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Reference: Conduct of the 2004 federal election and matters related thereto

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JOINT COMMITTEE ON ELECTORAL MATTERS

Monday, 25 July 2005

Members: Mr Anthony Smith (*Chair*), Mr Danby (*Deputy Chair*), Senators Brandis, Carr, Forshaw, Mason and Murray and Mr Ciobo, Mr Melham and Ms Panopoulos

Senators and members in attendance: Senators Brandis, Forshaw, Mason and Murray and Mr Danby, Mr Melham, Mr Anthony Smith and Ms Panopoulos

Terms of reference for the inquiry:

To inquire into and report on:

All aspects of the conduct of the 2001 Federal Election and matters related thereto.

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Committee met at 9.32 am

CHAIR (Mr Anthony Smith)—I declare open this public hearing of the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2004 election. To date the committee has received 165 submissions to the inquiry; many were detailed, well written and self-explanatory. Accordingly, the committee does not need to hear from everyone who has made a submission. Submissions have raised numerous issues that the committee is considering carefully. While examining those submissions, the committee identified a number of issues on which it wants to take further evidence in this third round of hearings.

I thank today's witnesses for appearing. I remind you that, although the committee does not require you to give evidence under oath, this hearing is a legal proceeding of parliament and warrants the same respect as proceedings in the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of parliament. The evidence given today will be recorded by Hansard and covered by parliamentary privilege.

Finally, because we are running to a tight schedule, we will need to stay very close to the program times for each of the witnesses. If anyone has any queries they wish to raise about the proceedings, please see the committee's secretariat staff.

COSTAR, Professor Brian John, Professor of Politics, Institute for Social Research, Swinburne University

MacKENZIE, Mr David John, Senior Research Fellow, Institute for Social Research, Swinburne University

CHAIR—I welcome Professor Brian Costar and Mr David MacKenzie to today's hearing. The committee has received your joint submission. As you would be aware, it has been numbered submission 105. Professor Costar, the committee has received your individual submission which has been numbered 106. The submissions have been authorised for publication. Just as a formality, are there any corrections or amendments you would like to make to the submissions in any way?

Prof. Costar—No, Chair, I do not have any amendments.

CHAIR—Given the time constraints, we have your submissions and we have had a look at them. As there are a number of members and senators here, we will move straight to some questions, and I ask you to elaborate as we go through some of the issues.

Senator MASON—Gentlemen, you state in your submission that homeless people's attitudes and not their homelessness are mainly responsible for non-voting. You also state in paragraph 6.1 that disillusion with the government is a factor in discouraging the homeless from voting. How is that different from the general population?

Mr MacKenzie—I will just make a few comments on the homeless and voting. Our knowledge of this is based on a small-scale study that we did of in-depth interviews with about 39 homeless people. Most workers with homeless people actually did not think that homeless people voted. We found that about half did, and their attitudes were very similar to those of the rest of the population. They did say that homelessness was a barrier, and it may have been in some ways, but it was not a barrier to their actually doing it. The other half were homeless people who did not vote for a range of reasons. Some were dealing with issues like mental health; some were voters alienated from society and from the political system; some were not registered, although they thought they were registered. Perhaps we will call that the Peter Garrett syndrome. So there was a host of reasons. It certainly knocked over the stereotype that we had in mind when we started.

Prof. Costar—That is a very good question because it draws our attention to not treating the homeless as a complete subcategory in a community. We found that, as my colleague David MacKenzie said, homeless people, people experiencing homelessness, have certain specific issues that they have to deal with, but they are also citizens and in a sense reflect a good deal of the diversity of the Australian citizenship. One thing that we were advised was not to make assumptions about, for example, how homeless people vote. We never investigated that, but we had a number of references available to us that we would be very foolish to assume that homeless people had an overwhelming preference for a particular political party. The suggestion we were given was that the homeless population is very diverse and its political preferences are diverse.

Senator MASON—I have a technical question: you have to be enrolled, obviously, to vote, and you have to be enrolled in a particular electorate to vote in that particular electorate. With homeless people who therefore do not have a domicile, are there any technical barriers to casting a vote?

Mr MacKenzie—Homeless people move around a lot, but most people who are homeless are still going to be connected in the city where they were born or have their origins, and many are still connected in their community. They are moving around within that community. A minority of the homeless population—it is about 100,000 men, women and children in Australia, as you know—would be itinerant in the sense of moving from one location to another, from one state to another. There is an unknown number of people that are actually like gypsies, moving from one area of seasonal work to another. But the majority of the population are going to be much closer to home. They are not in one stable address, obviously, but, as one fellow said, ‘I use my mum’s address.’ So there are addresses that they can use, and those who vote use those addresses. They may not be at that address, but it is an address where they receive mail and where they were present in recent times.

Senator MASON—That may be appropriate for some, but do you think that all 100,000 homeless people would be able to tie themselves down to a particular address at election time?

Mr MacKenzie—No. About 20 to 30 per cent are itinerant in the true sense of the meaning, so the itinerant voters form is going to be relevant for them. For the others, their address could be a welfare agency, and they are sometimes there for three or six months. It is the address where they are supported and where they are accommodated, so that address could be used. Others may use an address where they were recently. It is complicated, and I guess for the majority we would be basically wanting to enrol them at the address that they are pretty much connected to. Certain measures would need to be taken to actually reach that group and ensure that they are enrolled in those addresses, and there are issues there that Brian might want to comment on.

Mr MELHAM—How would you establish that connection? What would you say they would require before they can be enrolled at that address?

Prof. Costar—They obviously have to fulfil the requirement in the act, but I guess you are asking a broader question, and that is how—

Mr MELHAM—Would it not be a different requirement than the one in the act?

Prof. Costar—Not necessarily. I think this is the point that Mr MacKenzie is making. I think of the homeless in American constructs. I did a bit of research in the US and it struck me very quickly that we really are dealing with a different population. As you know, the American electoral legislation is very diverse. In some states of the United States, it is virtually impossible for a person to be enrolled if they do not have a driver’s licence but, in other states, homeless people can enrol when their address is a doorway or a park bench.

CHAIR—Do you mind just outlining some of the international experience with homeless persons voting?

Prof. Costar—In the two jurisdictions that we have looked at that have some relevance to Australia—and I do not necessarily mean a model—the United States one is interesting. At first glance there is an enormous difference between the two systems, but there are things that we can learn from them and they can learn from us. First, as you know, the interest in homeless people voting is relatively new in Australia. It dates back, I think, to the late 1990s when there was an article in *The Big Issue* and in the newspapers—and of course, your committee took it up last time. In the United States, because the homeless population is so large, and because much of it is genuinely transient, there has been a long tradition of enrolling homeless people. There are some interesting things that perhaps we can learn from the Americans. I asked people from the homeless coalition if they were able to nominate one factor to assist them in properly registering homeless people who could be voters. They said, ‘Voter education, voter education and more voter education.’ That was the one issue that is of relevance to us.

I learnt that in the United States—and this is, I guess, partly because of the size of the homeless population and its demographic—a quarter of homeless people are veterans of the military. That struck me as an extraordinary statistic, but that is the evidence. In a good deal of the activity that I observed in the United States, there is a lot of what might be called self-help amongst homeless people. They drive a lot of the programs. There is a lot of close interaction between professional workers and actual homeless people who are advocates in their cause.

The other international example that perhaps might come up, if we talk about itinerant voters, is the United Kingdom. We have suggested in our recommendation that the homeless voter registration form under the Representation of the Peoples Act 1983 of the UK is probably a better user-friendly model than the one we currently have. We are not alone in that. That is a theme that has come through in a lot of the research. There are things that we can usefully learn from other jurisdictions. I am more familiar with the situation in the US rather than in the UK, but there are things there that we can adapt to our conditions.

Mr MELHAM—I am not against the thrust of what you are saying. What I am worried about is that, at the moment, we have a situation where there is still some paranoia in the parliament about the integrity of the rolls. We are in the process of looking at suggestions that are not about enfranchising people but that are going to disenfranchise people. Putting the homelessness issue to one side, I am talking about young people and their ability to enrol from the time an election is called and the seven-day period. We have a supplementary submission from the Australian Electoral Commission. I do not know whether you have seen that, particularly tables 6 and 7, but it shows a disenfranchisement—if we go down this path—of about 70,000 new enrollees, not to mention people not being able to correct their existing enrolments which will run into the hundreds of thousands. How does that conform with those to overcome the fear campaign of integrity? That is why I asked you what will be the basis of enrolling homeless people. Do we require a minimum period in a particular area, and that area can stay for so many years, or what?

Prof. Costar—Could I start with the integrity of the roll? The first thing I have put on the notes that I have prepared for this hearing was to stress our commitment to the integrity of the electoral roll, and we all know why. But I think we need to distinguish two things here. Certainly, we would not want to make any recommendations—and I am sure the committee would not want to take any of them up—that in any way put at risk the integrity of what is, in my opinion, a very good electoral roll. That has to be done carefully. But, then again, we do not

want to be discriminating against a diverse group of people by requiring additional evidence, in a sense, of connectedness as against what you and I can enrol by way of living at an address.

As to the question of, you might say, partisan manipulation of groups of people to engage in malfeasance to stuff the electoral roll, there are two points about that. A number of allegations have been made over the years—and this committee has heard a lot of them—and many of them do not stack up when they are put to the evidence. On the other hand, the matter must be addressed. Using an out-of-country example, at the 2000 presidential election in the US, the campaigners for Al Gore got caught on television effectively bribing homeless people with cartons of cigarettes to get them to vote and to vote in a particular way. There was the usual litigation about that.

I directly raised that with people in the US and said, ‘How do you counter zealous partisan manipulation or attempts to manipulate a group?’ They said, ‘We build it into the voter education program that we take to homeless people’—in other words, alerting them to the fact that there are or have been a number of what we would call ‘scams’. They are attempts to exploit—let’s be honest—a group for a partisan end, and that they need to be aware of this. If they find evidence of it, they give them steps to deal with it. The allegations that have flown around are too extreme, but the issue is there and should not be ignored. I think it can be addressed.

Senator MURRAY—Just recently I was down in Bunbury, WA, and talking to some homeless people. A number of them could not get accommodation, even though they wanted it, because there was none available, even of the cheapest kind. So they were sleeping rough. It occurred to me that it is more difficult to attach homeless people to an address than to where they eat. They eat at a regular place. They do not necessarily sleep at a regular place, and those eating places, in my view, could be usefully used, before the close of the rolls, to register homeless people who wish to vote. In other words, you send the form to the people who run those eating establishments. What do you think about the idea of perhaps registering homeless people at the place they eat?

Prof. Costar—As a former Queenslander, I have horrendous memories of people registering to vote in trade union elections as to where they once worked, which were hotels, which led to a memorable prosecution in Queensland some years ago—so I think we need to be a bit wary of that. You know what was happening there: people were—

CHAIR—Professor Costar, it is not memorable to me; do you want to just run through it for the benefit of Hansard? I would hate people who subscribe to *Hansard* to be left wondering.

Prof. Costar—People who were working in hotels often were creative in the use of their names, but they were eligible to vote in whatever union they were enrolled in. As you know, union ballots are postal. The postal ballot would arrive at various hotels and, as the hotelier had forgotten the person, he would simply put the letter up on a noticeboard. Then what we would call ‘enthusiastic persons campaigning for other persons’ would come along and collect them and vote for them. But a couple of sharp-eyed Electoral Commission officers noticed that some of these seemed to be in the same handwriting. We had a memorable case in the Federal Court where a couple of people were very lucky not to go to jail. It was a pre-Karen Ermine outing, if you like.

Mr MELHAM—I gave evidence in one of those cases on character.

Prof. Costar—One thing that might be worth considering—

Mr MELHAM—I just need to explain that—

CHAIR—I am surprised they did not go to jail, actually!

Prof. Costar—The point you are making is that there are areas where homeless people gather. Mr MacKenzie could take us on a tour not very far from here where we would find lots of homeless people gathering. Suggestions have been made—and I am aware that there are technical issues that have to be addressed in this—as to whether or not a better solution where it is known that homeless people gather is mobile polling stations, along the lines of hospitals and prisons. Mr MacKenzie is much more expert in this than I am, but in some places—in capital cities and not in capital cities—as you discovered, the number of people is significant and enough to justify perhaps the expense of a mobile polling place. But that would have to be investigated place to place. You do not want to be squandering resources sending out mobile polling places where there is simply no need.

Senator MURRAY—But you talk about voter education. Most of the places at which these people eat are run by charitable institutions. They do not eat in hotels and congregate in hotels; they cannot afford it, for a start. They are getting a free feed in sometimes very good surroundings. That is where you are likely to get your voter education across because they are captive, they trust the volunteers there, and the volunteers know them. Generally, they would not have a partisan agenda; they are folk with good hearts. It seems to me that it is the same with itinerants. An itinerant does not have an address, but at least the place they eat is an address for a person who otherwise would be an itinerant. I am surprised at your negative reaction.

Prof. Costar—I am sorry; on the question of voter education as a location for that, yes.

Senator MURRAY—But I am not just talking voter education, I am talking registration. Itinerants do not have addresses. The only address a person has is where they eat.

Prof. Costar—I am sorry, Senator, I think I misunderstood you. When you talked about people congregating somewhere to eat, I did not pick up on the fact that you were thinking about an agency. There we are at one with you. We have said that in our report.

Senator MURRAY—Thank you for that. As to your prisoner franchise presentation, it is my view that taking a vote away from a prisoner is a double punishment. You are punishing them twice for what they have done. My feeling for a long time is that if you want to do that, you should leave it up to the judge—in other words, make the withdrawal of votes a category of punishment that the judge can apply, as well as a suspended sentence, a fine, a withdrawal of liberty. How do you react to that as an alternative to the way in which the law is at present?

Prof. Costar—I think you would see from my submission that I would agree with you. I oppose the legislative and blanket withdrawal of the right to enrolment and to vote for certain classes of convicted prisoners. My preferred view is not to withdraw the voting right from any prisoners on the principle that you mentioned. If it were to go into sentencing procedures, given

that most, if not all, prisoners or convicted persons in Australia are convicted by state courts, that would then have to be negotiated through the state Attorneys-General.

