



**COMMONWEALTH OF AUSTRALIA**

**JOINT STANDING COMMITTEE ON  
ELECTORAL MATTERS**

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

**BRISBANE**

**Monday, 19 May 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

## JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Members:

Mr Nairn (Chair)

Senator Abetz  
Senator Conroy  
Senator Minchin  
Senator Murray

Mr Cobb  
Mr Laurie Ferguson  
Mr Griffin  
Mr McDougall

Matter referred:

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

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

**WITNESSES**

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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

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

BRISBANE

Monday, 19 May 1997

Present

Mr Nairn (Chair)

Senator Conroy

Mr Cobb

Mr Laurie Ferguson

Mr McClelland

Mr McDougall

The committee met at 10.08 a.m.

Mr Nairn took the chair.

**LOVE, Mr William Edward, Senior Industrial Relations Consultant, Queensland Chamber of Commerce and Industry, 375 Wickham Terrace, Brisbane, Queensland**

**CHAIR**—I declare open this third public hearing of the inquiry into the role of the Australian Electoral Commission in conducting industrial elections and welcome the witnesses and others in attendance. We will be taking evidence today from the Queensland Chamber of Commerce and Industry and also from Mr Gordon Hodge and Mr John Curtis. I now call on a representative of the Queensland Chamber of Commerce and Industry to give evidence.

I remind you that the proceedings here today are legal proceedings of the parliament and warrant the same respect as proceedings in the Senate and the House. A 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 received your submission, which is now publicly available. Are there any corrections or amendments to that submission?

**Mr Love**—The only correction that I think needs to be made is on page 9. In the first paragraph on the top of that page at the third line we say, ‘as the figures on pages show’. In our haste in preparing that we failed to put the page numbers in. It should read ‘pages 6 and 7’. There are no other corrections.

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

**Mr Love**—Yes, thank you very much. I would like to thank the committee for giving us this opportunity to talk to our submission. Maybe now, having the benefit of hindsight and having seen most of the other submissions, it is possible to make a couple of statements. We see from a review of all of the submissions that have come to us that there is a very clear message coming through. That message is that the Australian Electoral Commission is doing a very good job—in fact, an excellent job—in the conduct of elections for unions in Australia. The message that is also coming through from that is that most of the parties that have made submissions desire that that should continue. So that is the first point we would make.

From those submissions we also see that a large number of the persons putting them forward see no great advantage, and indeed see some disadvantages, to standardisation of the rules with regard to union elections. Most of the submissions say that there should be no charge for the conduct of union elections. I would think that it is fair comment to say that most persons making submissions were indifferent to whether the Australian Electoral Commission provided assistance to private organisations or not. Some made comments, others did not, and we did not make any comments on that. The general consensus that I can see through all of the submissions is that there was not a clear thread

running through them.

Mr Chairman, I do not know how you wish to conduct the inquiry, but if it is convenient to the committee, I thought perhaps I might just explain why our submission was so long and covered so much ground and then perhaps indicate to you what has been happening in Queensland that is possibly relevant to the outcome of this inquiry.

**CHAIR**—That is fine.

**Mr Love**—I am in your hands.

**CHAIR**—If you would like to cover just briefly those three areas.

**Mr Love**—I can cover them very briefly.

**CHAIR**—That will enable some questions to flow from that.

**Mr Love**—The submission from the Queensland Chamber of Commerce and Industry covered approximately 40 pages. One of the reasons that it was so long and covered a large amount of ground was that the Queensland system of union elections has been modelled on the legislation of the Australian Industrial Relations Act, or the Workplace Relations Act. We came fairly late into the field of having elections conducted by an official body. It was not until 1992 that legislation made provision for that, and then it was not until 1993 that elections were actually conducted.

In our submission we included a number of sections from the Cooke inquiry which had looked into the activities of seven unions in Queensland from 1989 until around about 1992. I think you could probably say it wound up around then. The Cooke inquiry dealt with a number of things, including the matter of ballot rigging. It particularly dealt with the question of the introduction of model rules. I would like to say a little bit more to the committee about model rules shortly.

That probably is a convenient point just to turn now to what has occurred in Queensland since we wrote this submission and the things that may be relevant to the deliberations of this inquiry. Firstly, we indicated that the government had introduced legislation for an Industrial Organisations Act. The purpose of this was to take the legislation dealing with the administration of unions and the conduct of union elections out of the Industrial Relations Act and put it into a separate act. That has now occurred. The act has been passed by parliament and that is a copy of the act.

**CHAIR**—We understand that it was passed in January but it has not actually been assented to; is that correct?

**Mr Love**—The act has been assented to. A few parts of the act have actually been

proclaimed and therefore implemented. That section which has been proclaimed and implemented mainly relates to freedom of association. It was necessary to bring that section of the act into being as quickly as possible, and that has been done. The bulk of the act has not been proclaimed. There is a document circulating in the industrial community at the moment, a draft of the regulations to appear under that act and also a draft of the model rules, which is attached. They are now circulating, and the Minister for Industrial Relations in Queensland has called for comments on that document by this Friday. It is anticipated that the act will come into being on 1 July. That is dependent upon the regulations having been formatted and finalised.

The new act contains one issue that is very pertinent to this inquiry and that is the introduction of user pays for the conduct of union elections in Queensland. Up until now, the legislation has provided that organisations having their elections conducted by the Queensland Electoral Commission pay for postage and two other items associated with that which just escape me for the moment.

**CHAIR**—Printing?

**Mr Love**—That is right, yes. The new act makes provision for user pays. As yet the government has not announced what that means in terms of how it is to be implemented or what it means in monetary terms. We have had discussions with the Queensland Electoral Commission and we are no more enlightened than they are on what Treasury is going to decide as to what user pays will entail.

Could I just refer the committee to the QCCI's submission at page 14? We raised this question of user pays. We have put down five dot points at page 14 of the submission which raise the question of what should be included in user pays. All I can say at this point is that we have no idea whether any or all of those matters that are included in the dot points will become part of the user-pays system. The committee, I would imagine, would appreciate that were all of those things that are enumerated at page 14 to be included in user pays, it would impose severe imposts on organisations which have their elections conducted by the Queensland Electoral Commission, particularly in the case of small unions. There are basic costs whether the union has 40,000 members or 50. Those basic costs would be there no matter what the size of the organisation. In the case of very small unions, it would be prohibitive to have all of those costs included in the user pays.

**Mr COBB**—Could you give us some idea in dollar terms?

**Mr Love**—No, I could not, because I really do not know what the Electoral Commission has been doing. If we could take an example, the Queensland Nurses Union recently had an election conducted by the ECQ. I happened to view the fact that there was a staff of 22 persons engaged to handle the dispatch of papers to members. I would imagine that quite a large staff would also have been engaged in the counting of votes.

**Senator CONROY**—That is not a permanent staff, though; they are hired casuals.

**Mr Love**—They are hired casuals, yes, and they would be brought in only for the election and they would disappear until the next one.

**Senator CONROY**—And not even for the full period of the election, just for the mail-out date.

**Mr Love**—Yes.

**Mr McCLELLAND**—I suppose you would have to factor in as a starting point the cost of a stamp each way, wouldn't you; 45c each way, one to the voter and one return?

**Mr Love**—There is some discount, I understand, from Australia Post if you do it in bulk.

**Mr McCLELLAND**—You are looking at somewhere between 75c and 90c per vote as a starting point?

**Mr Love**—I would think so, yes; that's a starting point. The electoral staff must prepare the basic documents such as the nomination form and the notices which have to go out. That is going to be the same whether you are a big union or a small union. You still have to have those documents prepared.

**CHAIR**—Currently the postage and that is already paid by the organisation?

**Mr Love**—Yes.

**CHAIR**—So that aspect of it would not be any different; it is the additional cost?

**Mr McCLELLAND**—Is that right? I understand the Australian Electoral Commission pays for the cost of postage.

**Mr Love**—They do.

**Mr McCLELLAND**—For new members and for the—

**Mr Love**—The Australian Electoral Commission pays for everything.

**Mr McCLELLAND**—Yes.

**Mr Love**—The Queensland Electoral Commission recoups the cost of postage and printing.



**CHAIR**—And distribution.

**Senator CONROY**—Under the new law or previous?

**Mr Love**—Under the previous law.

**Senator CONROY**—The current.

**Mr Love**—The current law. The charge will be higher but we know not what. When the question of user pays arises—

**Senator CONROY**—The AEC has billed the Nurses Union for the postage.

**Mr Love**—No, I am talking about a Queensland election. The Nurses Union election was conducted in Queensland.

**Senator CONROY**—Under the Queensland state act.

**Mr Love**—System, yes.

**Mr McDUGALL**—Mr Love, the taxpayer might ask why should an organisation, whether they be a union or an industry body, not pay their fees—and a fair fee—for either the ECQ or the AEC conducting elections on their behalf? Why should the taxpayer fund that money? Why shouldn't those organisations fund it?

**Mr Love**—Well, yes, I can see that there could be an argument put forward as to why they should do so. The Queensland system was a compromise in 1992 in order to get people to have their elections conducted by an organised and reputable body. The compromise was that part of the cost would be paid for by the organisation. If I could just take that a step further, could I take it to the matter of the administration of justice? It is very important in our society that we see elections, be they union elections or be they parliamentary elections, conducted by a reputable body and conducted in such a way as to remove all possibility of irregularities.

When you take that a step further to administration of justice by the courts, the apprehension by police of criminals and the processing of people through the court system are all part of the fabric of our society; we see it as necessary to have these things conducted cleanly by a reputable government organisation. It is for that reason that we see it as necessary that the government pays for it. The government pays for the administration of justice. The running of the courts is not on a user-pays system and nor is anyone ever contemplating instituting such a thing.

**Mr McDUGALL**—On that basis, I have noticed that since you started here this morning you have referred to union elections. Does the Queensland act also require

industry organisations to have their elections carried out by the ECQ?

**Mr Love**—Yes. The Queensland act, as I said earlier, is modelled on the federal act and the rules are basically the same for employee organisations as for employer organisations. Might I say that my own organisation is not only a company but also a union of employers. My own organisation has its election conducted by the Queensland Electoral Commission. Under our auspices we have two other unions, one involving the clothing trade and the other one involving the dry cleaning trade. They are unions registered in the Australian system and their elections are conducted by the Australian Electoral Commission. So we have a fourfold effect.

