, in a political sense, I am for compulsory, first-past-the-post voting. But in terms of voluntary voting, I draw your attention to the fact that in any recommendations you make—and I am not opposed to the system per se—you have got to address the issue of fraud. It is just too easy in a highly technological society to create profiles on people who never vote and then vote for them. Now you have a simple solution.

I will give you an interesting example. It is within my living memory, in fact, during the premiership of David Brand, and the vice-premiership of Sir Charles Court, that the Western Australian electoral system had property franchise and voluntary voting as the conditions for the upper House. A lot of people in the Liberal Party thought that must obviously benefit the Liberal Party and it did not. In fact, it was Sir Charles Court and David Brand who changed that and brought in a full franchise system. They did not do it for philosophical reasons. But the reality is that that is a reasonably contemporary example for people who believe that there is an electoral advantage. I believe the electoral advantage in fact resides with the loony left because I think it is apathy that is the greatest threat to good politics in Australia. But if you walk away from compulsory voting, in that I am ambivalent. You have to go for an identity card and I have argued against that.

Senator CONROY—That is hard to say.

Mr Tuckey—Those are the options, or you do not do it as far as I am concerned because of the opportunity to vote on other people's behalf. There are allegations of it today, but you could get down to 50 per cent voting, 10 per cent who occasionally vote, and the rest who never vote. It is just too easy today to know who those people are and to go and vote for them. Any voluntary system has got to address that problem. I am not saying you cannot have it. I am saying that if you fail to address that problem you are going to have a very corrupt system. Might I say that those press clippings should not be taken as an example of why you should all go independent.

CHAIR—We thank you very much for your attendance. Resolved (on motion by Mr Griffin, seconded by Senator Conroy):

That the press clippings tabled by Mr Tuckey be accepted as an exhibit.

Resolved (on motion by Mr Nairn, seconded by Senator Minchin):

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

Committee adjourned at 9.46 p.m.