Unlike the homeless, we are talking about a relatively small group of people, simply because our rates of imprisonment are relatively low worldwide. We are not looking at the American situation where it is estimated now that there are two million otherwise eligible citizens who are unable to vote because they have committed a felony. We are not talking that order at all. But it is an important democratic symbol in your point—that people who are convicted of crimes are sentenced to a loss of liberty in many cases. I would want to hear a very strong argument as to why, as you said, they should face a double jeopardy.

A lot of the jurisprudence is running in the opposite direction. The British Representation of the Peoples Act 1983 has fallen foul of the European Court of Human Rights, although the government in Britain is not doing anything about it. The Canadian Supreme Court ruled against disenfranchising prisoners, and the push in the US is very much to try to wind back the peculiar American action that in most states people who commit a felony lose their civil rights, which includes the right to vote. In many states, it disbars them from voting for all time. They really do believe in civil death but not in civil resurrection, unfortunately.

CHAIR—Could I just seek a point of clarification—I am sorry to interrupt, Senator Murray—so that we are all clear? Are the prisoners who are eligible to vote currently registered at their continuing electoral roll registration at their home, or are they all registered in—

Prof. Costar—As I understand it, yes, they are registered.

Senator MURRAY—You must wonder what sort of life I lead, because last week I was also talking to some prisoners down in Harvey in WA who were typical of many prisoners—namely, they have lost their way. They are not basically bad people; they have just been foolish and need a second chance. It struck me that these are the sorts of people from whom you would not take away the vote. I can see that it should not apply to somebody who has committed treason or somebody who is mentally incapacitated. But I do not see why these people should have the punishment of removal of their right to vote as well as their loss of liberty. It is true, is it not, that in Australia there is some similarity to America in that the regimes vary per state?

Prof. Costar—Yes, they do.

Senator MURRAY—At least we should attempt to get some commonality, some common principles, between the Commonwealth and the Attorneys-General of the states. If the committee were to consider nothing else, it should at least ask for that.

Prof. Costar—I think the strictest regime is that of people who are convicted and serving a sentence of one year. Until late last year, the least strict regime was that of the Commonwealth, where it was five years. As you know, it is now three years.

Senator MURRAY—There is an attempt to withdraw it all together. My difficulty with that is that in some states the penalty is jail, for instance, for not paying a fine, and in other states there is no penalty of jail for not paying a fine, so you would have people with the same crime having a different outcome.

Mr MELHAM—Is that not why the best way is to look at the threshold of a jail sentence as against the penalty, given what Senator Murray is saying?

Prof. Costar—That is to be preferred, but I would say that another reason why I am being very liberal on this is that, as Senator Murray points out, there are a number of layers of discrimination possible. One is different state laws and different state penalties. The other one, as we all know—and Senator Murray has alluded to it—is that the prison population of Australia, albeit small, is not a microcosm of society. It is predominantly male, it is predominantly young, and Indigenous people have 15 times the rate of imprisonment. If you went into it, I am sure you would find a socio-economic—

Mr MELHAM—How would you frame it? What would your disqualification be?

Prof. Costar—None.

Mr MELHAM—So you would say that all prisoners should be entitled?

Prof. Costar—That is my view.

Mr MELHAM—Even if they were guilty of treason?

Prof. Costar—Given that we have never convicted anybody of treason—

Mr MELHAM—That is why I am trying to define the barrier, because one minute we are told it is none, and I mention the offence of treason and am told it is different. That is why I am trying to work out what Senator Murray—

Prof. Costar—I think I mentioned briefly in my submission—

Mr MELHAM—Will we bar treason?

CHAIR—I think it is important that Mr Melham pursues this, because I am sure Mr Melham would not want us to confuse your position with Senator Murray's.

Mr MELHAM—No, I agree, and that is why I am interested in it. What are you suggesting—that treason be the only disbarment? If you are convicted of treason, that is the only disbarment for your right to vote to continue? I am just looking at what the threshold should be, Professor, given that you have raised it.

Prof. Costar—I have said that we would need to put forward a good argument. Probably the best argument you could put forward for removing the right of a person to vote is if they were convicted of treason but, given that no-one has ever been convicted of treason in Australia, are we really looking at a practical issue?

Mr MELHAM—What about terrorist offences? We are about to maybe envisage legislation that would take away citizenship. What about an offence of terrorism? Do we take away their right to vote if they are convicted of an offence of terrorism?

Prof. Costar—No, I would not categorise that differently. I would leave that to the current legal system.

Mr MELHAM—What about Senator Murray's suggestion that we should leave this to the courts, for instance? In other words, that could form part of the penalty that a judge imposes—disbarment from voting.

Prof. Costar—I think I said to Senator Murray that I am a bit worried about uniformity of application.

Mr DANBY—Thank you both for coming along and for your very comprehensive submission. Before I turn to Professor Costar, I have a number of questions for you, Mr MacKenzie, about the early closure of the roll which is specified in the supplementary submission of the Australian Electoral Commission. First, I want to stay with this topic that you have been talking about with respect to homelessness and the vote and to try to quantify it. Do you know the number of Australians over 18 and the number of people who actually vote in federal elections? Have there been any studies of that?

Mr MacKenzie—The number of homeless people over 18?

Mr DANBY—No, the number of Australians over 18 who are eligible to vote, and the number of people who actually vote in federal elections?

Mr MacKenzie—I am going to defer to Brian on that one.

Prof. Costar—The answer is we do not know. How can we know? We are trying to prove, in a sense, a negative here. We know that enrolment is compulsory for people who have turned 18, and that they can provisionally enrol at 17. What we do know from the statistics is that the young are slow enrollers. Setting aside any other category about ethnicity or class or gender or anything; if you wanted to see who are the non-enrollers, it is the 17, 18 to 24-year-olds.

Mr DANBY—I will come to that, because I am going to be asking you some questions about age, but I want to stick with this. We must know from the Australian Bureau of Statistics how many Australians who are over 18 are eligible to vote.

Mr MacKenzie—We do know that, but I just do not have the figure here.

Mr DANBY—It is probably worthwhile this committee and even yourselves having a look at that. The Australian Electoral Commission regularly gives us reports after the elections that 95 per cent of eligible voters voted, or 94 per cent or 92 per cent. It would be interesting to quantify the differences in absolute numbers as well as percentages.

Mr MacKenzie—It is a bit tricky to get that number, but we could get a pretty good estimate.

Mr DANBY—It is worthwhile refining that because an element of it, according to paragraph 1.7 of the summary of your report, is that 46 per cent of homeless voters are classified as non-active voters. I presume they are a percentage of the number that do not vote. It is 46 per cent of

people you classify as homeless—these are itinerate people—who think they are registered at their mum's address but they have not bothered. Is that figure of 46 per cent correct?

Mr MacKenzie—There were three studies. I think ours showed about 54 per cent were non-voters. They were very small-scale studies. The homeless population is about 100,000 men, women and children. That is pretty well established from our work with the Australian Bureau of Statistics. About two-thirds are aged 18 and over. I will not go into the tricky, technical things about exactly how we get that.

Mr DANBY—But they are included in the homeless category?

Mr MacKenzie—In the homeless category. With these three small-scale studies, we have estimates that about half of the homeless people who are eligible to vote are voting, and about half are not. These are small-scale studies, and we are inferring from those studies to the whole population, so let us be clear that that is a bit of a jump.

CHAIR—You say they are small-scale studies. In your findings you do not claim that those percentages would replicate across?

Mr MacKenzie—No, we do not. You cannot infer from 39 interviews to a population of 100,000. There was a survey of 100 in the Public Interest Law Clearing House study—and that was quite a small survey as well—but the three studies do roughly corroborate. One can have a bit of confidence that maybe that is close to what is going on out there, but you cannot technically infer from such small samples to a population of 100,000.

Mr DANBY—My point to you both is that—apart from this committee and the Australian Electoral Commission classifying and quantifying and making recommendations about the homeless vote—it is probably worthwhile quantifying exactly how many people do not vote all together, and why. I think homelessness is probably a very large reason. All of us need to know more about that. With respect to the 100,000 potential electors who are referred to in your submission, what expenditure of public moneys would get them on the roll? What are we looking at? Is it cost efficient and all of these kinds of things?

Mr MacKenzie—It is actually quite complex. We are looking at a range of different things. It is not just one group and therefore one strategy and one set of actions that could be costed in a simple way. Some homeless people are not in contact with agencies. About 40 per cent are out there sleeping on couches and floating around with acquaintances and friends. In a sense, they are an invisible part of the population that is very hard to reach. They may come at some stage into an agency or they may not. Public education and using the mass media in various ways would be the only way to reach such people.

As to the 20 per cent or so that are in contact with agencies—and over time more than 20 per cent would use an agency over the year—they can be reached. We have a very good system that has had bipartisan support over many decades from both parties of supported accommodation and a range of other assistance. Senator Murray's suggested that those sorts of agencies are in a very good position to be in contact with homeless people and are the logical place where certain things could be done to make sure people are enrolled and aware of what is going on.

The people sleeping out are also in contact with agencies, generally speaking. They are a very small group at any one time in cities, about five per cent, but in Bunbury or in country areas, a much greater number of people actually sleep out, simply because you can. Up to 25 per cent of the homeless population in a country area could be sleeping out, camping out, on river banks and so on. They are also probably in contact with agencies. So it is a fairly significant number—maybe a third of the population—of people who are in contact with agencies and where something could be done. Another major part of it is that others are not, and that is more difficult. There is a further section of the homeless population that is living in cheap rooms, in very cheap boarding houses, and so on. They are also contactable, because they actually have a place of residence, even though they are technically homeless. I will not go into those technicalities now. They can also be reached.

Mr DANBY—With respect to the early closure of the roll, you outline in your submission that 300,000 people would be disfranchised if the roll was closed on the day the election was announced, which is apparently a government proposal. Are you aware that, in table 7 of the AEC's supplementary submission, they actually state that 345,177 people would be disfranchised?

Prof. Costar—Yes, I am aware of that, but I did not have those figures.

Mr DANBY—I am not criticising you for it, but I just wanted to make sure that it was on the record before this committee.

Prof. Costar—I think that is a very interesting table which can be put to use as to the effect of closing the roll.

Mr DANBY—There are some very interesting figures also on new enrollees. It states that 7,500 Victorians would be disfranchised by an early closure of the roll and 37,000 18-year-olds across Australia, comprising 78,000 people altogether—if that had happened at the last election.

CHAIR—Just for the purposes of clarity, Mr Danby, that table does not assert that that many people would be disfranchised. So there is no confusion, 'disfranchised' is your word; is that right? What you are asserting is they are the figures in the AEC submission. The Australian Electoral Commission does not say, 'Here is the number of people that would be disfranchised,' because you are talking about figures from the last election. Is that right?

Mr DANBY—Yes.

CHAIR—You are operating on the assumption that there would be zero behavioural change in the event that there was some change to the existing requirements. We can find a difference of opinion, but for the sake of clarity—

Mr DANBY—I appreciate the chair's refinement of that; it is a perfectly proper issue of classification. Professor Costar, what was the implication of that happening at the last occasion in 1983 when the roll was closed on the day the election was announced? What happened amongst voters on election day subsequent to that?

Prof. Costar—It provoked a High Court challenge which told us that section 41 did not mean that if you had a vote in a state election you automatically had one in a federal election. That was probably the most enduring effect of the requirement.

Mr DANBY—Can you say that again? It did not mean that you had a vote?

Prof. Costar—No. The High Court ruled that section 41 was what they call a ‘transitional provision’—that it was there to deal with the transition from the colonial parliaments into the first federal election. A person took an action and said: ‘Look, I’m a voter in New South Wales; I am on the roll’—I think there were no common rolls at that stage—‘I am being disfranchised because the roll was closed. Therefore, I am being denied my rights to vote under section 41.’ In finding that it was only a transitional provision, which was hardly surprising, it does underpin that I think we all have to remind ourselves that there is no right to vote enshrined in the Australian Constitution.

Mr MELHAM—It has been said emphatically that, in effect, the Electoral Act now is what gives the right to vote, and parliaments are paramount in that regard, not the Constitution.

Prof. Costar—I think what flows from that—

CHAIR—We just might keep moving because I am very keen, since we are discussing possible disfranchisement, not to disfranchise Senator Brandis, my colleague Ms Panopoulos and indeed Senator Forshaw! Perhaps we can just wrap up.

Mr DANBY—Professor Costar, can you just finish what you were saying?

Prof. Costar—I think we all need to bear in mind that, because there is no entrenched right to vote in the Constitution—neither is there in the American Constitution—we need to proceed carefully when we are thinking about making the electoral roll less inclusive than it is now. That is not to say there are not good reasons to exclude some people from enrolment; under 18s would be one big category. But I think it needs to be thought through very carefully, and we should not be rushing in to make the roll more exclusive than it is now, given that it is something that Australia can be pretty proud of. It runs the electoral roll and does what I call representative democracy reasonably well.

Mr DANBY—If 300,000 were disfranchised in the 1983 election, do the press reports of the time describe turmoil at the polling booths with electoral officials having to deal with people who thought they had the right to vote but did not in fact have it because they had not advised the AEC in the week of grace that they had normally had until that date?

Prof Costar—No. Remember, they never had the week of grace—until the act changed in 1983. So in a sense, if you like, a pattern had been developed. As you all know, people come along to a polling place looking for their name on the roll and, if it is not there, they insist on a provisional vote. Of course, some do not and wander away. I think it was settled policy. It had been settled policy since 1984, and I hear that there are suggestions that it might be changed. Nothing has been proposed, as you know.

Mr DANBY—I do not need a comment on this, because I have to turn over to my colleagues, but I am pleased to see that the AEC is going to provide us with information—I am sure it will be available to people like you—on the effect of this electorate by electorate had it been implemented at the 2004 election.