Just to take that one step further, I am the returning officer—and I have been since 1990—for the Queensland Chamber of Commerce and Industry. The company and I conduct the company elections under the companies law on each occasion. So we are very much involved in elections.

**Mr COBB**—How many voters do you have in those elections and what does it cost?

**Mr Love**—Do you wish me to talk about the company as well as the union?

**Mr COBB**—Yes.

**Mr Love**—The company has a membership in excess of 3,400. A number of those are associations and may be unions in their own right or they may also be associations that are not registered as unions. So whilst the membership is in excess of 3,400, we have a vast expanse out there of other organisations which are associations or unions in their own right which are our members. The cost to the company I could not exactly say. I could get the figure for you. But to cut the costs, most of the preparation is done by myself and one other staff member. We use staff in their down-time capacity to do a lot of the things that would be done by the Electoral Commission.

**CHAIR**—I am just asking in relation to the other party organisation which uses the ECQ. What is the cost for the printing, postage and distribution which is charged by the ECQ? Do you know that off the top of your head?

**Mr Love**—Yes. It would be around about \$2,000. That is for the dispatch of the initial documents. We have not yet had a reason to hold an election because the number of candidates has not exceeded the number of positions.

**Mr COBB**—\$2,000 to post out how many ballot papers?

**CHAIR**—Not the ballot papers, because they have not had an election. So it is only the initial—

**Mr Love**—These would be the initial documents calling for nominations and posting those documents out.

**Mr COBB**—How many documents?

**Mr Love**—There are usually three documents that would go out: usually a notice from the organisation and the Electoral Commission's nomination form—

**Mr Cobb**—But how many does it go out to?

**Mr Love**—To all members.

**Mr COBB**—Which is what? 3,400?

**Mr Love**—3,400.

**Mr COBB**—So it costs about 60c or 70c for postage?

**Mr Love**—No, there are printing costs in that as well.

**CHAIR**—Yes, but the \$2,000 covers printing, postage and distribution?

**Mr Love**—Yes.

**CHAIR**—So it is 60c.

**Mr COBB**—So it is 60c a member. If there were full cost recovery, what are we talking about? Doubling that?

**Mr Love**—We do not quite know, because it depends on how many hours the Electoral Commission spends on these things. We have no idea how much time they spend on them.

**Mr COBB**—But earlier you said that it is prohibitive to put the full cost on them. I mean, it is costing 60c or 70c now. Surely we are only talking about another \$1 per head or something. It is hardly going to make or break any organisations.

**Mr Love**—We are talking at the moment about a situation where you do not go to an election; you go to the preparation for an election. If you go to an election, your costs will rise considerably. Firstly, you will double your postage and printing, but you are required to use security paper, which increases your costs. You have got to prepare the ballot papers.

**Mr COBB**—Say it goes up to \$4 a head and the ballot is held once every 4 years;

it is \$1 per head per year. At first blush it does not seem to be overly onerous.

**Mr Love**—Well, at first blush maybe not. In organisations that are trying to cut costs, to add these costs to them is going to be considerable. For example, if that were put to our dry cleaning union, they would go out of business.

**Mr COBB**—We are talking about \$1 per head per year for democracy and everybody is wringing their hands about the cost of holding elections. I mean, it must be just about the least of the costs of running an organisation.

**CHAIR**—I think we also should recognise the fact that elections do not seem to be held very often inasmuch as an election is not required. So if you had full cost recovery and an election was not required, that cost would remain at the 60c plus whatever are the AEC's costs. I think we are still looking at probably \$1 to \$1.50 per head in an uncontested election, and possibly three times that in a contested election. When was an election last required within your organisation?

**Mr Love**—There is an election required both for the union and for the company every year.

**CHAIR**—But when was the last time it was actually contested so that you actually held a ballot?

**Mr Love**—In every case there has been a ballot held for the company, but in no case has there been a ballot held for the union.

**Mr McDOUGALL**—How many members in the company?

**Mr Love**—How many members?

**Mr McDOUGALL**—About 3,400?

**Mr Love**—Yes. The numbers are the same. Persons joining the company become members of the union.

**Mr McDOUGALL**—And if you had a ballot each time, what sort of percentage of people would actually take the right to vote?

**Mr Love**—Around about 25 per cent. That is for the company. As I said, there has been none for the union.

**Mr McDOUGALL**—It has always been around about 25 per cent.

**Mr Love**—Since we amalgamated with the state chamber of commerce, the figure

has fluctuated between about 22 per cent and 26 per cent. I am averaging that out. For the last three elections that we have had the figure has been an average of about 25 per cent.

**Mr McDOUGALL**—Why do so few vote?

**Mr Love**—I would like to know!

**Mr McCLELLAND**—You are talking about an employer organisation with approximately 3,000 members, but there are other quite substantial organisations. For instance, the Australian Workers Union has about 55,000 members in Queensland, does it not?

**Mr Love**—Yes. The figure in the last annual report of the industrial registrar shows a figure of 70,000.

**Mr McCLELLAND**—And indeed, from your knowledge, a number of federal organisations have far in excess of that. Would it be fair to say that many of the large federal organisations have memberships of between 200,000 and 300,000 members?

**Mr Love**—Since amalgamation, yes, I would have to agree with that.

**Mr McCLELLAND**—So if an organisation was going to pay for its own ballot federally, it would be well over \$1 million?

**Mr Love**—Assuming that the figure is around \$4 a head, the figure would be up in the \$1 million mark.

**Mr McCLELLAND**—And if there were another election inquiry which determined that a further ballot should take place, obviously it would be a double whammy of that magnitude in the same year.

**Mr Love**—That is possible, yes.

**Mr McDOUGALL**—To follow that question further, I noticed a report in a newspaper on the weekend regarding the AWU. The article stated that there appeared to be a considerable number of members who were registered as members but who did not have an address registered with the union. How do you suppose an election could be conducted if addresses are not registered?

**Mr Love**—I take it you are referring to that article? It caught my eye as well.

**CHAIR**—For the benefit of *Hansard*, the press article referred to was in the *Sunday Mail* of 18 May 1997 and is titled 'AWU \$500,000 legal bill'.

**Senator CONROY**—Could I see that?

**Mr Love**—Certainly. The elections are conducted in that way now. It must cause the Electoral Commission some considerable concern in getting a voters roll, but this is the way that the world has been running for the last 20-odd years.

**Mr McCLELLAND**—It is frequently the case, is it not, that the employee gives his place of work as his address for the purpose of his union membership?

**Mr Love**—I would imagine that the Australian Workers Union would find it very difficult to have the home addresses of lots of their members, because the very nature of that union is that it represents workers who are fairly itinerant. They move from place to place and so they give their workplace addresses. I do not think it would make a great deal of difference if you insisted on having a home address. Because of the nature of their work, those people are very itinerant, particularly in the rural industries, and having home addresses will not make much improvement in getting the ballot papers to the right places.

**CHAIR**—From an electoral fraud point of view, we have heard evidence about ballot papers going to workplaces where there might be casual or shift workers. The ballot paper arrives at a place where there are other people who might have some interest in that ballot paper if it is not claimed by the person whom it was intended for, whereas a ballot paper going to an address which somebody has left is more likely to be returned. That is part of some of the evidence that has been put forward about limiting the potential for fraud by its going to a home address rather than a work address. Do you have any views on that?

**Mr Love**—If that system could be developed, it may help. Perhaps we might see some change as a result of changes recently made to the Workplace Relations Act. I know from my experience as deputy head of the labour department and from the inquiries and complaints we received that, for a long period, people were coerced into joining unions. They did not give their correct names and addresses and, in many cases, it would be a fact that employers paid the union fees of large numbers of people. There were no application forms or no signatures on the application forms, and obviously there were no addresses. That system was perpetuated for very many years. I defy anyone to say that you could have a system that was even 50 per cent correct on home addresses because of the nature of that system.

With the changes in the Workplace Relations Act and attempts to try to stop the practice of coercion into union membership and employers paying the union fees for their people to buy peace of mind, then perhaps we will see more people genuinely filling out their application forms and filing them with the union. I think that is one of the reasons why you rarely see coming through the courts prosecutions of unionists who have not paid their fees when they have said they have resigned from the union, because the unions cannot produce application forms with signatures on them. I think there are other reasons.

People often do not give their correct names. I do not know how widespread that is. I can recall many years ago when I was practising in the courts and people were brought before boards of references and others to give evidence because of union stoppages and strikes, and quite often in the corridors the court attendants had to call five names before the people would come forward. There are wide discrepancies in this. If anyone can devise this sort of system, good luck to them. At the moment, I do not see how you are going to improve a lot on getting home addresses.

**Mr LAURIE FERGUSON**—I appreciate the general thrust of what you are putting forward, but I have to express some doubts about the 50 per cent figure, quite frankly. It is very difficult to sustain evidence in areas of industry where previously there have been closed-shop practices and, although they have been abolished, that essentially accounts for 50 per cent of the trade union membership in the country. I have experience of trade unions, and it might be different in the areas you have been involved with in industries where people were required to fill out forms. The only problem we struck was in the contract cleaning sector where in the past there was a very big incentive for false names to be used for taxation purposes. In my experience, we certainly did not have thousands of returned mails when we sent out accounts. The figure of 50 per cent sounds very extreme. That is starting from the proposition that 50 per cent of the entire membership is essentially forced to join. I do not dispute that that is a practical situation, but that figure sounds a bit extreme.

**Mr Love**—I am not saying that the 50 per cent arises from the fact that people are forced to join unions and do not fill out forms. I am saying that I would suspect that the members roll containing home addresses would not contain more than 50 per cent of home addresses that are correct.

**Mr LAURIE FERGUSON**—Obviously there has been a small number of very strongly contested ballots that went to the courts. Do you know of any where that figure was sustained?

**Mr Love**—No, I do not.

**Mr McCLELLAND**—When the Electoral Commission conducts a ballot, does it keep a record of the number of ballots returned marked ‘not at this address’?

**Mr Love**—Yes. It should do.

**Mr McCLELLAND**—And those figures would be readily available through the Australian Electoral Commission?

**Mr Love**—Yes. That should give a fair indication. It depends on whether the mail that has arrived at those wrong addresses is sent back.

**Mr McCLELLAND**—Is it not more likely that an independent agency such as the Australian Electoral Commission is going to be able to detect false addresses than the organisation that conducted the ballot itself? It has more ability and willingness, I should say.