Senator FORSHAW—I pick up on the issue of homeless people who may be able to be enrolled through an agency such as St Vincent de Paul, through one of their night shelters or whatever, where they go to spend the night. Would that put an added burden on organisations that are already stretched to the limits in terms of providing services, and increasingly being required by government to provide services and support that they might not have done in the past? For instance, I have sat on committees where people from St Vincent de Paul and the Smith Family were saying that the range of issues and services that they have to cover now is much greater than in the past. Are you aware of the views of those organisations? Have you ever discussed that with them and their taking on a role of promoting enrolment with their clients?

Mr MacKenzie—I think there is a sense of community out there in the sector with the programs that support homeless people, given that they have not been given increased resources for a long time. Any additional expectation does raise the issue of the added burden. There would be a lot of people in the sector who would possibly agree with me on this point. Elections only happen from time to time and, given the nature of homelessness and the disengagement of homeless people from the mainstream of the community, the idea of actually assisting people to exercise their right to vote is perhaps better seen as part of bringing people back into the mainstream and having the same expectation of homeless people as you would have of anyone else—rather than saying, ‘Well, they’re homeless; we don’t need to worry about them.’ Put in that context, I think we are likely to see a fairly positive response from service providers. The added burden in real terms is fairly small. The people out there working with homeless people are very resourceful, very committed, very hardworking and generally do whatever it takes to assist the people they are working with.

Senator FORSHAW—The context in which I raise it—and I understand and would not disagree with your point—is that a lot of what they have to do also involves trying to assist these people to register to qualify for other forms of government support, such as Centrelink, or referral to mental health agencies or whatever. Following on from this issue—and my colleague Senator Murray raised this—I can see how it is a sort of a meeting point. It is a place where these people go essentially to stay at night. There are two aspects to this question. Firstly, let us say that they were able to be enrolled at the address of the local Sydney City Mission. How would you see that working out in practice? The tendency for these people is that they only visit those centres at night. They might be put on the roll, but does it necessarily mean that they are likely to go and vote at a polling booth? Would you need a polling booth in the agency’s centre itself? Would that mean you would have the polling booth open later because they are wandering around the city?

Secondly—and it is probably even more contentious—I refer to the capacity for abuse from other people. Let us say you have 200 people enrolled at XYZ agency facility, but if it is the expectation that they may not necessarily all go and vote, or very few would vote, you then have a block of names and addresses that provides potential for other people to vote illegally on their behalf. This is the sort of thing that I heard about when I first became involved in politics. Real estate agents would know who was on the rent rolls, who was on the electoral roll from those

rent rolls, and who had left the district. When the absentee figures came in, you were often suspicious about how it was that many of those people voted. Would you comment on those aspects?

Mr MacKenzie—In my experience, there is a very, very strong ethos of confidentiality in those agencies. The women's refuge is an example. If I were to pick any institution or any organisation out there, these would be the ones that I would be least worried about with that sort of thing happening.

Senator FORSHAW—I am not suggesting that they would do it, but it is publicly available—just as people are resident on the roll in a retirement village. It is publicly available information that John Smith is enrolled to vote at such and such a mission, or the city agency centre—

Mr MacKenzie—We actually have very few of those very large institutions. We have redeveloped our services significantly. What we tend to have in Australia, unlike in the United States where they have large warehouse type shelters in all the major cities, are smaller agencies but many of them. I think there are about 1,200 dispersed throughout the community and throughout Australia. There are very few where there would be those large lists that you are talking about. Generally speaking, there might be 10 or 20 or five or six, and they are small houses in suburban locations throughout the country.

Senator FORSHAW—So you do not see—

Mr MacKenzie—I do not see it as a big problem.

Senator FORSHAW—that there is scope for people—

Mr MacKenzie—Very, very small scope for that.

Senator FORSHAW—to say, 'Here is a whole list of names on the electoral roll that we feel confident may not vote.'

Mr MacKenzie—In real terms, from my point of view, it is small—very small.

Ms PANOPOULOS—I was quite pleased to hear you say before that the sample size of the research was rather small. That is something that struck me at first. I always go to the sample size. The submission states that quite a few identified homeless people refused to cooperate. How many were actually approached in the overall research?

Mr MacKenzie—In our study there were 39 who did. There were a few people—only two or three people—who said they did not want to talk to us. But overwhelmingly, in terms of the interview study that we did, homeless people were very cooperative. They were quite prepared to talk.

Ms PANOPOULOS—But how many homeless people were approached to participate in this study?

Mr MacKenzie—Forty-two or something like that. Ours was an interview study so we were not surveying a large number. We were not randomly sampling a group from the population. We were actually trying to find out, by asking detailed questions, what was going on. So when we infer from the population, we do that with all the reservations that you have noted. We are not seriously arguing that the whole population is like that. It is encouraging that the three small studies corroborate each other—that we are getting something like the same answer.

Ms PANOPOULOS—It could be the same answers or it could just be the same innate fundamental flaws in the methodology to reach a result.

Mr MacKenzie—As a researcher, I am very willing to say we do need much more research always, so I will make that admission.

Ms PANOPOULOS—The other issue that was particularly interesting was the comment that one of the factors overriding a homeless person's desire or willingness to vote was the fear of welfare payments being denied. Can you expand on that?

Prof. Costar—I am sure you have read the PILCH submission. As David said, they are small studies, they are beginning studies, they roughly corroborate each other—and that could be for all sorts of reasons. We hope to be before you again in three years time with a much bigger project to report to you. The interesting thing is that this was picked up in a number of workshops, if you like, that were held over the past 18 months, that people from agencies and the AEC and homeless people attended. There was a view—and I would not say it was a majority view—amongst homeless people that they did not make a particular distinction between elements of the benign bureaucracy or, for them, the less benign bureaucracy. This is not surprising. Interestingly, the PILCH report stated that a number of the people surveyed said they would like to have information put through Centrelink. We take that as reported. Again, a number of people were, if you like, reluctant to put their name on an electoral roll, or they said they were, because they thought they would be pursued by other agencies, or if they enrolled—let us say they were 38 years old—and they had not been enrolled for years or they had never been enrolled, they feared that there would be retrospective fining.

Ms PANOPOULOS—I was not asking about being fined; I specifically wanted to know and understand this fear of being denied welfare payments. What was that founded on? Outside that general dislike and suspicion of bureaucracy, why was that an overriding factor for so many people? Is it because there is an element of fraud in welfare? Why would people be afraid of losing their welfare benefits?

Mr MacKenzie—My simple answer would be that it is just a general distrust of government and bureaucracy felt by some people who are homeless and highly alienated. There was no evidence in any of the work we did of welfare fraud—that they were defrauding the system and worried about being found out.

Ms PANOPOULOS—So you are saying that that was an unreasonable fear that they had?

Mr MacKenzie—A few of the other attitudes that people have are unreasonable. We note that they have a view, but it is not always a factual view or a reasonable view. I think that mistrust is just something that you find amongst homeless people, given the pretty terrible experiences that

they have had. They have a very great distrust of authority and government agencies, and some of them have reported difficult experiences with government agencies. The view of some people is understandable, given that context.

Prof. Costar—We witnessed some fairly robust exchanges between homeless people and, if you like, hardly bureaucratic agencies, quite small agencies. I am not saying it is universal. We began our submission by talking about diversity, and that is the thing that is in this area of research.

Ms PANOPOULOS—I was just trying to ascertain whether there was any evidence on the basis of that unreasonable fear.

Prof. Costar—We did not find it, but then again, I am not homeless.

CHAIR—I thank both of you for making your submission and agreeing to come and give evidence on this important topic. As you are aware, we will be hearing from other witness today and we also be going to Adelaide and Perth, and then back to Canberra. If you want to submit anything additional over coming weeks or months, that can be accepted also.

Prof. Costar—Thank you very much for having us.

Proceedings suspended from 10.27 am to 10.45 am

THAM, Mr Joo-Cheong, Law Lecturer, University of Melbourne

CHAIR—I welcome our next witness. We have received a joint submission from you and Dr Graeme Orr, which has been numbered 160 and authorised for publication. Are there any corrections or amendments you would like to make?

Mr Tham—I would like to tender an article that I co-wrote with David Grove as a supplementary submission. I have copies to be circulated to the committee.

CHAIR—I have that here before me.

Mr MELHAM—Is that a supplementary submission?

CHAIR—It is an article that Mr Tham wishes to submit as an additional submission for our information and consideration.

Mr MELHAM—I move that we accept it as evidence, and I know there is an article in volume 32 of the *Federal Law Review*—

CHAIR—I will take that as moved, Mr Melham. Is it seconded?

Senator FORSHAW—Yes.

CHAIR—There being no objection, it is so resolved. Are there no other corrections or amendments you wish to make, Mr Tham?

Mr Tham—No.

Mr DANBY—Could I ask who David Grove is? He has an asterisk to his name, but I cannot find the asterisk.

Mr Tham—David Grove is co-author of the article. Dr Graeme Orr is the person who co-wrote the submissions I have tendered to this committee. They are different persons.

Senator BRANDIS—There seem to be different documents from you and Dr Orr. Are we to understand that you adopt everything that Dr Orr says and Dr Orr adopts everything that you say?

Mr Tham—Very much so. The only caveat I would lodge to that is that we have tendered two submissions. One is co-written by Dr Orr and me and is on political funding, and I am more than happy to take questions on that submission. The other submission is on government advertising, and I will not speak to that submission today. If the committee has any questions—

CHAIR—That is not this one?

Mr Tham—No, that is not this one. I am happy to take any questions on government advertising on notice, consult with Dr Orr and tender the answers.

CHAIR—We will certainly take that into evidence—in fact, we have done so. We will not specifically question you on that as we have not had that before us for consideration. We have an allotment of time for you and a number of members and senators will be more than keen to question you. If we have any further questions, we will get back to you, but we will take that as a submission. We will move immediately to questions so that everyone has a good length of time and we can have a discussion similar to that which we had with the previous witnesses.

Senator MASON—I note that you said you would not answer questions relating to Dr Orr's submission to the Senate Finance and Public Administration References Committee. In relation to the ALP's proposal to review advertising after each election and dock public funding when parties in government are found to have misused advertising, my questions on notice to Dr Orr relate to how that would be policed. What would he do to police the expenditure by a government?

Regarding your comprehensive submission with Dr Orr to this committee, I have a couple of questions in relation to caps on political donations. You say that, in principle, you recommend limitations on political donations and that you want to ban corporate donations to political parties and candidates. You also say that you want to put caps on the amount any individual could donate in a financial year to a particular party or candidate, including a total annual cap on the amount donated. Two questions: firstly, upon what democratic principle do you believe you can justify that? Secondly, how practical is it to do that? How would you police it, and how practical is it?

Mr Tham—Let me address the first question. With respect to bans on corporate donations, we set out in our submission to argue that corporate political contributions are arguably a form of political undue influence. We say that because it really stems from the ambiguous status of commercial corporations in a capitalist democracy like Australia. On one hand, I think commercial corporations wield a lot of economic power necessary for economic growth, and therefore they rightly have the ear of politicians and political parties. On the other hand, they have no legitimate claim to democratic representation. The ultimate bearers of political power in a democracy are the citizens. This is made clear by sections 7 and 24 of the Constitution, which vest political power ultimately in the people of the Commonwealth. Neither do commercial corporations, unlike democratically organised institutions like trade unions, have a derivative claim to democratic representation. What we clearly have with commercial corporations is shareholder control, and shareholder control clearly means that internal decision-making power is parcelled out according to wealth. For all those reasons, we say that commercial corporations should not be able to secure political access and influence through the medium of money or political contributions.

Senator MASON—I think you used the word 'derivative'—what do you mean by that? The entire Labor Party—it used to say the Labor Party; I hope I am not misrepresenting them—were in a sense the political arm of the labour movement.

Mr Tham—Again I am starting from first principles. If we start from a first principle that the citizens are the ultimate bearers of the political power, then we can say that they have a direct

claim, clearly, but they can also have a derivative claim through democratically organised institutions. This is the qualitative difference between commercial corporations and trade unions. Registered trade unions are required by industrial statute to be democratically organised. So I would not treat commercial corporations and trade unions on the same footing with respect to political donations.

Senator MASON—Do you think that trade unions have always been organised democratically and would fit within the argument you have just given the committee?

Mr Tham—I am not making historical arguments. In the submission I have cited a provision of the Workplace Relations Act which requires trade unions to be democratically organised. For example, section 5(d) of schedule 1B or the Workplace Relations Act expressly states that one object of the schedule is to:

... provide for the democratic functioning and control of organisations.

You can see this cutting across various state industrial statutes. Section 238 and 240 of the New South Wales Industrial Relations Act provide for the same effect. So what we have as a matter of law is that commercial corporations are organised in a very different manner from trade unions.

Senator MASON—Do you have any overseas precedence to fortify your position? For example, you are arguing that we should have caps on the amount that individuals can donate in a financial year. Do you have any overseas precedence? I ask because I am wondering about the utility of that sort of law. You can see many ways around it, I am sure; you are a better lawyer than me. There are plenty of ways around that.

Mr Tham—If you look at the end of our submission on political donations, there is a table basically giving in summary form the regulation that pertains in New Zealand, the United—

Senator MASON—What page is that?

Mr Tham—It is the very last two pages. You can see, for example, the columns dealing with the Canadian regulations, which actually place caps on donations from corporations and trade unions. As I understand it—and I have not done any in-depth research—the American regulations also provide in some circumstances bans on contributions from trade unions and businesses or companies.

Senator MASON—You are not against public funding of elections, are you?

Mr Tham—I am not, in principle. It has to be properly designed and it must conform to the principle of political equality. That is the key with any form of public funding.

Senator MASON—You mentioned Canada and New Zealand; what is the experience of those jurisdictions in enforcing that law? I can think of some ways you could circumvent that law, and I am sure you can as well. Does it have any utility at all?

Mr Tham—This is a very important point. We have considered this in the last part of our submission, which deals with compliance and enforcement. Clearly, as you rightly pointed out,

with any regulation proposed we have to consider whether it is going to be practicable and properly enforceable. The problem with the debate in this area is that what are seen to be inherent problems with enforcing this kind of regulation, and there are inherent problems with any form of regulation—

Senator MASON—I accept that.

Mr Tham—Those problems are being used to oppose particular regulatory proposals. What we say with the proposals we have put is that, yes, they are attended by these inherent problems of enforcement—we accept that—but that should not be fatal to these proposals.

Senator MASON—Good luck!

CHAIR—Senator Brandis has indicated he has a question on that topic.

Senator BRANDIS—I just wanted to pursue a bit further with you, if I may, the distinction you draw between corporate donations and donations from trade unions. You put them on a different footing.

Mr Tham—Yes, I do.

Senator BRANDIS—Can you explain a little more fully how you justify doing so?

Mr Tham—As I explained to Senator Mason, simply by virtue of the very different internal structures of these organisations.

Senator BRANDIS—I was a bit surprised by it, but I think I heard you say—and correct me if I am wrong—that trade unions are democratic and, by implication, corporations are not. Is that your view?

Mr Tham—As a matter of law, that is my view.

Senator BRANDIS—Are you familiar with the Corporations Act? Doesn't that subject corporations to very exhaustive regulation in their organic structure, make the board subject to the general meeting and render decisions by the corporation the subject of determinations by a majority of the board?

Mr Tham—A majority of shareholders, yes, I agree, but a person—

Senator BRANDIS—Shareholders are members of the company, aren't they?

Mr Tham—They are members of the company, but—

Mr MELHAM—There are different classes of shareholders—

Senator BRANDIS—Just as there can be different classes of members of trade unions.

Mr Tham—I disagree, Senator. I agree with the premise that they are controlled by a majority of shareholders, but a shareholder's strength or influence over the decision-making power is determined by the value of the shares that they hold.

Senator BRANDIS—Have you ever met a trade union member who was out of sympathy with the labour movement's point of view on an issue? How much power do you think he has in his trade union?

Mr Tham—The point I return to, and this is irrefutable as a matter of law, is that registered trade unions are required by law to be democratically organised.

Senator BRANDIS—I do not know why you say it is irrefutable, because it all depends on what you mean by democratic. It is irrefutable that they are required by law to be organised in a particular way. Whether you regard that as democratic is something we could argue about.

Mr Tham—For example, I return to the legislative provision that I mentioned to Senator Mason, which was passed when Peter Reith was industrial relations minister—

Senator BRANDIS—I do not think that has anything to do with it.

Mr Tham—It does in the sense that the provisions require trade unions to 'provide for the democratic functioning and control of organisations'. As I mentioned earlier, this cuts across various state industrial statutes. If the Senator would like, I have notes on these various provisions and I am more than happy to prepare a supplementary submission—

Senator BRANDIS—That would be great.

Mr Tham—detailing all the provisions of industrial statutes that require trade unions to be organised on a democratic footing.

Senator BRANDIS—Leaving aside the analysis of the character of the statutes that govern trade unions as opposed to corporations, there is an asymmetry in their position in the sense that as a matter of practice—and you say this in your paper—corporations are large contributors to the Australian Labor Party, as they are to other major political parties. Trade unions are almost exclusively contributors to the Australian Labor Party—perhaps to a minor degree the Democrats and the Greens but hardly at all to the Liberal Party or the National Party. So there is an asymmetry there, isn't there?

Mr Tham—I agree.

Senator BRANDIS—The Labor Party gets money from corporations and trade unions; the Liberal Party gets some of its money from corporations but none of its money from trade unions.

Mr Tham—I agree.

Senator BRANDIS—Given that trade unions, to simplify it, only donate to one side of politics, wouldn't you agree that in the interests of transparency and balance the funds donated by trade unions, since they are imbalanced—they only go to one side of politics—if anything

call for greater scrutiny than donations from corporations which go in roughly equal measure to both sides of politics?

Mr Tham—It is only an imbalance if you see them on equal footings.

Senator BRANDIS—It is an imbalance if you look at the source—the source being on the one hand trade unions, which only donate to one side of politics, and on the other hand corporations, which donate to both sides of politics. As a matter of commonsense, there is a lack of balance there, isn't there?

Mr Tham—It does pose certain issues in terms of equality of arms, if you like, between the parties—

Senator BRANDIS—Yes, that is my point.

Mr Tham—I agree with that. At the same time, in my view it is quite profoundly wrong from democratic principles to treat contributions from trade unions and contributions from commercial corporations in the same manner.

Senator BRANDIS—Why? Because trade union contributions are in many cases extracted involuntarily from their members, whereas no corporate contributions are extracted involuntarily from their shareholders. Are you saying we should be much more suspicious and judgmental of trade union donations?

Mr Tham—Sorry, I did not follow.

Senator BRANDIS—It seems to follow from your logic, although you resist the conclusion, that it is less democratic—

Mr Melham interjecting—

Senator BRANDIS—So what? I am putting a proposition to him; of course I can do that.

Mr Tham—Sorry, Senator, I did not follow the last question.

Senator BRANDIS—What I am putting to you, Mr Tham, and please respond as you wish—

Senator FORSHAW—What he said was that donations from trade unions are undemocratic—

CHAIR—Senator Forshaw.

Senator BRANDIS—Senator Forshaw, I am perfectly capable of putting my own question in my own words.

CHAIR—Senator Brandis, please. Senator Forshaw, it is good to have you at this hearing, and I know you were not at the other hearings, but it will aid the witness in understanding the question if he is not interrupted by either side.

Senator BRANDIS—Mr Tham, you have suggested that there is a disparity in the way we can treat contributions from corporations and contributions from trade unions. What I have tried to point out is that in one respect, lack of balance, there is a disparity because trade union donations only go to one side of politics whereas corporate donations go to both sides of politics. I think you agreed with me that at one level there is a lack of balance. Do you agree with that?

Mr Tham—Lack of balance was not the phrase I used, but I agree that trade union money is largely channelled to the ALP.

Senator BRANDIS—In my state, Queensland, where the Labor Party is very powerful in state politics, a lot more corporate money goes to the Labor Party than it does to the non-Labor side of politics. Are you aware of that? That is certainly the case in my state and I suspect it is the case in other states as well. During state elections, where business decides that it has an interest in getting on well with the incumbent government and the government is well entrenched, the Labor Party gets most of the corporate money and all of the trade union money. Are you aware of that?

Mr Tham—I agree. I am not sure if it is a point we made in our submission, but it is a point that Dr Orr and I have made in an opinion piece in *The Age* today. A lot of corporate contributions are occurring through the purchase of access to and influence over the political process. Clearly, those who are more able to sell access and influence are the incumbents. That corresponds with your analysis—it could be the ALP government in particular states; it could be the coalition parties at a federal level.

Senator BRANDIS—You use two words in your submission to describe this vice, and I think you use them, if I may say so with respect, a bit loosely. You talk about ‘corruption’ and ‘undue influence’. Unless there was some sort of discernible bribe, there is not corruption, but I can understand why you might say undue influence. Don’t you think that the occasion of undue influence is much more acute where there are donations to only one side of politics, namely through trade unions, rather than to both sides of politics, namely through corporations? Is there more likely to be undue influence there?

Mr Tham—No, I do not agree with that. I use the concept of corruption as a narrower concept than undue influence. If you like, it refers to graft in the sense of brown paper bags and so forth.

Senator BRANDIS—Yes.

Mr Tham—We are clear on that. The broader concept of undue influence basically refers to influence on the political process which does not conform with the principle of political equality—for example, where people buy access to a minister or their chief of staff. And this occurs on both sides of politics—do not get me wrong. To understand whether undue influence occurs with trade unions we need to understand the nature or source of the contribution. Again, I come back to the fundamental point I made a few moments ago: all other things being equal, a

contribution that comes from a business as opposed to a trade union should not be treated on the same footing.

Senator BRANDIS—I agree with that. I think that trade union contributions, because they are unbalanced, should be treated with much more circumspection and perhaps a bit more scepticism. You seem to be resisting that conclusion.

Mr Tham—No, I do not seem; I do resist that conclusion.

Senator BRANDIS—Pursuing this undue influence as you have described it—and let me make it perfectly clear before I put the question that I am not suggesting corruption—if you had a category of donor which only donates to one side of politics, and I do not know if you are familiar with the fact that the Australian Labor Party has recently changed its preselection rules back so that trade union officials or members have to constitute a minimum of 60 per cent—

Mr DANBY—That is the sort of rubbish that Glenn Milne is writing.

Senator BRANDIS—That is what has been reported in the press.

Mr DANBY—That has been reported by Glenn Milne and is highly inaccurate—

Senator BRANDIS—All right, Mr Danby, if that is disputed I withdraw it. Let me put a hypothetical case to you, Mr Tham. If it were the case that the very institutions—that is, trade unions—which donate to one side of politics only are also the very institutions which by constitutional provision have a substantial share in the preselection of parliamentary candidates for that very same political party, would that be a case of undue influence?

Mr Tham—Not in my view. I think the point to be made is that politics is inherently about sectional interests pursuing their goals and policies.

Senator BRANDIS—Is it? Do you think so? What about the national interest? Do you not think that some people who go into parliament are motivated by a sense of the national interest?

Mr Tham—Maybe I am using sectional interest in too broad a sense. We are talking about particular interest groups that decide to support a particular party that agrees with their views of the national interest and so on. For instance, if a country based organisation is supporting the National Party, I do not see any problems with that. I think that is part and parcel of a robust democracy. Likewise, in itself I do not see any problems with trade unions supporting one side of politics.

Senator BRANDIS—Neither do I; it is a free country. Of course they can support one side of politics. What I am interested in is criticising your critique.

Mr Tham—When I say I do not see any problems with it, I mean I do not see any problems with it from democratic principles.

Senator BRANDIS—One of the problems I have with your submission is that you come before us as a lawyer and you use legal expressions that have a particular signification to

lawyers—like ‘undue influence’—but it is obvious from reading your submission and listening to you that you are using the expressions rhetorically and not technically. For example, a lawyer seeing that your submission mentions undue influence would ask themselves, ‘What are the indicia of undue influence?’ One is a dangerous closeness in a relationship which enables the dominant party to overpower the weaker party. That is a pretty loose description of what an equity lawyer would call undue influence. I am speaking to you as a lawyer, not as a rhetorician or a public citizen. When you say ‘undue influence’, aren’t you more likely to find undue influence where one category of donor, trade unions, donates only to one side of politics, the left, and they themselves are one of the principal determinants as to who shall constitute the parliamentary members of that political party? Isn’t that undue influence?

Mr Tham—Not in my view.

Senator BRANDIS—I think you should revert to being a lawyer, Mr Tham. I have one last question: would you regard it as a violation of or dangerous to democratic values as you understand them—I will put the hypothetical to appease my Labor colleagues—if the rules of a particular trade union enabled that trade union to extract from its members compulsory moneys that would be donated to the Labor Party, irrespective of whether or not those members wished their money to go to one particular side of politics rather than the other? Would that be a violation of democratic principles, Mr Tham?

Mr Tham—Not necessarily in my view.

Senator BRANDIS—Not necessarily, but what about generally? I am sure that being a clever lawyer you could always dream up exceptions, but as a general proposition would that be a violation of democratic principles?

Mr Tham—Not necessarily. Again, to trace back my argument, the qualitative difference between trade unions and commercial corporations is that trade unions are required by law to be democratically organised—

Senator BRANDIS—As are corporations. I do not think you are a corporations lawyer, Mr Tham.

Mr Tham—Corporations, if you like, operate by virtue of a property franchise; that is inherently undemocratic.

Senator BRANDIS—Sorry, is that right? It is inherently undemocratic if, to become a member of a corporation, I have to have a few dollars to buy the smallest marketable parcel of shares. Is that inherently undemocratic in your view of democratic principles?

Mr Tham—We have switched focus, Senator. I was referring to how corporations are actually organised. I am not sure how the reference to a few dollars to buy shares fits into the scheme of things.

Senator BRANDIS—What it means is that anybody can become a member of a corporation if they have enough money to buy the smallest marketable parcel of shares—that is what it means.

Mr DANBY—The biggest players have the biggest—

Senator BRANDIS—Go on, Mr Tham. I am struggling to see why you think that is undemocratic but it is not necessarily undemocratic for a member of a trade union—

Senator FORSHAW—I raise a point of order, Chair: I think it would be appropriate if occasionally Senator Brandis allowed Mr Tham to complete an answer before he interjects again with his further critique of the submission. I have been listening now for some time—

Senator BRANDIS—That is not a point of order, Mr Chairman.

Senator FORSHAW—I do not think Mr Tham has actually got to answer a question before he has been interrupted.

CHAIR—That is not a point of order. Questions are being asked; they are being answered.

Senator FORSHAW—He is not being allowed to finish his answer.

CHAIR—Questions are being asked and they are being answered.

Senator FORSHAW—We will read the *Hansard* later.

CHAIR—Now that you are attending your first public hearing you will know that we have a free-flowing and robust questioning session—

Senator FORSHAW—That is a cheap shot! I have been a member of a number of joint committees of the parliament for a lot longer than you have, Chair—

Senator BRANDIS—And chaired them, Senator Forshaw, and you are a much more interventionist chairman than Mr Smith has been.

Senator FORSHAW—I would just like to hear Mr Tham answer a question.

CHAIR—Senator Forshaw, I was pointing out a simple fact. Since you are concerned about interrupting people, I will now complete what I was about to say before I was interrupted. My point simply was this: in all of our hearings we allow extensive questioning and allow witnesses to answer in the time that they see fit. If the witness at any point has a problem with the questioning, I invite him to say he has a problem, but he is quite entitled to appear here and to be questioned. I am pointing out to you that that is how things have been conducted at all our public hearings to date. I am not criticising you for having had other engagements; I am saying that, as this is your first hearing, you are unfamiliar with that fact. Senator Brandis.

Senator BRANDIS—Thank you, Mr Chairman. Mr Tham—

Mr Tham—Can I actually respond to some of the earlier questions?