**Mr Love**—I do not know. They are only checking them off on a voters roll given to them by the organisation.

**Mr McCLELLAND**—But if there is a massive return of envelopes from a given workplace address, they are likely to smell a rat, as it were.

**Mr Love**—Yes, surely.

**Mr McCLELLAND**—Whereas if the incumbents in a union wanted to pull a swiftie, they may do something else with those returned envelopes. Is there not a public interest in the Australian Electoral Commission being involved in the process of union elections?

**Mr Love**—Very much so.

**Mr McCLELLAND**—Do you think if a charge was introduced by the Australian Electoral Commission there would be a push by industrial organisations to conduct their own ballots rather than incur that fee?

**Mr Love**—Yes, and we have said that quite plainly in our submission.

**Mr McCLELLAND**—And that would be contrary to the public interest in your view?

**Mr Love**—Yes. We believe that prima facie every election should be conducted by the Australian Electoral Commission or the Queensland Electoral Commission and that only those organisations that are validly given an exemption should have the right to conduct their own. However, we have said in our submission that if the charge became prohibitive, organisations would tend to opt out of that system and go back to the good old days or the bad old days, whichever way you want to look at it.

**CHAIR**—Depending on which side you are on!

**Mr Love**—Yes, it depends which side you are on. I must say that our own organisation is examining the costs and whether it would be possible to conduct our own union elections.

**Mr McCLELLAND**—Would not the union have ultimate freedom because it may withdraw its registration and conduct itself as a voluntary body and would not be faced



with any of these regulations? You would have a bit of the law of the jungle returning to the industrial field.

**Mr Love**—I suppose that is theoretically possible, but I cannot imagine any union wanting to give up its registration to go back to being an association.

**Mr McCLELLAND**—If it had no choice and the cost of the union ballots was going to destroy it, then it may be left with no alternative, do you think?

**Mr Love**—I suppose financial problems will drive all sorts of people to do all sorts of strange things. I suppose it is possible, but they do give up a lot of rights by not being a registered organisation.

**Mr LAURIE FERGUSON**—This probably does not affect you, but it has been raised in the course of the inquiry, that is, the financial status of members. Imagine that you did have a contestable election run by the AEC. Does everyone have to pay by a certain date or do you have quarterly fees or, as at a certain point in time, are there people who are unfinancial? How does it work?

**Mr Love**—In our case, people have to be financial to be able to vote either in the company elections or in the union elections. There is a definition of ‘financial’ in both. They are not the same in the two organisations.

**Mr LAURIE FERGUSON**—On the union side, what is it? Is there a period of grace?

**Mr Love**—I believe that, on the union side, it is 30 days that they have to be financial, or within 30 days. Membership does not occur on the first of a month, say, 1 July or anything. Membership occurs 12 months after joining. The membership fee payment dates are different in an organisation such as ours.

**Mr LAURIE FERGUSON**—It could be that at a point in time somebody is essentially a member in so far as they have been in for 20 years and they want to remain as such, but technically on the day an election is called they may fall within that period of 30 days of grace.

**Mr Love**—Yes.

**Mr McDOUGALL**—At present, the right to seek an inquiry into an election is restricted to persons who are members of the organisation concerned, whether it be a union or an industry organisation, and who have become members within the preceding 12 months. What would the QCCI’s attitude be to enabling an application for an inquiry to also be made by the AEC?

**Mr Love**—That is something that has not been discussed by the QCCI, but my view is that I would not favour the AEC becoming what we might call a regulator. It is a provider at the present time and to make it both a provider and a regulator would cause some difficulties in the AEC itself, in my opinion. I say that because the AEC is beholden to organisations to obtain the information that it requires to successfully run these elections. If it is going to become a regulator, it would require some new types of staff and it would have to be given the ability to rummage around in union offices and to maybe even conduct raids in order to gather the evidence to become a prosecutor. I would see that as damaging the AEC's standing in the community and creating difficulties for it in the way in which it is able to conduct elections now. It works largely with the cooperation of the organisations. If another arm of that organisation is going to be snooping around and gathering evidence for prosecutions, then I see that as a real problem.

I think that the AEC is in the best position to find irregularities, particularly ballot rigging and matters of that nature. The AEC has a good role to play in covering the area that needs to be covered because most other organisations, government departments and so on, are very reticent to take the action to bring irregularities to the courts. The AEC would be a very good body to bring forward evidence, it would be a very good body to present evidence in proceedings, but I do not really think that it would be doing it a good service by making it the prosecutor.

**Mr McDOUGALL**—That was not the question I asked. The question I asked related to the right to seek an inquiry, not the right to carry out an inquiry. It is a bit different. Would you like to take the question on notice and ask the QCCI to respond and get back to the inquiry?

**Mr Love**—I would be most happy to do that, Mr McDougall.

**Mr COBB**—On that point, surely you are not saying that if the AEC can see a glaring irregularity it would do nothing about it?

**Mr Love**—No. I am saying that it is in a good position to find these things and there should be avenues for it to get an inquiry started. However, I would be totally opposed to the idea that the AEC or the ECQ be given the powers to start those inquiries. In my opinion, avenues should be open where it can either go to the minister or go to the industrial registrar if he was given the power to start inquiries so that it is able to bring this mountain of evidence forward.

**Mr McDOUGALL**—You are suggesting lodging some report after the conclusion of a ballot indicating how it took place, what they found and whether they perceived any irregularities occurring?

**Mr Love**—Yes, or even before the ballot was concluded if they saw this coming.

It is almost incumbent upon them to do something about it.

**Mr COBB**—Coming back to your earlier point about false memberships and the coercion of members, how prevalent was that?

**Mr Love**—I would say that it was very, very prevalent, particularly in some industries. Obviously I cannot reveal sources, but as deputy head of the labour department I can assure you that we received numerous complaints not only of single instances but also about a whole part of an industry.

**Mr COBB**—Does that happen now or has it ceased?

**Mr Love**—I do not know. I have not been in that position since 1990. I do not know what the level of complaints is.

**Mr COBB**—It was still prevalent in 1990?

**Mr Love**—Yes.

**Mr COBB**—Have the practices changed that would lead you to believe that it may have changed?

**Mr Love**—I would hope so. I would hope that changes on freedom of association may have helped to eliminate those practices.

**Mr COBB**—Were the false names that were recorded used for voting purposes?

**Mr Love**—I have no idea. I would assume that if they were listed on a members' roll, they would be eligible persons to vote.

**Mr McCLELLAND**—Under the federal system there is a power on the minister to commence proceedings seeking a penalty against an organisation or an individual that takes action to coerce a person to either join a union or join industrial action. That power exists under the federal sphere and has for quite some time. Did such a power exist or not exist under the Queensland legislation for the minister to take such penal provisions?

**Mr Love**—I believe that there was something in the legislation that came in in about 1987.

**Mr McCLELLAND**—If that was the case, why did your department not refer these complaints to the minister so that he could commence a prosecution?

**Mr Love**—In many cases it was very difficult to get evidence or to get anyone to come forward to present that evidence. There was a second problem: with the coercion to

join unions, it was never clear whether the person was being asked to join the Queensland branch of a federal union or the federal union. The evidence could not be brought forward, but the main obstacle was that persons would not come forward to give evidence.

**Mr COBB**—Why would they not come forward?

**Mr Love**—For fear of reprisals to their businesses.

**Mr COBB**—Was there any evidence of that?

**Mr Love**—We could only go on what they were saying and they were insisting that they would not come forward.

**Mr COBB**—Did they ever relate to you what sort of things may have happened if they had?

**Mr Love**—Not in specifics.

**Mr McCLELLAND**—Did the department ever conduct its own investigations after receiving these reports?

**Mr Love**—Yes.

**Mr McCLELLAND**—Can you recall how many?

**Mr Love**—When I was sitting in the chair, I arranged for certain inspectors to immediately go to these businesses.

**Mr McCLELLAND**—How many instances can you recall when that occurred?

**Mr Love**—I would say at one stage they were having them about once a week. This is in the 1980s.

**Mr McCLELLAND**—And no prosecutions came from that?

**Mr Love**—No prosecutions came from that.

**Mr LAURIE FERGUSON**—The Cooke inquiry, which is the most spectacular investigation in this type of matter, went into allegations of people collecting ballot papers and that type of thing. Do you recall whether that ballot investigation found evidence of the widespread use of false names?

**Mr Love**—I think there is evidence there. It is a while since I have read the Cooke reports. They stand about that high now. In his final and sixth report, Cooke makes

reference to the fact that there is widespread ballot rigging.

**Mr LAURIE FERGUSON**—I am aware of that, but what of the specific use of false names?

**Mr Love**—No, I cannot recall how deeply he went into the question of addresses.

**Mr LAURIE FERGUSON**—You were asked earlier about the attitude of the taxpayer towards funding ballots in both employer and employee unions. Is it fair to say that a philosophical point that comes through in your submission is that there is also a degree of right on the part of the membership of an organisation to essentially run their organisation without too much external interference and that if the state wishes to come in and essentially make requirements of organisations, then perhaps there is equally a requirement on the state to fund that?

**Mr Love**—I think that is a fair comment and we say that. As you were posing the question, I noticed that that came through in submissions from other organisations. I think the Australian Chamber of Manufactures makes that very point.

**CHAIR**—In relation to the Queensland legislation, you can apply for an exemption to carry out the ballot yourself. Do you know what percentage of organisations do apply and have that exemption?

**Mr Love**—No, I do not. I could certainly find out a figure. I might have quoted in our own submission that last year something like 30 or 40 organisations had their elections conducted by the Electoral Commission of Queensland. There are about 45 employer organisations and 50-something employee organisations, so I think we are looking at something less than half. The figure could be obtained from the industrial registrar. We could ask the registrar for that figure.

**CHAIR**—It would be interesting to look at that in relation to the federal legislation as well, because quite a number do have exemptions.

**Mr Love**—It is very high in the federal area, much higher than in the Queensland area. As I said, we only came into this business in 1993, whereas the federal one has been going for many years. It has integrity and everybody likes the system. I would hope that the same applies in Queensland.

I would make one point on the employee names, because it seems to have become a big issue this morning: it is really a problem that is associated with employee unions alone. We do not have that problem for employer organisations because, apart from a handful of five or six people who may go out of business within a 12-month period, we know where all our members are and they are operating as businesses and their addresses are the business addresses. The problem totally relates to employee associations.