Senator BRANDIS—Please do, but—

Senator FORSHAW—But!

Senator BRANDIS—can you indicating what you are responding to?

CHAIR—Senator Forshaw, you are now the one interrupting. If Senator Brandis could ask his question again, we will allow the witness to answer it.

Senator BRANDIS—I would like to re-put the question, just to focus the witness's attention. What I understood you to be saying, and correct me if I am wrong, is that corporations are not democratic because there is a property franchise, but that for trade unions to extract money compulsorily and involuntarily from their members to give to political parties for which the members may not wish to vote is not undemocratic. Is that what you are saying, or do you want to clarify your answer?

Mr Tham—The heart of my position is simply this: the overwhelming majority of people accept that one key democratic principle is that one person has one vote, and one vote has equal or similar value.

Senator BRANDIS—Yes.

Mr Tham—This is a principle that trade unions are required by law to abide by. For that very important reason, they are democratic. That does not preclude majoritarian decision making. In a particular situation of an organisation that adheres to one vote, one value where there is majoritarian decision making, and where a minority of members disagree with the vote, they still abide by the decision. So that is in response to your comment about whether I see it as undemocratic to have, if you like, a political levy being imposed involuntarily.

Senator BRANDIS—What do you think, Mr Tham? You have explained how, on majoritarian principles, it might be consistent with a particular view of democracy; I accept that, by the way. Do you think it is right that trade unions should be able to extract involuntarily from their members moneys from their pockets to donate to a particular political party when the member votes for the other side of politics?

Mr DANBY—A bit like taxation, isn't it?

Senator BRANDIS—Do you think that is right, Mr Tham, that that should happen?

Mr Tham—I have no problem, on democratic principles, with it.

Senator BRANDIS—Sorry, let me get this straight: you think it is all right, when you have just defined democracy as one person having one vote, and each vote having roughly equivalent value or weight, that a person can, against their will, have their money taken from them to be donated to the party they are voting against? Do you think that is all right?

Mr Tham—But there is nothing—

Senator BRANDIS—No, do you think that is all right?

Mr MELHAM—Let him answer your question, Senator Brandis.

Senator BRANDIS—Well, it is a simple question: do you think that is all right?

Mr Tham—I have no problems with it from democratic principles. I mean—

Senator BRANDIS—Even though you say one vote, one value?

Senator FORSHAW—Let him finish his answer.

Senator BRANDIS—Why don't you stop interrupting, Senator Forshaw?

Senator FORSHAW—You just interrupted the witness. He said three words in answer to your question. Instead of having a shot at me, let the gentleman answer a question for once!

Senator BRANDIS—I will let him answer the questions.

CHAIR—We will let him answer, Senator Forshaw.

Senator FORSHAW—He just interrupted him, and you heard it! You are going to lecture me and he interrupts him all the time!

CHAIR—Senator Forshaw, we will let the witness answer the question—

Senator FORSHAW—Well, I am sitting here listening.

CHAIR—and if you would like to answer a question, maybe you should go around the other side of the table and be a witness rather than answering yourself.

Senator FORSHAW—Mr Chairman, I am sitting here trying to listen to this gentleman's answers, and the *Hansard* will prove this, and we will go back to it when we get the opportunity.

Senator BRANDIS—Senator Forshaw, we never had any problems where you were not showing up.

Senator FORSHAW—Mr Tham has been trying to answer questions and every time he gets halfway through a sentence, he gets interrupted by another question from Senator Brandis.

CHAIR—Senator Forshaw, what we are doing is allowing each person to answer questions. I do not plan to ask any. I know the deputy chair is seeking to ask some questions. He will be able to do that when Senator Brandis has finished his questions, because he is next on my list, provided that we have time. I am quite happy to undertake this discussion for as long as you want, but you have now wasted another three minutes. Senator Brandis has asked his question; I would ask the witness to answer it. He can answer it without interruption and we will move on to the next question.

Mr Tham—The point I was trying to make is that in any organisation that abides by a majoritarian democratic decision-making process, there will be decisions that a shifting minority will disagree with.

Senator BRANDIS—Yes, I accept that.

Mr Tham—I beg your pardon?

Senator BRANDIS—I accept that.

Mr Tham—If that is the case, I cannot see that it is wrong from a democratic principle point of view. If you are a union member and you have voluntarily agreed to be a member of the union that is democratically organised, and if there are particular decisions that you disagree with, all other things being equal, I cannot see why this is undemocratic.

Senator BRANDIS—Well, Mr Tham, taking your definition of democracy or parliamentary democracy, I assume, in the words you used before, that every person has a vote, and each vote has roughly or as nearly as possible equivalent value—that is what you said?

Mr Tham—Yes.

Senator BRANDIS—I am not putting words in your mouth. How can it not affect the value of a person's vote if, against their wishes, as a result of a majoritarian decision, their money is paid to the other side of politics, the side they want to vote against, in order to help them? How can that not devalue their franchise?

Mr Tham—If I held that view then I would have to consistently hold the view that the fact that a large number of Australian citizens did not vote for the coalition parties, and the coalition parties have made decisions that are contrary to the wishes of that large portion of the Australian populace, was somehow undemocratic, and I do not hold that second view.

Senator BRANDIS—I am not asking you that. I am asking you about the compulsory extraction of money from people against their will for the purpose of making a donation. If everybody's vote is meant to have equal value, which is what you say—fair enough—then how can it not devalue or depreciate the value of that vote if the only contribution they might make at an election is a contribution made against their wishes to a party which represents what they do not believe in?

Mr Tham—It does not follow, Senator. The principle that each vote has equal value means that, when it comes to office bearers of a trade union being elected, votes are given comparable value. That is how the principle is adhered to.

Senator BRANDIS—That is how the majoritarian principle is adhered to.

Mr Tham—That is right. As I expressly—

Senator BRANDIS—But I am not asking you about that. I am asking you about the way in which the application of that majoritarian principle to the domestic governance of a trade union might affect the weight of that trade union member's vote in the general election.

CHAIR—We will make this the last question because we have four other questioners.

Senator BRANDIS—Do you understand the distinction?

Mr Tham—I understand it; I disagree.

Mr DANBY—I thank our witness for appearing. The last lot of questions leads very neatly, probably unintentionally, to my questions about the current \$20 million expenditure of taxpayers' money on government advertising for legislation not yet passed. You have made some criticisms in the *Age* today and in your submission to this committee; do you have any previous examples of the government spending \$20 million of taxpayers' money on legislation that has not been passed yet?

Mr Tham—To my knowledge, no.

Mr DANBY—You are opposed to political advertising of this nature, even if legislation has been passed—is that correct?

Mr Tham—I should say that government advertising is more Dr Orr's area than mine.

Mr DANBY—Sure.

Mr Tham—I am quite wary of actually answering too many questions in this area without consulting Dr Orr.

CHAIR—Fair enough. Could I point out for the record that the witness did say at the start that the submission that is before us on government advertising is solely from Dr Orr and that, although you had a joint article today, you have pointed out that you would take questions on notice for him.

Mr Tham—That is right, yes.

CHAIR—So that offer still—

Mr Tham—Yes, I am happy to take that question on notice.

Mr DANBY—I suppose I should frame it in a general way, because this is the most recent example of this. Previously, we had the government expending public money on the *TaxPack*, for instance, and trying to send it to people via the Australian Electoral Commission. This was found to be in violation of the Australian Electoral Act, and therefore they had to shred 20 million *TaxPacks* which were planned to be illegally sent to people via their Electoral Commission addresses. What is your general view—what you wrote in the paper today—about government advertising—

CHAIR—Just for clarity, what were you talking about with respect to *TaxPacks*?

Mr DANBY—During the campaign involving the GST the government planned to send out millions of *TaxPacks* to people via the Australian Electoral Commission and eventually—

CHAIR—No, not *TaxPacks*, I do not think that is right.

Mr DANBY—Well, they were packs advocating the government's taxation policies. These were forcibly withdrawn because it was found to be beyond the powers of the government. I want to ask you about—

CHAIR—I know what you mean now.

Mr DANBY—How do you view this advertising that we see on industrial relations today? How does it fit in with the democratic principles outlined in your submission and what is your attitude to the government doing these kinds of things, particularly in light of the kinds of comments and questions you were asked by Senator Brandis?

Mr Tham—I think I can speak for Dr Orr in my response. Our general view is that there is clearly a legitimate role for government advertising. When laws have been passed, for instance, and citizens need to be advised about the entitlements they might have or the process of applying for those entitlements, that form of advertising is legitimate and is a proper function of government.

CHAIR—By way of example, regarding the significant change to health policy last year that required the public to do certain things to access new benefits, like the Medicare safety net, you would agree that that advertising campaign was proper. You would agree that advertising for Defence recruits is proper. You would agree that the current advertising on what to do if there is some sort of terrorist alert is appropriate.

Mr Tham—We clearly accept the base reasons for advertising to be legitimate reasons from a democratic point of view, but there is also a question of extent. This moves into a very tricky area about what are considered to be partisan political issues, and there is no hard and fast definition. Clearly, some people might consider some of the issues that you mentioned to be partisan political issues. For that reason, there should be a lot of caution in spending money on government advertising involving those issues, even though at the base there might be some legitimate reason to prompt government advertising. Returning to your question, Mr Danby, our starting point is that we do see a legitimate role for government advertising in some circumstances. But what we have seen—again, this is not confined to this federal government; we have seen it in the past—is that government advertising has spiked close to election time. This is also the case with the Labor Party. This is egregious from a democratic point of view, because it clearly hands over a competitive advantage to the incumbent government, whichever party is incumbent at a particular point in time.

Mr DANBY—Can you answer now, or would you prefer to take on notice, the question of how you propose to handle this? Do we have to ask Dr Orr about Auditors-General looking at this?

Mr Tham—Yes, in terms of detail, it is something I will take on notice.

Mr DANBY—I have two specific questions on matters not to do with government advertising. I notice that you are very critical of members' entitlements for communicating with constituents and areas like that, but at the same time—and I cannot find the specific reference; I read it late last night—you also advocate that individual members of parliament be given extra funding to communicate on the matching funding basis. Why are you critical of moneys given to members generally while you advocate the matching formula for individual members of parliament to receive moneys?

Mr Tham—I do not actually recall advocating that. Let me speak more generally: our strong view and a starting point for our submission is that political parties and parliamentarians play a very important role and they need to be adequately funded to perform that important role. It is not correct to say that we are opposed to parliamentary funding. We actually support proper funding of parliamentarians. The problem we have is with the current system of funding, where we see excessive amounts being devoted to parliamentary entitlements. It is not so easy that you get a sense from exact figures on the amount spent on parliamentary entitlements. As an example, in the recent Auditor's report, it was stated that in 1999—

Mr DANBY—Sorry, what report?

CHAIR—The recent Auditor-General's report?

Mr Tham—Yes, this appears in the text above footnote 65 on page 25 of our submission. The Australian National Audit Office report states that, for the 1999-2000 financial year, \$354 million was spent on parliamentary entitlements. To get a sense of proportion, if you combine the total budgets for all the main parties—Greens, Democrats, Nationals, Liberals and ALP—for the three financial years from 1999-2000 to 2001-2002, the amount is even less than that \$354 million. Over those three years the total budget for the main parties stood at only \$248 million. While our starting point is that parliamentarians should be adequately funded as they perform very important functions, we say that the current system of funding of parliamentary entitlements is clearly excessive.

Mr DANBY—The very last question is: what is the political penalty you envisage in your recommendation on compliance and enforcement?

Mr Tham—Sorry, I did not catch that.

Mr DANBY—You say there is a political penalty in your recommendation on compliance and enforcement. What does that mean? What political penalty? Do they lose their seats; do people get fined—what?

Mr Tham—I suppose we are just referring to the opprobrium that comes with not complying with the law.

CHAIR—Senator Murray has some questions.

Senator MURRAY—I want to put my questions into two categories. In my view, reform in the political governance area, which is broadly what we are discussing here, falls into two categories: one is reform which tries to improve the principles which already exist in the electoral law; the other is changing the principles which exist in the electoral law. Let me deal with the first, which is improving what we have. Would you agree that it is a principle of funding and disclosure not only that the true identity of the donor be available but that the Australian Electoral Commission be able to check on that person or entity if there is any dispute?

Mr Tham—I agree.

Senator MURRAY—Therefore, wouldn't you agree that it would be a proper principle with respect to overseas donations that overseas donations should be prohibited from entities but not from Australian citizens living overseas, simply because it is impossible for the Australian Electoral Commission to follow up on, for example, a foundation in Sweden or a corporation in the Philippines or the United States?

Mr Tham—There are two reasons for a ban or, if not, a very strict limit on overseas foreign donations—in our view, even though we did not address it in detail in the submission. One is the question of enforcement which you just mentioned, and we agree with that. The other one is the question of principle.

Coming back to the point I made at the start, if we accept that ultimately the legitimate bearers of political power in Australia are Australian citizens, it also follows as a matter of principle that we should take quite a hostile attitude towards, if you like, non-citizens being able to influence the political process through political donations.

Senator MURRAY—I particularly asked you, though, with respect to Australian citizens living overseas who, as you know, can voluntarily participate in our elections. You would have no objection to Australian citizens living overseas making donations in their individual capacity, would you?

Mr Tham—No objections, except for the question of enforcement, I suppose. I am just throwing this out; it is not something we are committed to: with respect to any donation from overseas, regardless of the source, it becomes very hard to police and it is very difficult to ascertain the identity of the donor. There might be some argument for a complete ban on contributions from overseas regardless of the source.

Senator MURRAY—Can you confirm that it is a common feature of electoral law internationally for donations from a foreign entity to be prohibited?

Mr Tham—Again, if I can refer the committee to the table that Dr Orr and I set out at the end of our submission, you will see that three comparable countries—and this confirms your view, Senator—New Zealand, United Kingdom and Canada, have a complete ban on foreign donations.