**Mr COBB**—Understood.

**CHAIR**—Thank you very much for your attendance here today.

**Mr Love**—Thank you. I appreciate the opportunity to talk to you.

[11.00 a.m.]

**HODGE, Mr Gordon Lester, Returning Officer, 282 Riding Road, Balmoral, Queensland 4171**

**CHAIR**—Mr Hodge, would you please state the capacity in which you appear?

**Mr Hodge**—I am appearing independently. This is not a submission on behalf of the Australian Electoral Commission. I will not give a view of the Australian Electoral Commission at all; it is all my own view.

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

**Mr Hodge**—No.

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

**Mr Hodge**—I believe that I covered everything that I had to in my written submission. I will go through that, if you like.

**CHAIR**—I think that probably the best way would be if you briefly highlight, say, the things that you would like us to take note of particularly. Then we can float the questions from there.

**Mr Hodge**—I would have to agree with the previous witness and, in actual fact, I will read what I wrote about funding. I believe that the cost of conducting industrial elections should continue to be borne by the Commonwealth despite the trend these days to introduce user-pays systems. As I understand it, the then Prime Minister of Australia, Malcolm Fraser, introduced tax-funded union elections to allow an independent and professional organisation, the Australian Electoral Commission, to conduct well-run elections. One side benefit was that there would be fewer court challenges thus freeing up the Federal Court. If organisations are now forced to pay, then they may be inclined to obtain an exemption under the act and start conducting their own elections again. I have heard some horror stories about elections conducted by novice returning officers, including how the returning officer is influenced by certain union officials because they do not know better.

It seems to me that candidates are more aware than they were 20 years ago when the Prime Minister introduced the system and the challenges to election results could increase. With regard to elections conducted by the AEC, just suppose that a returning officer was too close to an organisation secretary and was influenced either directly or indirectly not to take a certain action because of the financial cost to the organisation. Would this be a good thing? I do not think so. I have been present on a couple of occasions when federal secretaries have influenced the course of action of the AEC and there was no way the Australian Electoral Commission was going to oppose that view. The decisions were relatively harmless in themselves, but it was still somewhat worrying to me.

I consult with branch secretaries in every election that I conduct. I believe in cooperation with our clients and that a returning officer must remain independent at all times. I pride myself on being independent, impartial and fair and I work hard at being consistent.

I will just go back to a few points with the previous witness, that is those returned unclaimed; they are mentioned in the election declaration of poll. However, as he stated as well, of course, that is only what is returned by the time the poll closes, and many that do not reach their addressee—the candidate—are just thrown in the bin either by the new person at the address or by the member themselves who just chooses not to vote at all.

On another matter, the role of the returning officer to do whatever is necessary is quite prominent. The question was asked about whether the AEC should conduct inquiries about the conduct of the election. Of course, the returning officer himself or herself has this role to play already. It is incumbent on him or her to do this if they suspect that anything is wrong. I will just go through the written submission, if you like, and then if you have any questions, let me know.

**CHAIR**—The written submission becomes part of it, anyway.

**Mr Hodge**—Yes, that is right.

**CHAIR**—Is there something particular that you want to highlight rather than go through it in detail? We will probably run out of time otherwise.

**Mr Hodge**—That is fair enough. I believe that all postal ballots should require the voter to sign his or her name on a certificate or a security envelope and that the running officer should then check at least 10 per cent of those signatures against membership records held by the organisation. Any roll of voters should usually be a cut-off roll, unless a suitable alternative system is in place. A voters' roll should only include those members with a reasonable history in the organisation. The returning officer should endeavour to check the accuracy of the roll of voters and, if necessary, stall the conduct of the ballot or extend the period of the ballot if he or she is not satisfied that the roll is accurate.



**CHAIR**—Can we just stop there? What sort of other things are you proposing should be done in that regard as regards the accuracy of the roll in these sorts of elections?

**Mr Hodge**—I can only speak for myself, but I check that all of the candidates and nominators are on the roll of voters. That is the very simplest check.

**CHAIR**—That is not really checking the accuracy of the roll per se, is it?

**Mr Hodge**—Yes, it is. It is a start and I work from there. Of course, if the candidate who has been checked already individually and closely as being financial and eligible is not on the roll, there is something wrong.

**Mr COBB**—How often does that happen?

**Mr Hodge**—That they are not on the roll?

**Mr COBB**—Yes.

**Mr Hodge**—Very rarely indeed. It happened to me. It was my fault. Many years ago in a ABSA election, the branch secretary did not—

**Mr COBB**—So you are saying that the candidates themselves are actually okay?

**Mr Hodge**—Are already checked, yes. If any of those nominees or nominators are not on the roll, then there is something wrong.

**Mr COBB**—Does that happen much?

**Mr Hodge**—That is what I was saying—very rarely.

**Mr COBB**—So there is no problem in that area?

**Mr Hodge**—Usually not, no, but at least it is a starting point. Then from there I select names from the roll at random and I go back to the union itself and have a close look at the financial statements.

**Mr COBB**—You are able to do that readily?

**Mr Hodge**—Yes.

**Mr COBB**—How often do irregularities bob up then?

**Mr Hodge**—It depends on the union, but these days with computer rolls it is not

very often that I find discrepancies.

**Mr COBB**—We heard from the previous witness that, in years past at least, there could be very large percentages of fictitious names on the roll.

**Mr Hodge**—I covered that in my written submission. The Australian Taxation Office did us a big favour because, before it introduced its current system, we did have many false names. People did have two, three or four jobs and they would just select names out of the phone directory. So there would be an inflated roll to begin with and there would be false names, yes.

**Mr COBB**—So the names on the roll actually decreased, apart from becoming more accurate?

**Mr Hodge**—Yes, absolutely. That is true. Just on that point, that was allowed to a degree because people were allowed to get a vote because they had worked casually for only a short time and they had their name recorded maybe four or five months previously. As has happened in the liquor trades union elections in the past, people have worked in a hotel for a day, they have since moved on and they have continued their national tour, or whatever they are doing, and then months later they are sent a ballot paper. The bad news really is that the ballot paper has gone to the hotel. This has happened, too, of course.

**Mr COBB**—So is it just a matter of keeping the rolls updated continuously or is it a matter of changing the criteria for who should be on the roll to vote?

**Mr Hodge**—We have no say in who can be on the roll. It depends on individual sets of rules. As far as the accuracy of the rolls is concerned, it is a disappointment to me that unions do not, or cannot, keep as accurate a roll as what would be desired.

**Mr COBB**—So that may be an argument for standardising recommendations on how the roll should be maintained?

**Mr Hodge**—That could be considered. The accuracy of a roll varies from one organisation to another; that is true. In the past when the Commonwealth Bank Officers Association was a stand-alone union, I have had as big a return as 80 per cent, but they virtually all went to work addresses. I have had as big a return as 80 per cent but in some of the unions where there are many itinerants, it can be as low as 14 per cent, 15 per cent, or 16 per cent. I do think that unions should look at their rules so that the eligibility and the groups of eligible people as members to vote is quite clear.

Over the last 20 years things have changed in the workplace and rules have not necessarily changed to reflect that. There is more part-time work and casual work. I think for everybody's sake—the secretary who is compiling the roll, the candidates, the members, the returning officer—it should be quite clear that persons who are working

casually so many hours per week or whatever may get a ballot paper but people who do not work that number of hours do not get a ballot paper. It should be clear.

The point that I am making is that at the moment a returning officer has a very difficult task indeed. First of all, he or she has no input into the maintenance of the roll of voters. The returning officer is just dumped with the election and has to suddenly work a miracle at times with the standard of the roll.

**CHAIR**—I was just going to say that, really, the AEC in these sorts of elections does not really have a role as far as the accuracy of the roll is concerned. You are provided with a roll; you can check whether people standing for election or that those nominating are on that roll. As far as the roll is concerned, they are the members provided to you by the particular unions.

**Mr Hodge**—No, that is totally wrong. The returning officer has a responsibility to ensure that that roll is accurate.

**CHAIR**—But when we say ‘accurate’, how do you check whether or not Billy Smith is a member of the AWU?

**Mr Hodge**—As I said before, I do a check of the rolls. As I said before, the first check was to check that the nominees and the nominators are right. Then you go and select names at random from the roll. You go back and check those names in the system specifically to make sure that that person owes no money.

**CHAIR**—Owes no money, yes.

**Mr Hodge**—Of course, just to mirror that I also get a list of supposedly unfinancial members and make sure that they do owe money. Otherwise, if you do not do some sort of check of the roll, the election is in jeopardy. The roll of voters—the list of financial members—is absolutely crucial to a good ballot. It happens that a ballot is close with a handful of votes separating the winners and losers. We can never check in advance. We can never predict in advance when a ballot is going to be close. Supposing there are only 50 votes in it in a roll of, say, 10,000; that is not very many.

**Mr COBB**—But when you are saying you are checking the roll, you are just checking to see whether they are financial members or not.

**Mr Hodge**—Yes.

**Mr COBB**—What else do you check?

**Mr Hodge**—If it is a regional ballot, that they belong to the right grouping.

**Mr COBB**—Are you saying, though, that if they are financial and in the right group, they are dinky-di because the tax file number cuts out employers paying for false names nowadays?

**Mr Hodge**—You do not get a tax file number. We do not go that far. It would be very difficult. This is only a personal opinion, but these days I do not think the idea of the employer paying the union fees is all that prevalent. Years ago, before the Taxation Office clamped down, it probably was fairly prevalent but I do not think that it is.

**Mr McCLELLAND**—Under the Industrial Relations Act 1988 all organisations are required to file audited financial returns and membership returns, are they not?

**Mr Hodge**—Yes.

**Mr McCLELLAND**—And you base yourselves on that certified audited membership roll for the purposes of preparing the roll of voters?

**Mr Hodge**—We issue formal directions to the branch secretary and we explain what grouping we want. If it is a cut-off roll then it may have to be that the members on that list may have had to have been financial on, say, 30 June. That is what we would ask for. We then get a certified list from the branch secretary. He certifies it to say that all the members on the attached list—

**Mr McCLELLAND**—There are significant penalties if he makes a false application.

**Mr Hodge**—Absolutely.

**Mr McCLELLAND**—What do you think is a reasonable time—I know that it would vary—in normal circumstances for the Electoral Commission to have time from the close of roll of voters until the opening of the ballot in order to properly prepare the roll of voters?