Senator MURRAY—Dealing with the same principle domestically, and referring to the existing act, you should be able to determine who lies behind a donation. Do you agree with my

view that unless the beneficial owners of or the actual donors within trusts, foundations, clubs, fundraising dinners and so on, can be identified, those donations should not be allowable in law?

Mr Tham—Should not be allowable in law?

Senator MURRAY—Do you need me to repeat that?

Mr Tham—Yes, please.

Senator MURRAY—The principle in our existing law is that the donor should be able to be identified and checked on. If a donor cannot be identified, and the donation is from a trust, a foundation, a club or a fundraising dinner, for instance, my view is that that donation should not be allowable in law because you cannot find out who made it.

Mr Tham—I agree. In fact it is reflected in the ban on anonymous donations in the current law.

Senator MURRAY—Still with the issue of principles underpinning our current law, I return to the area raised by Senator Brandis. A principle in our law is that an organisation, be it a union, a corporation or a not-for-profit organisation, may make a donation. A principle in our general law is that, within an organisation, if a majority make the decision, that decision can prevail. Do you not think therefore the solution to the issues posed by Senator Brandis is simply that the donations policy of a union, or the donations policy of a corporation, should be approved by a majority of the members of a union voting at the annual meeting and, in respect of a corporation, by the majority of the shareholders voting at their annual meeting? Therefore you would have a fully authorised donations policy which the board or the management committee could then exercise.

Mr Tham—I think there is a lot of merit in that proposal, not just from an electoral law point of view in terms of the principles you mentioned but in terms of shareholder control in commercial corporations and also in terms of democratic control with respect to trade unions. I think there is a lot of merit in that proposal.

Senator MURRAY—Could you take this question on notice: when you reply to Senator Brandis's questions, you said you were going to do an analysis. Would you just check for me that the Corporations Law does not mention the words 'democracy' or 'democratic' anywhere? As far as I know, it does not, so that would be useful.

My last set of questions refers to the second category, which is changing the principles under which our electoral law operates, and that is with respect to your proposals made in terms of caps. Caps are not a feature of our electoral law and, as far as I am aware, are not a feature of any of our state or territory electoral laws. There is considerable interest by all parties—and all parties as far as I know have thought about this matter—in the issue of caps, and you have put that in your submission. Can you confirm that caps are a common feature of the electoral laws internationally or in countries like ours, and can you just outline succinctly the benefits of caps on donations?

Mr Tham—The first thing I should say is that in fact there is an Australian precedent for caps on donations. The Victorian Electoral Act actually puts caps on donations from holders of gambling licences. In terms of overseas precedents, the main example is Canada, which is referred to on the very last page of the submission, where it refers to caps on contributions from corporations as well as trade unions.

CHAIR—Although we are running short of time, I am interested in this, as is Senator Murray. Do you have any knowledge of how long those caps have existed, and whether there has been a review of them and how they are seen to be operating in each of those countries? We met with a New Zealand committee recently which gave us a rundown of what occurred there, but it would be useful with respect to Canada when you answer Senator Murray's questions.

Mr Tham—I will take that on notice.

CHAIR—Okay.

Mr Tham—We see several advantages to having caps. We propose caps of different forms. We propose caps on contributions from commercial corporations, and we propose caps more generally on any type of political contributions. With respect to the caps on contributions from commercial corporations, the key advantage in our view is that contributions from commercial corporations arguably are a form of undue influence from a democratic perspective. Caps will lessen that form of undue influence. One advantage of caps more generally, as opposed to caps on contributions from commercial corporations, is the fact that it removes a key source of corruption and undue influence because large donations are the ones that carry the most serious risk of corruption and undue influence.

The last advantage we see in having caps, and you will see this in the article that I tendered as a supplementary submission, is that there is a dramatic financial inequality amongst the parties. In that article we combined the budgets of the parties over three financial years, from 1999 to 2002, and we divided it by the number of first preference votes. What you see in terms of the measures that come out is that the ALP, the National Party and the Liberal Party have received more than double the amount of funding for first preference votes compared to the Democrats and the Greens. The article also shows that that dramatic financial inequality is explained by inequality in terms of private funding—and private in the sense of commercial corporations and trade unions. Another advantage of caps is that it will indirectly lessen the financial inequality between the parties and ensure a more level playing field.

Senator MURRAY—My last question on the second category of changing the principles of the act refers to undue influence, and follows on from your remarks earlier in response to a number of questions. You may or may not be familiar, as a lawyer specialising in your area, with section 4A of the tax act, which is a general anti-avoidance provision. Do you think that a general prohibition based on that broad approach in the electoral law, which essentially said that no strings attached should be applied to any donation, would be of assistance? In other words, anyone who made a donation intending as a result to have special access to a government or influence over a party or a policy would be subject to criminal sanction. Think of property developers and local government as an example, and then you will immediately understand what I mean.

Mr Tham—In principle I would support some kind of regulation like that. However, as that particular ban hinges upon, if you like, the state of mind of the person giving the money and the person receiving the money, in terms of undue influence, there might be quite serious difficulties in terms of enforcing that kind of ban.

Senator MURRAY—Which, of course, is its virtue, because it gives a proper defence or makes available a proper defence to those accused. Nevertheless, as a general prohibition, it directly confronts the issue of corruption, which is one category, and entails bribes, or undue influence, which is a more subtle form, if you like, of achieving the same outcome.

Mr Tham—I will have to give more thought to that.

Senator MURRAY—I wonder if you would do so on notice, and if in doing so you would perhaps consult with your colleagues in the university about the way in which the tax act anti-avoidance provisions operate and see if that sort of principle is transferable.

Mr Tham—Yes.

Senator FORSHAW—I have a quick question following your discussion with Senator Brandis and the question from Senator Murray regarding donations from, say, trade unions and corporations. I think you agreed with the proposition that this could be subject to a vote of the members of a union or the shareholders of a corporation. There is a register of members of a trade union, and they all get one vote. Generally the elections are run by the AEC, and that is fairly easy to organise, and it is transparent.

Senator BRANDIS—I am sure you have organised a few in your time, Senator Forshaw!

CHAIR—Senator Brandis, let Senator Forshaw ask his question uninterrupted.

Senator FORSHAW—All free and fair. Thank you, Chair. With respect to corporations, companies, unincorporated associations and so on, the situation is not that simple, if I can use that word. For instance, a large corporation could comprise shareholders who are other corporations, who are superannuation funds, who are overseas corporations. You have also drawn attention to the fact that it is not simply that each shareholder has one vote; a shareholder gets votes according to the number of shares. I am not suggesting that is undemocratic, but that is the nature of the structure of a corporation. There is also provision for proxy voting. I am putting to you that it is not really an equal situation—that a union could have a vote of its members to authorise a political donation. How do you deal with the myriad complex structures within corporations, many of whom make large donations to both political parties?

Mr Tham—I agree with your observations.

Senator FORSHAW—So it is not equal in that sense.

Ms PANOPOULOS—I am very interested in your perspective and your concept of justice. Could you direct me to any additional information that you have published, because I see on pages 51 and 52 of our documents that you have published in *Realising Democracy*, in *Labor*

Essays 2002: the big makeover: a new Australian Constitution, and extensively on the web. Do you have any other publications that, in my private time, you can direct my attention to?

Mr Tham—I have tendered as a supplementary submission an article I co-wrote with David Grove in the *Federal Law Review*, which is not listed in the list of publications. Dr Orr and I had a piece in *The Age* today, basically drawing on the key points of our submission. There are probably quite a few more from Dr Orr and I. I can compile a list, if you like, Ms Panopoulos, and email it to you.

Ms PANOPOULOS—Yes, I would be very interested. My email is listed on the Parliament House web site. I was also quite interested in your loyalty to the concept of democracy within trade unions, because it strikes me that you went much further than many Labor members of parliament in defending the processes of trade unions. I note that you did say that the law requires trade unions to be democratic. The law also requires that people respect private property, do not wear balaclavas and storm into an office and smash it all up, but some trade union officials have done that. What I am saying is—

Mr DANBY—They went to jail.

Ms PANOPOULOS—Please don't interrupt me. What I am saying is that just because the law says something does not mean it is always followed. You seem to have a textbook romantic view about democracy within a trade union, which is not like that of a government in collecting taxes, but it is a sectional interest. With you having published in *Labor Essays*, I am trying to ascertain ideologically, not legally, where you are coming from. I cannot really work that out, because your submission is not really a legal document. Are you, or have you been, a member or actively involved in any political organisations?

Mr Tham—No.

Mr DANBY—This isn't the House Un-American Activities Committee, is it?

Ms PANOPOULOS—No, I am just interested because—

CHAIR—Deputy Chair, I think everyone should be entitled to ask their questions without interruption.

Mr DANBY—But that is a pretty extraordinary question.

Ms PANOPOULOS—No, it is not an extraordinary question because—

CHAIR—Excuse me, Ms Panopoulos; everyone should be entitled to ask their questions freely, and not according to questions which the deputy chair or other members—or I, for that matter, when you are asking questions—deem fit to vet. We could operate on that basis, but I do not think it would be good for the inquiry or for the robust public debate on electoral matters that we are all here arguing about and defending. I think it would be an irony if there was that sort of democratic censorship.

Ms PANOPOULOS—Thank you, Mr Chair.

CHAIR—We operate on the basis that, if anyone giving evidence does not understand the question or finds it offensive, they are free to raise it and they are protected by parliamentary privilege. So that is the basis we will operate on.

Ms PANOPOULOS—Thank you. I asked those questions because your submission is made presumably as a lawyer and as an expert on these matters, not just as a citizen who has walked in off the street. So I am ascertaining the veracity of your experience in commenting on these matters and your objectivity, because some of the claims you have made are quite extraordinary, and one could objectively say they come straight out of the *Socialist Worker Online* rather than from an academic of the ilk of Graeme Orr. I could understand why you would be very grateful to have your name attached to some of the publications of Dr Graeme Orr. Is there nothing anti-democratic you see in the processes of trade unions, in the way they operate?

Mr Tham—Say that again? Is there nothing—

Ms PANOPOULOS—Is there nothing anti-democratic in the processes of trade union organisations?

Mr Tham—Sorry, I—

Ms PANOPOULOS—Just a simple yes or no? Is there nothing? Is everything they do democratic?

Mr Tham—Sorry, I am struggling with the question. It is a double negative.

Ms PANOPOULOS—Is everything that Australian trade unions do democratic? It is quite simple.

Mr Tham—Of course not.

Ms PANOPOULOS—Of course not; thank you.

Mr Tham—Can I respond, Ms Panopoulos, because you did make some pointed comments about my academic credibility and my research. I am not a member of a political party, and whatever positions I have had and whatever arguments I have made are transparent. They are all in the public sphere. Whatever arguments I have made I have substantiated with either evidence or research. If you want to take me on regarding any specific arguments, you can do that, but I actually resent any attempt to cast doubt on my academic credibility just through broad-ranging comments.

Ms PANOPOULOS—You have asked me to follow that up with a particular instance. You refer in your submission, at page 41 of our documents, to the activity of incumbents maintaining databases used for partisan advantage. At page 5 of your submission you use a footnote of a particular newspaper article.

CHAIR—Since we have all turned to it, Ms Panopoulos, you might take us to the paragraph?

Ms PANOPOULOS—The paragraph begins, ‘Incumbents already’—

CHAIR—The first paragraph?

Ms PANOPOULOS—Yes. It is the end of that sentence. You say, ‘Incumbents already enjoy very significant advantages’—

Mr Tham—We seem to be on a different page. This is the submission on government advertising?

Ms PANOPOULOS—So you are not subject to this? You did not—

Mr Tham—I am happy to take the questions on notice, as I mentioned earlier. But I should add that if there are any specific arguments, in terms of how it has been substantiated or in terms of the evidence that you find in the submission on political funding, I am more than happy to answer questions.

CHAIR—So you will take the questions on notice, but you did not author that submission.

Ms PANOPOULOS—What I am particularly interested in is the comment made regarding state resources used to maintain databases used for partisan advantage. The reference to that is a footnote, which is a newspaper article, and it seems quite strange that an opinion in an article is used as evidence for a statement made here, particularly since one of the authors of that article had a very short-lived two months working in my office. I know exactly what he had access to and what he did not, so I find it very disturbing that investigations are not made by academics in this field to verify statements. Anyone can write an opinion piece, and any academic, it appears, these days can use that as evidence, which is quite a shame. I suggest that these are very serious matters in that allegations can be made in these submissions, and perhaps people should go back to using primary evidence, not relying on opinion and hearsay of others. So if you could pass that back—

Senator BRANDIS—Is this the phoney authenticity of the specious footnote you are concerned about?

CHAIR—Mr Melham has waited patiently.

Mr MELHAM—For what it is worth, it seems to be an inarguable fact that that is what sitting members of parliament do in terms of their databases. I refer to your article in the *Federal Law Review*, volume 32, which was tabled earlier. I am particularly interested in parliamentary entitlements, which you outline from page 406 through to 408. You quote from the *Parliamentary Handbook* as follows:

It is accepted practice that material concerned with the re-election of the member in his or her electorate may be included in a newsletter but not material concerned with the election or re-election of anyone else.

In the last parliament, the Special Minister of State basically extended our ability to use our communications allowance so that we can now produce how-to-votes which include a how-to-vote not just advocating our re-election but the re-election of senators in our own state. I am concerned about the way in which parliamentary entitlements have now been expanded to the

stage where they give a huge advantage to incumbents who are seeking re-election. At the moment, you quite rightly point out that—

CHAIR—By that, Mr Melham, just for clarity, you mean incumbent members and senators individually?

Mr MELHAM—Well, individually, but there are different entitlements for senators than for members of the House of Representatives. For instance, the printing entitlement at the moment for members is \$125,000; there is no rollover provision. The communications allowance has now been expanded so that it is the equivalent of a postage stamp per elector per year. My postage allowance has gone up from \$28,000 to \$42,000, and there are rollover provisions on that. I suppose my concern is that that comes on top of public funding and other private fundraising activities of individuals and political parties. Do you see an advantage in a provision that basically says that entitlements should cut out when an election is called—in other words, at the close of writs—so that there is not a political advantage to members who are seeking re-election? In other words, we go to a scheme that says, ‘Yes, you can use those entitlements for electoral and parliamentary business, but not the shameless use of them for re-election, for party political purposes.’ In effect, if I do my mathematics correctly, depending on the timing of an election, as a sitting member seeking re-election, I could use \$200,000 of parliamentary entitlements to help in my re-election, which is an instant advantage in a 33-day campaign, on top of which comes public funding that was initially designed to cover that, and private funding.