**Mr Hodge**—We usually look at a month for nominations, a month for the preparation and a month of the ballot as a general timetable. The rules may require only a fortnight for nominations. That preparation time may also be in the rules. It may be in black and white and we are expected to comply with that, but it depends entirely on a number of things. One is the size of the organisation; the second is how good or bad are the records of the union.

**Mr McCLELLAND**—Yes.

**Mr Hodge**—The third is what has to be done. In that preparation time, if it is only a ballot paper or ballot papers, then it would require a shorter time than if we had to

prepare a candidate's statement with photographs.

**Mr McCLELLAND**—Would you be assisted if at least those formal gaps were standardised so that a union rule did not block you up against yourself—push you up into too tight a time period?

**Mr Hodge**—It probably would. As I say, sometimes six weeks—

**Mr McCLELLAND**—Is too much.

**Mr Hodge**—Sometimes four weeks is too short and six weeks is just enough. So it is very difficult to standardise. Once again, I refer back to my original submission. I am not very much in favour of too much standardisation, but there are certain areas that I am in favour of standardisation. In an organisation, the different unions vary in size.

**Mr McCLELLAND**—You suggest that it may be better if it could be done on a cooperative collective basis, in your submission.

**Mr Hodge**—Yes.

**Mr McCLELLAND**—My final question on this is: I understand that under the state legislation in Queensland there is a mechanism whereby a barrister experienced in the area would make some sort of certification that he had read the union's rules as being sensible and complying with the act before they are filed with the industrial registrar and he then certifies the rule. If there were identified practitioners who could read rules and say, 'We have read these and we think that they are in compliance with the act,' would that be of assistance in the federal sphere?

**Mr Hodge**—Yes. I do think as well that it should filter down to below that officer, that returning officers should have an input. If an organisation wants to change its rules, then I do think that the returning officers within the Australian Electoral Commission should be consulted. The legal representative of the AEC may look at the law but, as for the practical side of it, you really do need the returning officers. On many occasions within the Australian Electoral Commission the returning officer has a problem and solves it. It may not even get to senior officers that this has happened. We become used to solving problems and not making a big deal about it. So quite often the problems that we have gone through are not well known.

**Mr McCLELLAND**—You think it would be assisted if there was some officer who could give out advice on past experiences and make recommendations?

**Mr Hodge**—Yes, not just an officer, but I think if it were possible, returning officers at large.

**Mr LAURIE FERGUSON**—You suggested that people should have a reasonable work history. This question relates to the question of people's financial status. If someone works for one day in a hotel and pays a quarter's fees to the organisation, is it anyone's business that he worked there for only one day?

**Mr Hodge**—It is only my personal opinion, but I really doubt that a person who has worked in the industry for one day should have any say.

**Mr LAURIE FERGUSON**—The person whom I am putting to you is financial at the time of the ballot.

**Mr Hodge**—Yes.

**Mr LAURIE FERGUSON**—He has worked for only one day and he has paid a quarter's fees. Essentially, has he not paid to be part of an organisation and to have certain rights? Equally, are we going to start running around spending a whole lot of money investigating every individual's work record for the previous quarter?

**Mr Hodge**—It is my own personal opinion.

**Mr LAURIE FERGUSON**—It does not matter whether or not I agree with you; I am asking you whether it is very practical.

**Mr Hodge**—I just do not think that a person who has worked in the industry for one day should receive ballot material.

**CHAIR**—But he might have paid a quarter's fees and intended on looking for more work or whatever. How do you differentiate between somebody who does a few days' work and then does not have any work for next week but hopefully will have some work in a month's time?

**Mr Hodge**—If he paid a quarter's dues, that is a different story.

**Mr LAURIE FERGUSON**—That is what I said to you. If he paid a quarter's fees.

**Mr Hodge**—Yes, I am sorry.

**Mr LAURIE FERGUSON**—So you are concerned about someone being stacked in and paying one payroll deduction.

**Mr Hodge**—Yes, one payroll deduction. I am sorry, I am thinking of the liquor trades union where a person had his deductions for one afternoon deducted by the employer and then got a vote.

**Mr LAURIE FERGUSON**—I am talking about a quarter's fees.

**Mr Hodge**—That is fair enough.

**Mr LAURIE FERGUSON**—Secondly, in regard to this whole question of financial status, essentially in most organisations, at least in trade unions, people have a period of grace in which to pay their fees. They do not shoot you five minutes after you have not paid. When you say that there should be a financial list, do you still say that it is acceptable that, if there is a period of grace in that people who are unfinancial at the time of the calling of the ballot have another 25 days to pay their fees, they should get a ballot?

**Mr Hodge**—We conduct the ballot strictly in accordance with the rules of the union. There is a definition in each case of the word 'financial' and that is what we go by. So it is pretty straightforward. He is entitled.

**Mr LAURIE FERGUSON**—I was under the impression that you made some comments on it.

**Mr Hodge**—Yes.

**Mr LAURIE FERGUSON**—That is what I am getting at, rather than what the current rules are. I thought that you were making some comments about the need for an up-to-date financial list. What you are saying is a financially up-to-date list? What is your concept?

**Mr Hodge**—Sorry?

**Mr LAURIE FERGUSON**—I was under the impression that you made submissions about the need for up-to-date financial lists.

**Mr Hodge**—Yes.

**Mr LAURIE FERGUSON**—Have you particular ideas on how 'financial' should be defined or are you saying that, as long as the organisation allows a period of grace, it is good enough for you.

**Mr Hodge**—Once again, I can only go back to the fact that all union rules have a definition for the word 'financial'. That is related to other rules dealing with when a cut-off occurs or if a cut-off occurs.

**CHAIR**—I think that Mr Ferguson is trying to get to the point of your opinion rather than what the rules are. If a union has a rule that says you can be unfinancial for 25 days, do you think that that is an unfair rule?

**Mr Hodge**—In my written submission, I have covered that I do believe that the rolls of voters should be cut off. Probably the most convenient one would be as at the close of nominations. Another one maybe the opening of nominations, or it may be the end of a previous quarter. Personally, I do think that cut-off rolls are a good thing. In parliamentary elections the rolls are cut off. In fact, there are all sorts of dangers when there is a continuous roll, because it just adds to confusion. We do not know whether we have the whole list of financial members.

**Mr LAURIE FERGUSON**—There is a throwaway line in there about some electoral officers being too close to federal secretaries of the unions and exerting pressure on returning officers. What is the worst crime that you are aware of that has been committed in that field?

**Mr Hodge**—Are you talking about electoral officers?

**Mr LAURIE FERGUSON**—In relation to Electoral Commission officers and federal secretaries of the unions, you make the claim that sometimes the relationship is too close and therefore you have witnessed situations in which they tended to take riding instructions from the union. What is the worst instance of that that you are putting forward?

**Mr Hodge**—That would be when a federal secretary told the Australian Electoral Commission that they would not take any action on returned, unclaimed mail. As far as the union was concerned, either the account or some other correspondence had gone to the member, it had come back to the organisation in the past—it may have come back twice; they may have sent two or even three—that member or those sets of members were allocated a postcode of 9999, and the Electoral Commission would not do anything about it. That is what was being told to the Australian Electoral Commission: you will not do anything about those.

**Mr LAURIE FERGUSON**—What do you think should have been done? Are you saying that those people were receiving ballot papers?

**Mr Hodge**—That was the preparation for the ballot, but the ballot had not occurred at that time.

**Mr LAURIE FERGUSON**—We found a whole lot of people who had returned mail—

**Mr Hodge**—That is to the union.

**Mr LAURIE FERGUSON**—Therefore there is an indication that they might not be financial and might not live there, et cetera. What was the union secretary trying to put to the returning officer about that situation?



**Mr Hodge**—It was being put that the Australian Electoral Commission will do nothing about that.

**Mr LAURIE FERGUSON**—What do you suggest should have been done?

**Mr Hodge**—First of all, the Australian Electoral Commission is conducting the election; the returning officer is conducting it, and he or she can do whatever he or she likes within the act and within reason. If need be, the returning officer will take further action.

**Mr LAURIE FERGUSON**—Was there any argument about these people getting ballot papers? Was that part of it, or not?

**Mr Hodge**—They were financial. They were entitled to ballot papers.

**Mr McCLELLAND**—Are there not cases—for instance I can think of one, *Birch v. Australian Workers Union in South Australia*—where the ballot was set aside, one of the reasons being that the judge, Justice Keely, I think it was, thought that the returning officer had not done enough homework to chase up returned envelopes. So there is that obligation according to law, judge-made law at least, in pursuing the act. He has a positive role to search out, as far as he is reasonably able, relevant addresses.

**Mr Hodge**—That is absolutely right.

**Mr McDOUGALL**—You were speaking earlier about the process under which you feel that you should carry out some sort of check as to the accuracy of the roll. You may have heard me earlier asking questions about the article in the paper yesterday. I will quote from the article—

. . . the records showed:

. . . More than a third of people on the AWU's membership register had no addresses.

One-third of the membership of a major, big union had no addresses. How would you check as to the validity of the run-up?

**Mr Hodge**—With much difficulty—I am not conducting that election.

**Mr McDOUGALL**—I did not mean that you were.

**Mr Hodge**—No. I have only been on the periphery. I have been in the same office with the regional officer who is conducting that. I am not impressed one bit at all by the standard of that roll. As to how you go about improving it at this stage, that is very difficult indeed. That is tied in with the point that I made before that, in between these

elections—and some of the elections are annual, some biannual, some triennial, some quarterly—the returning officer has no control over the maintenance of these records. We are in the hands initially of the organisation. We are then expected to run an election that will stand up.

**Senator CONROY**—Are you suggesting that the Electoral Commission should have a role in monitoring the addresses of union members in between elections?

**Mr Hodge**—No, I am not suggesting that. I am asking the question: who is responsible?

**Mr McCLELLAND**—The audit should be done properly, should it not? You should be able to rely on the chartered accountants who sign off on the financial and membership returns. The Electoral Commission should be entitled to expect that to be done properly.

**Mr Hodge**—Yes, but I think that all that the auditor would be looking at would be the financial aspect, not the addresses. Even if he did look at the addresses, what could he do about it? He is still going to sign his certificate.

**Mr McCLELLAND**—Do you think that that perhaps should be an obligation in one of the factors that he is compelled to certify: that reasonable efforts have been made to have accurate records kept as to membership details? Do you think that should be a requirement of auditors?

**Mr Hodge**—It would be nice, but I do not know how practical it would be.

**CHAIR**—What about a cross reference to the electoral roll?

**Mr Hodge**—No, we are not allowed to touch the electoral roll.

**CHAIR**—I realise that. I am throwing it up as a possibility.

**Mr Hodge**—No, it is too dangerous. For every 10 or 100 that we are successful with, if we were to make a mistake with only one, we would be in big trouble in the paper, with the voter and with civil libertarians. I do not think it is practical at all.

**Mr LAURIE FERGUSON**—Large numbers of people have the right to work here who are not citizens.

**CHAIR**—I realise that. We are talking about people without addresses.

**Mr COBB**—How is it possible in 1997 that one-third do not have addresses? Is this incompetence in recording or is it a deliberate action?

**Mr Hodge**—I do not think it is deliberate, but that is only an opinion. I think that unions are bound by the same budget problems as the rest of society. The AWU is not alone.

**Senator CONROY**—Do you think the AMP has the current address of every single member who has a superannuation policy with it?

**Mr Hodge**—Good point.

**Senator CONROY**—Do you think the bank does?

**Mr Hodge**—No, but at least 95 per cent of addresses might be known. I have not read that article I must admit, but I have seen some of the addresses, some of the labels. I am not impressed one bit. They have their own problems as far as having staff to process them.

**Mr McCLELLAND**—The previous speaker indicated that the nature of the Australian Workers Union was itinerant: shearers, fruit pickers.

**Mr Hodge**—That is certainly a big factor. You are absolutely right.

**Mr McCLELLAND**—I think it covers people who work on recreational facilities on islands and so on. It would be a very mobile membership.

**Mr Hodge**—Yes.

**Senator CONROY**—In that case, rather than recording a home address, it would be simpler for them to have the material from the unions sent directly to the workplace.

**Mr Hodge**—That is true.

**Senator CONROY**—That would probably be more convenient for the worker.

**Mr Hodge**—Yes. The previous witness also mentioned members not giving their home addresses or changing their home addresses as quickly or as many times as they should. Regardless of whether the Electoral Commission runs a ballot with home addresses or work addresses, they both have their problems. Using work addresses would make it more open to rigging, but using home addresses would mean that the roll is probably more inaccurate.

**CHAIR**—Why would you say that? Surely somebody who is an itinerant worker would be more likely to jump from hotel to hotel and perhaps stay in the same accommodation. They might have one home address while they work at three or four different workplaces, rather than the reverse; would you agree?

**Mr Hodge**—I am talking generally. Perhaps the AWU and the federated liquor union are two bad examples in relation to changing workplaces. I am talking generally. Just on that general matter of keeping records, my suggestion about every member in every election having to sign a certificate or a declaration would depend on the union holding a record with the member's signature. At the moment, for the one union that we do it with, I am looking at signatures that are sometimes 30 years old. I feel that the members would have to be asked to update their signature every five years or so. Those who were not willing to do it would just miss out on their vote. It is not a compulsory vote anyway. When they have to sign something, members do get worried about the secrecy of the vote. It is not who votes; it is how they vote.

**Mr LAURIE FERGUSON**—Which other organisations require that? Which sporting organisations or other similar groups require people to start updating their signatures every three or five years? The organisation has some internal rights, does it not?

**Mr Hodge**—Yes, of course, but if you are trying to eliminate fraud and ballot rigging, that is my suggestion.

**Mr McDOUGALL**—I know this is a very average question. In your experience, in those that you have conducted yourself, what sort of numbers in percentage terms have resulted in voting in, say, employee union elections and employer elections? We heard earlier this morning that in one employer case there were about 15 per cent to 16 per cent votes. How do you find the comparison between the two groups?

**Mr Hodge**—We do not run a great many employer elections compared with the employee elections. Their percentages are fairly low. Off the top of my head, I have no idea. Usually, with a medium-sized union election of, say, around about 7,000 or 8,000, the percentage return is somewhere around 40 per cent. That is the percentage of people who voted. As the electorate gets smaller, the percentage tends to go up, because they know the people. In a bigger electorate, they tend not to know who the people are and they do not vote. As far as employer organisations, I cannot recall what the percentages are.

**Mr McDOUGALL**—So you would say that employee elections—union ballots—have a less than 50 per cent vote.

**Mr Hodge**—Usually, yes.

**Senator CONROY**—For Mr McDougall's interest, a rule of thumb that I often apply in these cases with voter turnout in union elections, in a non-contested ballot—that is, one person is nominated against an existing leadership—you usually average between 10 per cent and 15 per cent voter turnout, with only one side putting out a how-to-vote card. Where there is a full ticket against an incumbent leadership, when you have an old-

fashioned campaign without a lot of direct mail, you usually have about 25 per cent turnout. In a hotly contested campaign, in which both sides are employing the latest election techniques—phone canvassing, direct mail—you can have anywhere up to 55 per cent.

**Mr Hodge**—My figures would not agree with that.

**Senator CONROY**—That is independent of the size of the unions.

**Mr Hodge**—My figures would not agree with that, but I do agree that the percentage voter turnout does depend on the campaigning, and on a number of things.

**CHAIR**—Thank you very much for your time, Mr Hodge.

[11.45 a.m.]

**CURTIS, Mr John Edward, c/- Australian Electoral Commission, GPO Box 2590, Brisbane, Queensland**

**CHAIR**—Mr Curtis, would you please state the capacity in which you appear?

**Mr Curtis**—I am employed by the Electoral Commission, but I am appearing in a private capacity.

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

**Mr Curtis**—Yes, I do. Firstly, I also have a response to a submission by Mr Keane. That is the response there. I have a correction to make on the first page of my submission. In the second line I said, ‘300 elections’. I think that really should be in the order of 200, approximately.

**CHAIR**—I will amend that to ‘200’.

Resolved (on motion by Senator Conroy):

That the additional submission from Mr Curtis be authorised.

**CHAIR**—Was that the only correction on that first page?

**Mr Curtis**—Yes, that is right.

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

**Mr Curtis**—Yes, I would. In the submission that I made, there are some key recommendations which I think I probably did not highlight enough. I would like to emphasise those now. The first one refers to the security measures that were reported in the Cooke report. One area that I did not highlight sufficiently was the fact that in declaration voting there is a system whereby the elector makes a declaration on the back of an envelope, which is returned to the AEC, and then that signature is matched. I did not highlight that because, if that system was in place, for example, in the 1996 liquor trades elections, which I conducted, it would have made things a lot easier and would have

reduced the possibility of fraud occurring. I did not highlight that sufficiently, although I must say that Marshall Cooke certainly did in his report.

The second thing I would like to say is that I had a large involvement in the Cooke report, as did other people in the AEC, such as Kevin Fitzgerald and other staff. Since the report was finalised and published, I must say that, looking back in hindsight, nothing has really changed very much. There have been model rules put forward by Commissioner Cooke; many of those were basically ignored. That was one of the major reasons why I made this submission in the hope that your committee would look at these matters. Perhaps in the fullness of time things may change.

**Senator CONROY**—As to the background to the Cooke report, there was quite a lot of input from different people into it. Can you run us through that a little bit and tell us what status we can put on it. Is it a credible report or not?

**Mr Curtis**—I certainly believe that it was a credible report. I had a large involvement, as did other people from the AEC. One of the things that I thought Marshall Cooke was very strong on was fairness. He certainly treated me fairly. I saw that he treated other people there fairly. Using that as a basis, I thought that many of the recommendations should have been picked up by the AEC. Some of them have been. Some of the key ones that I am talking about are in regard to the security of ballots, that is, how you can verify that the person to whom the ballot paper was sent was in fact the person who voted. That is a key element of any election. That applies obviously to parliamentary elections. It should also apply in union elections.

**CHAIR**—In your submission, you talk about the Cooke inquiry and the summary concludes to the effect that as the ballot proceeded it became apparent that many members had not received ballot papers and had not voted but their votes were returned and that it became apparent that the ballot was hopelessly corrupted in the counting. What sort of percentage of those ballot papers were going out to work addresses as opposed to home addresses, or is that unknown?

**Mr Curtis**—We probably would have the figures, but from my memory of that roll, which was of extremely poor quality, the figure would have to be in the order of 70 per cent to 80 per cent that were going to work addresses. That is only an estimate, but it would be pretty close to that figure.

**CHAIR**—Would you say that that is how the ballot papers came back with votes, even though individuals never received them?

**Mr Curtis**—Yes, they had gone to hotels and certain union officials had gone to those hotels and, in some cases, they collected large numbers of ballot papers and there was no declaration. There was only a roll number on the back of the replied envelope. That identified the person as Billy Smith at Jupiters Casino. Anybody could vote on that.

However, when we got those envelopes back, we then contacted, for example, Billy Smith and got written statements from him and from many more people like him to say, 'No, I did not receive the ballot paper and I didn't vote.'

**Mr COBB**—Of the recommendations of the Cooke report, which ones have not been taken up to the degree that they should have?

**Mr Curtis**—The key ones that I would like to see implemented relate to some of the areas that Gordon Hodge touched on. If possible, in relation to the compilation of the roll, you would have a system in which 60 days or 90 days before nominations opened the roll was actually cut off. There should be some way of defining a cut-off date, because that would give the returning officer a chance to look at the standard of the roll and, if necessary, take corrective action.

**Mr COBB**—Should that be left in the hands of the union or the employer organisation themselves, or should the AEC have some input into checking the veracity of the roll?

**Mr Curtis**—It is probably desirable that the organisations do it themselves. In most cases, there is always a certain percentage of people who use workplace addresses. If you have a voting system of integrity, whether the person uses a workplace address or home address does not matter, because if there is a proper declaration system you can verify that the intended person voted. It would also eliminate late additions and deletions. Those are just technical things. That would give the union more time to get it ready. That is the reason I would suggest having a cut-off date 60 days to 90 days prior to nomination. That is done in parliamentary elections. It is not done to that extent, but there is still a cut-off.