Mr Tham—I will take that on notice, because I just have not given sufficient thought to that particular policy.

Mr MELHAM—No, that is okay. I am concerned at the way both sides of politics have expanded that aspect. There is no doubt that when Labor was in office it expanded the use of parliamentary entitlements. I have now been in the parliament for 15 years and I have seen its massive expansion, culminating in the last election with a direction from the Special Minister of State in effect saying that we could produce party how-to-votes for our electorate funded by the taxpayer, and that came within entitlements. So I would like you to address that, as well as the undue advantage that that might give to incumbents. In effect, I think it is along the lines of what your submission says at page 413 when it refers to public funding indirectly setting up barriers against newcomers, and state funding ossifying the existing party system by generally supporting existing parties.

CHAIR—Thank you very much. That concludes our questioning. We have run a little bit over time. It has been most worthwhile. I thank you for your evidence and for taking questions. Obviously, as an academic, you put out views, and forceful ones, and you are more than happy to defend them, which you have done today. That sometimes entails a bit of a robust exchange, but if you are an academic who is afraid of that, you would be in the wrong business. So thank you very much for coming.

Mr Tham—I believe in robust political democracy, so it is no problem at all. Thank you very much for inviting me to appear.

[12.05 pm]

LYNCH, Mr Philip Alan, Coordinator and Principal Solicitor, PILCH Homeless Persons Legal Clinic

CHAIR—Welcome. We have received your submission, which has been numbered 131. It has been authorised for publication. Is there anything you wish to add to that submission or correct or amend in any way?

Mr Lynch—There is nothing I wish to amend or correct.

CHAIR—As I said, we have your submission. We have received a number of submissions on this topic. I ask you to make a very brief opening statement and then we will go straight to questions.

Mr Lynch—Certainly. As you will have seen from the submission, it pertains to the issue of homelessness and voting and particularly the enfranchisement of homeless voters, having regard to the various barriers and disincentives that people experiencing homelessness confront when seeking to participate in the electoral process, the importance of meaningful participation in the electoral process, and also the identification of strategies, policies and programs to enhance electoral participation among people experiencing homelessness. You will no doubt have heard from previous witnesses that, according to the ABS, there are about 100,000 people who experience homelessness on any given night across Australia. According to the Australian Institute of Health and Welfare, there are about 154,000 that accessed homelessness assistance services during 2003-04.

Our research indicates that many of these people, in the order of 65,000, are eligible to vote, and experience multiple barriers to voting and to electoral participation, notwithstanding obviously the obligation that the Commonwealth has to facilitate participation under international human rights law and also under principles of representative and robust democracy, and also notwithstanding the importance of voting and meaningful participation in public affairs to people experiencing homelessness themselves. Our submission is based on and informed by primary research conducted with 104 people experiencing homelessness. They were people who came from the categories of primary homelessness—that is, people sleeping rough, people with no form of conventional accommodation; those in the secondary category—that is, people in crisis accommodation, people couch surfing with friends, relatives and so on; and those in the tertiary category—people who are in boarding houses or rooming houses and do not have security of tenure or whose accommodation could be said to fall below minimum community standards. I will stop the introduction there because I am aware that you have received and will have read the submission which, as I say, identifies barriers and strategies, and it is probably most effective if we have a discussion about it.

CHAIR—Thank you very much. We will proceed to questions.

Senator MASON—Were you here when we had the discussion with Professor Costar and Mr MacKenzie?

Mr Lynch—No, I was not, but I have read their submission.

Senator MASON—I will go to the heart of the matter, and I note that you have looked at amending section 96(12) of the Commonwealth Electoral Act. Obviously you have to be registered to be entitled to vote. Homeless people do not always have a domicile. What are the technical barriers to enfranchising homeless people?

Mr Lynch—You will have seen from the research that people experiencing homelessness may enrol to vote as ordinary electors; more appropriately they will or should ordinarily enrol as itinerant electors. The reality is that a very, very small minority of them enrol as itinerant electors. In part, that is an issue of electoral awareness, education and the dissemination of information, but it is also due to legislative impediments. I have identified in our submission three particular impediments to effective enfranchisement of homeless voters through the itinerant electoral provisions. They are that a person becomes ineligible to enrol as an itinerant after the expiration of one month if they have a real place of living. Many people experiencing homelessness will have a real place of living for more than one month, having regard to the definition of ‘real place of living’, which is a place that a person lives and has a fixed intention of returning to. So if a person is domiciled in crisis accommodation for six weeks, for example, even arguably if they are sleeping rough in a squat for an extended period, they will become ineligible to enrol to vote as an itinerant elector.

The other key impediment is the way in which the itinerant voter provision is drafted, such that an itinerant voter is deemed to have enrolled to vote in the electorate in which they last had an entitlement to enrol to vote, or if that does not pertain, the electorate in which they have a next of kin enrolled. It is only if neither of those categories applies that a person will be enrolled in an electorate with which they have a close connection. Given the transience of the homeless population, the last electorate in which they enrolled may well be in Western Australia. They have subsequently moved to Victoria; they have not been enrolled to vote for six years. They try to enrol as an itinerant voter and they are told that their electorate will be in Western Australia. That is a significant disincentive to voting because it renders really illusory the concept of being represented by someone who really represents you and is accountable to you. The perceived futility of voting was a key issue affecting the level of enrolment in our research.

Senator MASON—I did read that, although once again, as I said to Mr MacKenzie, I am not sure that that differs much from the general population. But we will leave that aside for a second. With the technical problem, what do you propose to better enfranchise homeless people?

Mr Lynch—In terms of the itinerant elector provisions, we would recommend amendment of the provisions such that a person is enrolled to vote in the electorate with which they have the closest connection. That approach would be consonant with the approach taken overseas, including in the United States and the United Kingdom, in efforts to enfranchise homeless voters.

Mr MELHAM—I think we did that with Norfolk Island at one stage, didn't we? At one stage, the committee made some recommendations that allowed residents of Norfolk Island that option as well; they were not at that stage tied to the division of Canberra. So there is an Australian precedent for that as well, not just an overseas precedent, if I am right.

Mr Lynch—Thank you. I was not aware of that precedent. We would suggest an amendment to enable people to enrol to vote in the electorate with which they have the closest connection. Section 96 should be amended to ensure that a person can reside or have a real place of living for a period of longer than one month before they become ineligible to enrol as an itinerant voter—I would suggest a period of, say, six months; and section 96 and also, by extension, section 4, the definitions section of the act, should be amended to ensure that ‘real place of living’ does not include somewhere that constitutes unsafe or insecure accommodation, such as crisis accommodation, transitional housing or, indeed, a squat or a park.

Senator FORSHAW—So it does or it does not?

Mr Lynch—So that it does not include those areas.

Senator MASON—When you were referring to homeless people, that conjures in one’s mind, of course, people living in a squat or under a cardboard box, but that in fact is not necessarily the majority of people, is it? There could be itinerant seasonal fruit pickers, people who perhaps work in shows, people who work in theme shows and so forth and travel around; do you include them as well?

Mr Lynch—They would not be included in the ABS methodology. We are relying on the ABS enumeration of the 2001 census, but you are quite correct: only 14 per cent of people categorised as homeless fell into that primary homelessness category—that is, people who are sleeping rough, who have no form of accommodation at all, other than perhaps a squat or a derelict building.

Mr MELHAM—I am interested in your recommendation 4 which goes to the real place of living. I asked earlier witnesses about this: what is it that we should be looking at in terms of itinerant voters? What do you say constitutes a real place of living in terms of section 4 of the Supported Accommodation Assistance Act? Can you further define that for the committee?

Mr Lynch—The term ‘real place of living’ is derived from the Commonwealth Electoral Act as against the Supported Accommodation Assistance Act. The notion of unsafe and insecure housing drawn from the Supported Accommodation Assistance Act basically refers to crisis accommodation, transitional accommodation or any other form of accommodation provided for under that act. It basically means accommodation that threatens the health, safety or security of a person and does not afford them appropriate security of tenure.

Mr MELHAM—Could we define that for a period, such as a month, similar to current provisions of the Commonwealth Electoral Act, for instance? If someone is in that sort of accommodation for a month then they would be able to be picked up under a particular section?

Mr Lynch—Such that they would not become ineligible to enrol as an itinerant elector?

Mr MELHAM—That is right.

Mr Lynch—Yes, that would be one approach that could be taken.

Mr MELHAM—What I am attempting to do is to come up with a definition and a clause that is workable, transparent, not open to abuse, but that is consistent with some of the existing principles within the act.

Mr Lynch—Recommendation 4 is drafted with that intention in mind.

Mr MELHAM—Subsection 96(7) provides:

Where a person who has applied under subsection (1) to be treated as an itinerant elector:

- (a) resides in a Subdivision for a period of 1 month or longer;
- (b) forms the intention to depart from Australia and to remain outside Australia for a period of 1 month or longer;
- (c) ceases to be entitled to enrolment;

the person shall, as soon as practicable, give notice in writing to the Australian Electoral Officer to whom the application under subsection (1) was made ...

It seems to me that if they reside in that subdivision for a period of a month or longer then that is when they can be picked up as an itinerant voter, but given that subdivision—

Mr Lynch—Yes, but they will become ineligible if their place of living or if where they are staying is considered to be or regarded as a real place of living, which in turn is a place that a person lives or has a fixed intention of returning to.

CHAIR—Give us an example around Melbourne where you and I live?

Mr Lynch—An example might be that if a person is resident in Ozanam House or Flagstaff Crisis Accommodation for a period of, say, six weeks, that is clearly a place that they are living; it is clearly a place that they have a fixed intention of returning to; they are clearly homeless within the definition of the Supported Accommodation and Assistance Act or, indeed, the ABS definition. But if they stayed there for longer than a period of four weeks—and for the most part people stay in crisis accommodation for periods of up to six weeks before they are then sought to be moved into transitional accommodation—they would become ineligible to enrol as an itinerant voter at the expiration of the four-week period or the one-month period.

Mr MELHAM—They must enrol at that address?

Mr Lynch—And would need to enrol as an ordinary elector at that address, indeed, notwithstanding that they would then change address two weeks later.

Senator MASON—That is why you favour six months?

Mr Lynch—That is why we favour six months, because it reflects the reality of people's movement through the homelessness service system, which I certainly do not romanticise as being a continuum from rough sleeping to crisis accommodation to transitional housing—

Mr MELHAM—What do they then get? They register as an itinerant voter?

Mr Lynch—They register as an itinerant voter and they do not become ineligible to vote as an itinerant voter until such time as they have been in safe and secure accommodation for a period of six months, on our recommendation.

Senator MURRAY—I want to test a proposition I put to Professor Costar earlier today. I was down in Bunbury, WA, and met a number of homeless people. Some of these people are living rough, simply because there is no accommodation; there is nothing available for them. They are being moved on regularly; they are not even resident in a park or by a creek because they are moved on. But the place they go to regularly, every day, is the place they eat at, and typically that is run by a charitable organisation. It seems to me that one possibility on the itinerant electoral status is that they should not have to confirm a real place of living for the period of the election; they could, either on a pre-poll basis or on a normal basis, be registered at the place they are eating. That is a small number of Australians. According to the statistics we are given, 4 per cent of homeless people are enrolled to vote as itinerant electors, so that is roughly 4,000. What do you think of that proposition, moving completely away from a place of living to, say, the place of—I hesitate to call it ‘eating’; what should we call it?

Mr Lynch—I will respond to a number of issues you have raised. The first is to comment on the dearth of crisis accommodation available. The demand for crisis accommodation significantly exceeds the supply of crisis accommodation. A report commissioned by the Commonwealth government estimates that an increase of 40 per cent in the funding levels of the Supported Accommodation Assistance Program would be required to meet the demand for crisis accommodation, so I certainly do not find it surprising that you saw people sleeping rough in Bunbury and unable to move into crisis accommodation. You have highlighted precisely what we would recommend in respect of the itinerant voter provisions; that is, the provisions enable a person to enrol to vote in the subdivision with which they have a connection—in this case, the subdivision in which they are receiving services, assistance, eating and so on.

Senator MURRAY—That is your recommendation 19?

Mr Lynch—That is right. The difficulty with the provision as currently drafted, of course, is that they will not be enrolled in that electorate or that subdivision; they will be enrolled in the subdivision in which they last had an entitlement to enrol. If they have moved from Melbourne to Bunbury to try to secure fruit picking work, for example, then they will be enrolled to vote if they are aware of the itinerant voter provisions—and that is a separate problem and issue—in Victoria rather than in Bunbury, where they should rightfully, on any representative and accountable basis, be enrolled to vote.

Senator MURRAY—There is a coalition proposal to close the rolls early, and I have consistently opposed that. One of my reasons has been that, without fixed terms or a fixed date of election, you raise the possibility of disenfranchising large numbers of people. However, if the coalition were to pursue that proposal, there is then the possibility that we should look at an ameliorating provision. Essentially the proposition is that people who are rational, able and responsible should get their affairs in order. Of course, there is a whole category of people for which that is difficult: perhaps young people, certainly homeless people and so on. If the coalition were to ever go down that route, perhaps there needs to be a class of people exempted and allowed more latitude. How would you react to the view that, if the coalition were to close

rolls early, the homeless should not be subject to that early close, that they should continue to have the seven days presently available?