**Mr COBB**—Is that unfairly disenfranchising anybody who joins the work force later?

**Mr Curtis**—I agree that you have a point there, but for the sake of the overwhelming majority I point out that some organisations do find it difficult to get a roll up to speed in the allotted time.

**Mr COBB**—Is that the major recommendation that has not been taken up?

**Mr Curtis**—The other one that concerns me relates to the point that I mentioned earlier about the security aspects of the ballot material. There should be a matching of signatures. A standard declaration should be used for all elections. The signatures should be matched, so that you can verify as far as possible the integrity of the person who voted, that is, that it was in fact a genuine vote coming from Billy Smith at the casino.

**Mr McCLELLAND**—The Cooke inquiry was an inquiry established by the



Queensland government to report to the Queensland government. That perhaps may account for the lack of Australia wide knowledge of the contents of the recommendations.

**Mr Curtis**—Yes, some people have put that forward. Cooke himself did not recognise that in his report. I cannot remember the exact section. He did make the claim that, because much of the legislation is similar, the rules in a lot of these organisations are similar at a state and federal level; therefore, his report did have application that could be applied equally at a federal level.

**Mr McCLELLAND**—I am aware of that. In terms of the lack of Australia wide application or consideration of the recommendations, one has to bear in mind that it was a report commissioned by the Queensland government to the Queensland government.

**Mr Curtis**—That is quite clear. There is no doubt about that.

**Mr LAURIE FERGUSON**—Going to the question of financial status and setting a date, is your point that there should be a definite date of closure or are you saying that people have to pay their fees on that date?

**Mr Curtis**—I would envisage a system something along the lines that Marshall Cooke envisaged, that is, 60 days prior to the opening of nominations was a cut-off point for all members who were financial as at that particular point. Those financial members were the people eligible to vote. The reason I say that is that, from a practical point of view, that makes it a lot easier for the organisation and for the Electoral Commission. If there are problems with the roll, for example there may be a large number of people who have left addresses, we would try to contact those people. We are presently doing that with the Australian Workers Union. We are writing to those people and saying, 'The union records indicate that you have left. If you happen to receive this advice, please tell us your correct address so you can vote.'

**Mr LAURIE FERGUSON**—I am not addressing the issue of false addresses. I am addressing the issue of financial status. I see a difference between people who owe three-quarters of their dues and people who are technically unfinancial because their organisation gives them 10 days to pay after that ballot occurred and they have not at that stage paid their fees. Do you not see a difference between those two situations of financial status?

**Mr Curtis**—There is a difference, yes.

**Mr LAURIE FERGUSON**—So is it more the case that you are concerned that we do not have people owing hundreds of dollars voting rather than people who technically have not paid because they are still in the same quarter in which they are allowed to pay?

**Mr Curtis**—That is a problem with the rules of the organisation. Hopefully we

could arrive at a date. Say an organisation became unfinancial after one quarter, we would try to give the organisation the maximum time. Say a person did not become unfinancial until the thirteenth week, we would try to set it like that. It is probably a bit too rigid to say that we should set a time period of 60 days or 90 days, but that could be the parameters in which you could work.

**Mr LAURIE FERGUSON**—How did the DROs for Forde and Rankin become aware of all this debate inside the AEC? Were they part of the task force?

**Mr Curtis**—They were part of the team who were assisting us in our field investigations.

**Mr LAURIE FERGUSON**—You make some fairly serious allegations against a Ms Rehn. You say that she culled documents and that she is responsible for some disappearing.

**Mr Curtis**—Yes, prior to the Cooke inquiry commencing, we had to be subpoenaed to give evidence and they also advised us that they would be subpoenaing the election file for the liquor trades union and also the AWU. She actually arrived at our office unbeknownst to me, obtained the files and removed certain papers from those files.

**Mr LAURIE FERGUSON**—Did that come out as part of the investigation of the Cooke inquiry? Was it ever established at the Cooke inquiry that she had done that?

**Mr Curtis**—She did it because——

**Mr LAURIE FERGUSON**—I am not asking that; I am asking whether the Cooke inquiry found that she had.

**Mr Curtis**—I do not know what reasons she gave. She may have had some reason for removing them. I heard she may have been removing policy papers. There may have been some reason for it. I am not sure.

**Mr LAURIE FERGUSON**—We are not talking about whether you think you know the facts or whether someone told you the facts. What I am getting at is: was that investigated by the Cooke inquiry? Was she personally investigated and were there questions asked about this?

**Mr Curtis**—No, she never appeared at the Cooke inquiry. I think they did want her to appear at one stage, but she never did.

**Mr LAURIE FERGUSON**—They did not require her to?

**Mr Curtis**—I think they asked her to appear and she——

**Mr LAURIE FERGUSON**—They did not require her to?

**CHAIR**—They did not subpoena her?

**Mr Curtis**—They did not subpoena her.

**Mr LAURIE FERGUSON**—So how are you aware that she culled and was responsible for the theft of documents?

**Mr Curtis**—I did not say the ‘theft’ of documents.

**Mr LAURIE FERGUSON**—The disappearance of; what does that mean?

**Mr Curtis**—It means certain documents were removed from the files.

**Mr LAURIE FERGUSON**—That is not theft of documents?

**Mr Curtis**—All I can tell you are the facts. I have looked at the file and I know that there are certain documents which were removed.

**Mr LAURIE FERGUSON**—Have you done anything about that?

**Mr Curtis**—Have I done anything about it?

**Mr LAURIE FERGUSON**—Yes.

**Mr Curtis**—I reported it to the director at the time and he is well aware of it.

**Mr LAURIE FERGUSON**—So you have reported that to the director?

**Mr Curtis**—Of industrial elections in Queensland, yes, I have.

**Mr LAURIE FERGUSON**—How are you aware that she actually undertook that? You know they disappeared; I understand that. How do you understand that she was the person responsible?

**Mr Curtis**—I was told that she was here; that she was actually doing it. I was told that by the director of industrial elections in Queensland, and I was told by another staff member that this is what she was doing. Subsequent to the completion of the Cooke inquiry, a folder was actually returned. Enclosed in it were some documents, but there were some which I knew were on the file and were not there when this folder was returned.

**Mr LAURIE FERGUSON**—What was the nature of those documents that

disappeared?

**Mr Curtis**—There was one which was a letter written by Colin Hughes, who was the Electoral Commissioner. In my submission, you will see that I wrote a report in July 1989. Colin Hughes got a copy of that report. Following on from that, he wrote a letter to me. He did not address it to me as a returning officer; it came to me in a personal envelope. He told me that if I was complaining about not getting legal representation at a court case in which I was subpoenaed as a witness, then I should go and get my own private legal advice. I then complained about that to Kerry Rehn and I have complained about it to Kevin Fitzgerald, and subsequently put the letter on the file, because that appeared to be the only place for it. I have looked in the file on several occasions and that letter is not there. It was not returned in the folder which Kerry Rehn returned after the completion of the Cooke inquiry. That is why I made that statement.

**Mr LAURIE FERGUSON**—That is a very serious matter for you personally.

**Mr Curtis**—Yes, it is.

**Mr LAURIE FERGUSON**—I inferred from the point that you were making that Ms Rehn was involved somehow in, essentially, part of the manipulation of the ballot, or trying to cover up the ballot.

**Mr Curtis**—I do not think I said that at all.

**Mr LAURIE FERGUSON**—I said that that is the inference from what you said. So it was just a document about you personally, was it, and your legal representation?

**Mr Curtis**—That is right, yes.

**Mr LAURIE FERGUSON**—The other documents that disappeared; were they of the same nature?

**Mr Curtis**—There is another document which was a minute in which I gave some papers to Kerry Rehn and said that they were issued by the Federal Police or DPP. She wanted to peruse them. I said that I had been told that they were confidential and that she should treat them as such and not pass them on to anybody. I returned later in the day and found a photocopy of them. I made a file note about that. Many people were aware of that, and that file note also disappeared. So they are the two items that I was referring to there.

**Mr LAURIE FERGUSON**—Thank you.

**Mr McDOUGALL**—Could I just take you back to the point where you said that currently you are trying to verify people in relation to the AWU elections. Obviously you

are trying to contact them by various means. If this newspaper report of yesterday is correct, how would you get on trying to track down 30 per cent of the membership who do not have addresses?

**Mr Curtis**—That report is incorrect. The number of members who have left addresses—people whom we have been advised by the union they have tried to contact either through a direct mail program or through writing to them for various reasons—we have now established as in the order of about 9,000 out of a roll of 57,000. We have written to all of these people. We have had a response, but not a great response. We have also managed to get in contact with a number of people who have given us insufficient addresses or no addresses by getting in touch with their employer or getting back to the union and saying, ‘Do more. Get an address.’ We have reduced those down to a mere handful at the moment. However, we are still left with maybe 3,000-odd workplace addresses. We started with more. We wrote to all of those people and said, ‘We have only a workplace address for you. Please provide us with a residential address on account of this upcoming ballot.’ We have had a response to that. Those figures that they are quoting in the paper are certainly not accurate.

**Mr McDOUGALL**—So could the 30 per cent include people who have workplaces addresses whom you are now trying to seek to find an address?

**Mr Curtis**—No, they still could not build up to 30 per cent. You would build up to maybe 12,000, which would be certainly a lot less than 30 per cent.

**Senator CONROY**—So 9,000 with no addresses and only 3,000 with workplace addresses?

**Mr Curtis**—Sorry, we have 9,000 that are classified as ‘left address’. They do have an address, but when we send mail to them it comes back returned unclaimed. There is no address that they are receiving mail at.

**Senator CONROY**—So only 3,000? You look to 12,000, but only 3,000 then?

**Mr Curtis**—Sorry, and the 3,000 I talked about in addition were people who have workplace addresses.

**Senator CONROY**—Of 57,000 only 3,000 were based at work?

**Mr Curtis**—Yes. We did have more, but we reduced it to 3,000 approximately. I think it might have been around 4,000. What we did as a security measure was that we had written to the workplaces and gave them directions telling them that we were conducting a ballot and that, secondly, the material would be arriving at the end of this week and that they had an obligation to pass on that material to their employees and if the employees had left their employment, they had to simply just mark it ‘return to sender’.

We requested them to do that. We also sent directions to over 900 union representatives directing them not to take any part in the conduct of a ballot, and the same thing applied to candidates.

**Senator CONROY**—Did any employers notify you of any who had left already? You have written to them and said, ‘If they do not work here anymore, send it back to us’, giving the list in advance. Would it have been better to say, ‘Could you advise us of who has left your employment?’

**Mr Curtis**—We wrote to the actual members at that workplace. Of course, some of them, we have now established, have in fact left that workplace. So we did obtain that advice. There were a couple of large employers about which we are updating that advice. So yes, we have done that. The main emphasis of getting people who have left their addresses has been writing to the member as opposed to going to the employer.

**Mr COBB**—Getting back to the Cooke inquiry, you were talking about the attitude of the Electoral Commissioner; is that the Australian Electoral Commissioner to the inquiry or are you referring to Queensland?

**Mr Curtis**—No, I think I was referring to where the Electoral Commission made application to the court that we not appear before the commission of inquiry. I have actually attached a newspaper item about that in my submission.

**Mr COBB**—You say they attempted to prevent you from appearing as a witness.

**Mr Curtis**—By making application to the court that the returning officers should not appear as witnesses. I think there is a newspaper item in my submission which refers to that.

**Mr McCLELLAND**—It was based on section 109 of the constitution, was it not, as to whether a state initiated inquiry could look into the practices of a federal agency in conducting its role under federal legislation?

**Mr Curtis**—That is correct.

**Mr McCLELLAND**—And the supreme court of Queensland determined that there was no conflict with section 109 of the constitution or something to that effect; is that right?

**Mr Curtis**—That is right, yes.

**Mr COBB**—Broadly, where are we today with union elections in Queensland? Would you agree that it is much improved on what it was 10 years ago or do you believe that there are still serious irregularities? In your view, what is the situation?

**Mr Curtis**—The situation has certainly improved. However, I conducted elections for the Australian Workers Union in 1989, and I thought that was one of the best elections I had conducted. It came as a surprise to me to sit there and hear witnesses give evidence that there had been fraud occurring in those elections. So when you look at things like that you ask, ‘Why did that happen?’ The reason it happened is that you do not have a secure system of declaration voting. Until you introduce something like that, the possibility for that recurring is always there. So I see that as one of the main things which should be done. That is my viewpoint.

**CHAIR**—Can I ask about the AEC’s involvement overall? You mentioned in your submission that there really is a staffing problem often with a number of elections you might be holding at any one time. What sort of relationship is there between you conducting industrial elections up here and with the AEC in a global sense, in a head office sense? Do they have an involvement at all? Do you use resources that might be there in some way or are you just really using the resources that are on the ground?

**Mr Curtis**—At the moment we use the resources that are on the ground. We do not have any involvement regarding acquiring staff from central office. Regarding our present staffing situation, I think that is adequate. We do not have a problem regarding insufficient staff. Although at times elections for the Australian Workers Union are very large elections and they involve a lot of tedious work, we would still be able to make do with our own staff and by the employment of casual staff, too.

**CHAIR**—You say that you are expected to conduct at least 10 or more elections simultaneously but sometimes you could be conducting 14 or more.

**Mr Curtis**—That did occur in the late 1980s and it occurred in the 1990s. It is particularly bad in New South Wales.

**Senator CONROY**—And Victoria.

**Mr Curtis**—And Victoria, too. That is right. It is particularly bad in both of those states, and it probably is even in South Australia where you have only one returning officer. We were probably a little more fortunate in Queensland where we have slightly more staff on account of the involvement that we have had with liquor trades and court cases and that. We were able to cope. I really do not know how some of those people in southern states cope in those times.

**Mr LAURIE FERGUSON**—Just one point in relation to the 1989 AWU ballot in which you were surprised to find allegations of corruption: was that ballot upheld?

**Mr Curtis**—The allegations came out from witnesses at the Cooke inquiry. These were people who had voted originally. Marshall Cooke’s staff had contacted them and he then called them in to give evidence. These people stated plainly that they had not voted

and that it was not their signature appearing on the back of the reply paid envelope. I saw several of these people make this claim.

**Mr LAURIE FERGUSON**—A few moments ago you effectively abolished the newspaper account of this latest AWU situation. However, in your submission you cite newspaper reports on trade union ballots as being evidence of continuing concern in this field. Besides the well-publicised communication workers and the one you cite, Harty and the public service union, what other evidence have you got? As you indicate, there is the avenue for corruption and problems with ballots; I accept that. However, what evidence do you have to sustain your comments besides newspaper reports?

**Mr Curtis**—I think you should go back and have a look at the Cooke inquiry and I think you will find that all the unions that they selected to investigate—from my memory, I think in every case—were finding evidence of ballot fraud in organisations in which we were surprised that it existed. As I said, I got a surprise when I conducted the union election for the AWU in 1989.

**Senator CONROY**—Was there any follow-up to this AWU election?

**Mr Curtis**—It was too late; it was out of time. You can only prosecute within 12 months of the offence occurring.

**Mr LAURIE FERGUSON**—In your submission you used the expression, ‘nothing has changed’. Are you saying that nothing has changed essentially around the requirements and suggestions of the Cooke inquiry or nothing has changed in the level of corruption you perceive in union ballots?

**Mr Curtis**—In Queensland, Colin Hardie, who we convicted of fraud, stood up in court and made the statement that you would have to be a fool to rig an election in Queensland. If that was some sort of general feeling, I think that what we did had an effect. From what I can see, there has certainly been a decrease. However, I must also add that I got a surprise in 1991 when I saw elections which I thought had been well conducted and—

**Mr LAURIE FERGUSON**—Which ones?

**Mr Curtis**—The AWU is the one that springs to mind.

**Mr LAURIE FERGUSON**—So are you saying that in 1989 and 1991 there were problems?

**Mr Curtis**—No. The election occurred in 1989 and the Cooke inquiry was conducted in 1991.



**Mr LAURIE FERGUSON**—I am referring to your comment that nothing changed after the Cooke inquiry. Whilst I accept that there are certainly, as you would put it, avenues for people to do the wrong thing, I am getting at the question of your analysis of the level of this problem compared to pre-1991.

**Mr Curtis**—When I talk about nothing having changed, I am talking about procedures which in my view should have been implemented and which have not been implemented. The procedures I am talking about are ones that I mentioned.

**Mr LAURIE FERGUSON**—That is interesting, but besides newspaper reports—and we just heard you indicate that one of the people they are citing this week was totally incorrect—and besides two ballots that we are all aware of, since 1991 what are you also aware of that leads to a concern that it is actually, physically happening? Do you have any evidence of that?

**Mr Curtis**—Do you mean court cases?

**Mr LAURIE FERGUSON**—Anything.

**Mr Curtis**—The only ones on the public record are ones which have appeared in court and have been mentioned in newspapers.

**Mr LAURIE FERGUSON**—Besides those things, are you personally aware of any other situations?

**Mr Curtis**—With every election you conduct, you hear people making allegations. This is not something which is very rare. When you conduct an election, people will ring up and make allegations that the other side is going to rot the election. I cannot sit here and tell you that I have no evidence. I am saying that people tell me that these things occur from time to time. When you ask them to give more details or when you ask them whether they have reported it to the police, they will say, ‘You know, it’s hypothetical and it could happen,’ and they backtrack. This is the area in which we work.

**Mr McCLELLAND**—I understand that in its official submission the Australian Electoral Commission said that, of 3,500 elections between 1991 and 1996, only 1.5 per cent have resulted in applications for an inquiry. Out of those, there has been an order for fresh elections in eight instances and, of the 1.5 per cent of elections, there were very few allegations of irregularity going to the integrity of the electoral process itself. Is that consistent with your understanding?

**Mr Curtis**—I do not have any problem with that. As I said, anybody who conducts elections will tell you that they get a lot of allegations about malpractice. That has been my experience.

**Mr McCLELLAND**—It is a question of putting up or shutting up?

**Mr Curtis**—That is right. The vast majority of people do not have the money. They are terrified of going to court to lodge an application to have a inquiry into an election. People have said that to me.

**Mr McCLELLAND**—Until the current government there was no filing fee for these applications.

**Mr Curtis**—But you must remember that often you are not dealing with very sophisticated people. These people hear stories or have been told that, if they make an application and lose, they will lose their homes.

**Mr McCLELLAND**—But there is no provision for ordering costs against an unsuccessful applicant in an election inquiry.

**Mr Curtis**—I know, but a lot of these people are not aware of these things.

**Mr McCLELLAND**—But surely a losing candidate would have the opportunity of contesting the ballot if he genuinely believed he was going to sustain fraud.

**Mr Curtis**—You would have it in the case of people who were union officials and were more legally sophisticated and aware of the act and the requirements of it than people from the shop floor who would not have those skills and background. Therefore, my experience has been that on more than one occasion people have made these claims to me.

**Mr McCLELLAND**—But you would have to concede that, if there was no filing fee or costs being awarded against them and there is a mechanism for them to get legal aid, they have the opportunity to voice their grievance in a court of law?

**Mr Curtis**—I am not saying that the mechanisms and the law do not exist for such people to do that, I am saying that it is a personal disability in that they do not have the skills, background and knowledge to turn around and process the thing further. Maybe it is their own fear. Maybe they are frightened of it, too.

**CHAIR**—I think, like so many things, perceptions outweigh the reality. Am I correct that you are saying that those people perceive that, irrespective of what the real facts might be about costs and so on, getting involved in a legal procedure is something that they will tend to back off from.

**Mr Curtis**—That is right.

**Mr LAURIE FERGUSON**—I can only speak from the New South Wales

experience. Is it not fair to say that, other than the rare exception of Billy Bloggs, the boilermaker who decided to run alone against the whole union leadership, the vast majority of controversial ballots stem from team factional struggles with very organised campaigns, money being expended at a reasonable rate and, most particularly, both sides having attachments to legal firms?

**Mr Curtis**—Yes, that has been the case, but in years gone by there have been cases, although not many, of loners such as you described who have in fact run. However, now the vast majority of contested elections for a seat, particularly in the AWU which I am conducting now, would see that these people are backed by various factions.

**Mr McCLELLAND**—And they are playing for keeps.

**Mr Curtis**—Yes, it is very serious.

**Mr LAURIE FERGUSON**—And most particularly, in this case they are attached to legal firms and the compo field and they really know their rights.

**Mr Curtis**—Of course, yes.

**CHAIR**—Thank you very much for your time, Mr Curtis.

Resolved (on motion by Mr McDougall):

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

**Committee adjourned at 12.22 p.m.**