Mr Lynch—I would certainly support that approach. I am aware of the coalition proposal, and have previously expressed to the Australian Electoral Commission the view that that would have a disproportionate and discriminate impact on people experiencing homelessness. It would effectively disenfranchise a significant number of people experiencing homelessness. The reality is that, notwithstanding the importance of voting, voting is not a really significant priority in the context of trying to get other fundamental parts of your life together—finding somewhere safe and secure to live, finding something to eat, trying to secure employment, and so on. People experiencing homelessness will most often be catalysed to enrol to vote by the calling of an election and the media campaigns that surround that. I think it is very, very important that the window of seven days remains open to enable people who would not otherwise prioritise voting, for understandable reasons, to remain enfranchised.

Senator MURRAY—Because they are self-evidently a disadvantaged community?

Mr Lynch—Absolutely.

CHAIR—I have a couple of questions relating to your submission. You have made a number of recommendations with respect to the Electoral Commission. You have obviously had some discussions with the Electoral Commission over quite a period of time. How have they gone? Are they open to some of these ideas? We are hearing from them in about a week, so it would be beneficial to get your comments.

Mr Lynch—As you would be aware, the committee made a recommendation following the 2001 federal election that the AEC conduct a targeted public awareness campaign seeking to enfranchise homeless voters. The AEC has responded to that recommendation and has worked with us and with the Council to Homeless Persons, among other organisations, to ascertain and obtain information about people experiencing homelessness, about strategies to promote homeless elector enrolment and participation, and that is progressing. Unfortunately, none of those recommendations were fully or effectively implemented in advance of the 2004 federal election. For example, we did not see a streamlined and accessible itinerant voter form produced. I am aware that the form was modified slightly a couple of weeks before the election, but the reality is that that did not give the AEC divisional returning officers and so on the opportunity to disseminate information about the forms to people experiencing homelessness. They remain quite complex and inaccessible. Certainly that is an ongoing project—the need to streamline that form, the need to disseminate information about those provisions to people experiencing homelessness and to homelessness assistance service providers so that people are enrolled under those provisions.

CHAIR—I have read your recommendations. You would agree that some of what you are proposing falls into an area of change in the law, but a lot of what you are proposing is within the purview of the AEC itself, and they can do that at any point in time, as they do with any other vote or any other awareness campaign. I just wanted to gauge from you, without putting you in a difficult position, whether you felt that that had gone too quickly or too slowly. We can come straight out of this hearing into our hearings Friday week, I think, and get a bit of an update.

Mr Lynch—We have worked closely and collaboratively with the AEC. Of course, we would always like to see things move faster, but we appreciate that the machinations of big bureaucracies can sometimes be a bit slow. Certainly the committee's recommendation following the 2001 federal election was crucial, in my view, in bringing the issue to the attention of the AEC and getting the ball rolling. I certainly think a further recommendation to the same effect would assist in the ongoing campaign and enfranchisement of homeless voters.

CHAIR—Would you think that not just a recommendation but also a timetable might be appropriate?

Mr Lynch—Absolutely.

CHAIR—I was not on the committee then, but it was a recommendation, and obviously there have been discussions going on. Given we are now in the second parliament after that, to have a 'let's get it done by' date would be good.

Mr Lynch—Timetables and targets always assist in implementation and accountability, there is no doubt about it. You are quite correct in saying that the legislative amendments are important, but equally important are the administrative measures that are required to be undertaken by the AEC in terms of dissemination of information and public education, particularly around dispelling some of the myths associated with voting, for example. Our research demonstrated that not only were people experiencing homelessness not aware of the itinerant voter provisions but they were concerned that if they did enrol to vote, they would be fined for failure to vote in past elections—

CHAIR—Can I take you straight to that research, because that is what prompted my question. When you look through it all—and I realise we are running a little bit over time—it is obvious that, even though it is a very small sample, on some issues they are very well informed, but on others the opposite is the case. In the one you just referred to, 'aware that itinerant electors are not fined for failing to vote', 92 per cent responded 'no'. So those are the sorts of issues, just dealing with the detail of current provisions, that could be conveyed by the AEC speedily.

Mr Lynch—Absolutely. Similar examples include dissemination of information about the silent elector provisions. Many people are concerned that their details will appear on the electoral roll—

CHAIR—Yes, 82 per cent.

Mr Lynch—Many are unaware of the fact that itinerant voters will not be fined, and many are unaware of the fact that if they are enrolled to vote as an ordinary elector and fail to vote due to their homelessness that that may constitute a valid and sufficient reason for failure to vote. A lot of it is about getting awareness out there. As I have suggested in my submission, some of the key vehicles for achieving that include homelessness assistance services that are appropriately resourced, and also, very importantly, Commonwealth agencies such as Centrelink, with almost 90 per cent of people who are homeless accessing some form of social security benefit.

CHAIR—That is great. If there are no further questions, we will adjourn. I thank you for coming along today.

Mr Lynch—Thank you very much for hearing me on this issue again.

CHAIR—Sorry we were running a little bit over time. As I said, we have hearings in Canberra on Friday, 5 August and Monday, 8 August with the AEC. The committee staff will make sure that you receive a copy of the *Hansard* of those hearing, where we will get a bit of an update.

Mr Lynch—Thank you. We certainly remain committed to working closely with the AEC and also the Victorian Electoral Commission. The VEC has played a key role in this issue. I would also direct you to recent amendments to the Victorian Electoral Act, which were specifically targeted at the enfranchisement of homeless voters to the extent possible, given that the Victorian roll is linked to the federal roll and, by extension, the Commonwealth Electoral Act.

CHAIR—Thank you very much. Is it the wish of the committee to accept into evidence as an exhibit the discussion paper titled, *Bringing democracy home—enfranchising Australia's homeless citizens*? There being no objection, it is so resolved.

Proceedings suspended from 12.30 pm to 1.29 pm

CLARK, Mr Tony, Business Manager, RBS.RVIB.VAF Ltd

DODDS, Ms Christine Elizabeth, Public Relations Coordinator, Guide Dogs Victoria

SMITH, Ms Joan Marie, Public Education Coordinator, Guide Dogs Victoria

CHAIR—I welcome to today's hearing Mr Tony Clark, from the merged organisation incorporating the Royal Blind Society of New South Wales, Royal Victorian Institute for the Blind, Vision Australia Foundation and the National Information Library Service. We have received your submission, which has been numbered 54 and authorised for publication. Are there any corrections or amendments you would like to make?

Mr Clark—No, thank you. I am very pleased to announce that the new name of the organisation I represent is Vision Australia, which was determined late last week.

CHAIR—I also welcome to today's hearing Ms Christine Dodds and Ms Joan Smith from Guide Dogs Victoria. The committee has received your submission, which is numbered 16 and has been authorised for publication. Are there any corrections or amendments you would like to make?

Ms Dodds—No, thank you.

CHAIR—On behalf of each organisation, I invite you to make a short opening statement and then we will move to questions. We want to hear from you about the issues of concern.

Mr Clark—Mr Chairman, I thank you and the committee for the opportunity to present today regarding the barriers that currently exist for those who are blind or vision impaired within our current democratic system, and particularly the electoral system as it now stands. To basically cast a formal vote at this point in time, you are required to fill it in on the standard print ballot paper. For those who cannot see or read that ballot paper, they are unable to do so independently. Legislation is inherently discriminatory as it now stands as it requires a formal vote to be filled out on a printed ballot paper. Despite the fact that a number of avenues currently exist, such as pre-poll voting, postal voting and assisted voting, all still require an individual to fill out the standard print ballot paper; there are no other options. As you will note from our submission, we strongly encourage the committee to consider changing the legislation so that individuals who are blind or vision impaired can actually participate. Given that the electoral process is not just related to casting a vote but also to a number of issues such as finding out about electoral rights, democracy and political based information, a much wider range of barriers currently exist.

We strongly encourage the committee to consider three things: first, to change the legislation, as already indicated; secondly, to encourage and support the Australian Electoral Commission in its efforts to educate Australians, particularly Australians who have needs for an alternative to print based information, which is currently the system; and, thirdly, to encourage and provide information and perhaps education and support to political parties to provide their information regarding their political platforms, so again people can make informed decisions. While individuals cannot access information, they cannot make an informed decision. While that

information is unavailable, individuals cannot participate equally within the democratic process. We encourage the committee to give great consideration to those three issues as it moves forward. We also believe that the opportunity to be innovative within the world is now present with the advent of electronic voting. Thank you very much.

CHAIR—Ms Dodds or Ms Smith, would you like to make an opening statement?

Ms Dodds—Just as an introduction, Guide Dogs Victoria is a not-for-profit organisation that provides a full range of mobility skills for people with a vision impairment, aged five to 95, and all of our services are provided completely free of charge. Part of our mission is to equip vision impaired people in a way that enhances their independence and freedom so they can enjoy equal rights and responsibilities in the community. We believe that the failure to provide the opportunity for secret voting infringes on this sector of the population's rights and on their ability to fulfil their responsibilities. We believe that it is discriminatory that people with vision impairment cannot cast their vote privately or independently verify their vote. It appears an unjustifiable anomaly that people with a vision impairment can arrange personal, banking and other business matters through electronic communications, but they must still rely on another person's assistance to vote. Electronically assisted voting can address the needs of all those who are disadvantaged by the current pencil/pen on paper method of voting, including all those living with a vision impairment and the thousands of people with English as a second language. The solution of electronically assisted voting seems entirely feasible and should be achievable in time for the next federal election. Previous concerns about the security of electronic voting can be assuaged as people can cast their votes using computers in polling booths. Printed ballot papers can still be generated, deposited in a ballot box and counted in the traditional way.

CHAIR—Thank you very much. We might start with some questions. If a question is directed to one witness group and the other wants to add something, please do so. I know that you have a common view on some things, but if there is anything in particular from the Guide Dogs' point of view that you wish to add, please do so. I am particularly interested in the overseas experience and the timelines; who do you think is world's best practice at the moment, and how long has that been occurring with respect to services?

Mr Clark—Based on our research, that would probably be the United Kingdom. Certainly a range of things have been done in the United States, but there have been issues. A lot of the electronic voting that has been done, of which I am sure your committee is aware, is touch screen only, which is wonderful, but you also have to be able to see the screen to be able to know what you are pressing. Also there are various related programming issues that have caused all sorts of troubles. The United Kingdom is also trialling a range of options, including voting via SMS and other ways, such as by telephone, because the reality is that accessibility relates to available options, unlike in Australia currently, where there is just one option.

Senator MASON—Currently, how do blind or visually impaired people vote? What is the usual process?

Mr Clark—You generally have somebody with you, either a friend or a family member, and you let them know your choices and they fill in the ballot paper, and either you put it in the box or they put it in for you.

Mr MELHAM—Or an electoral official.

Mr Clark—If there is no-one of assistance, an electoral official, but I would hazard a guess that a lot of people who do not have anybody to help them go to a voting centre probably will not vote, because it would be a bit difficult.

Senator MASON—Okay, so the problem is first that the vote is not private. For example, you might say, ‘I vote for X party’ and you follow their ticket, and someone does it on your behalf, is that right?

Mr Clark—Yes, that would be correct.

Senator MASON—So the vote is not private; and, secondly, if you are blind or vision impaired you may not be able to verify whether in fact your instructions have been followed?

Mr Clark—Yes, that is absolutely correct. The other thing is that you are making a decision but you often do not have the information that everybody else has about what those parties stand for, such as the various information that is passed out at the time of voting et cetera.

Ms Dodds—As an example of how things can go wrong, at the last election a vision impaired friend of mine in New South Wales wanted to cast a vote for a certain party, and there was another party with a similar name—there were several of the same words in the party’s name—and the person who was assisting them to vote cast the wrong vote. They only found out afterwards, as they were unable to look at the piece of paper and see that the correct vote had been cast.

Senator MASON—They could not verify that their instructions had been accorded with?

Ms Dodds—Exactly.

Senator MASON—We have two problems: one is the privacy of the vote and the second is the verification of the vote. Mr Clark, in response to a question from the Chairman, you spoke about overseas practice. Would the technology you mentioned in the United Kingdom answer those two issues of privacy and verification?

Mr Clark—Yes. It depends on which one you are employing, but with the electronic voting that uses speech technology, that would absolutely be the case.

Senator MASON—How does that work?

Mr Clark—An individual has a range of options when using an electronic voting machine. The system is set up in such a way that you can either use a touch screen or a keyboard. So it can be done visually, or it has a set of headphones. When you put the headphones on, there is a loop of instructions which explain the simple keyboard—it is a standard numeric keyboard.

Senator MASON—Would you need braille?

Mr Clark—No, not really. You need it raised, it needs to be tactile.

Senator MASON—Right.

Mr Clark—Many people are of the view that you need numbers. I am getting a bit off track here, but I will use the ATMs as an example. They have braille numbers, which is fine, but then you have to select cheque, savings or whatever—and how on earth do you know which one is which? So in reality the braille numbers are fairly meaningless from that point of view. So this system uses a keypad. It will read through all the various things, and it will read out exactly what is on the ballot paper. The ones that are currently available will not give any additional information. You make your selection, and it then repeats your selection. For example, you press ‘Enter’; it will then say, ‘The vote you have cast is’—and then it will read it through in your presence.

Senator MASON—So it is being verified?

Mr Clark—Absolutely, it is being verified, and then you have to press ‘Enter’ again or whatever mechanism is employed by that particular system to actually formally cast that vote.

Mr MELHAM—I know it is probably not satisfactory, but are the postal voting provisions the best way to go in terms of allowing you to fulfil what you want to fulfil? It will require assistance, but if you were able to be put on a list of registered postal voters your ballot would be automatically posted to your home. In my electorate, for instance, there is a vision impaired person who receives a postal ballot, but if she cannot get a friend to assist her, she will ring the office seeking assistance. There is a dependence on others, I know, but in the privacy of your own home you would be much more in control of the casting of your ballot than having to attend on election day with a friend or seeking the assistance of an electoral officer.

Ms Dodds—I think the issue is that people with a vision impairment should have every right that sighted people have, and that includes the right to vote independently and the right to verify their vote independently. Some people may vote differently from their spouse—

Mr MELHAM—I understand that.

Ms Dodds—and that raises issues there.

Mr MELHAM—I am trying to come to a system that is workable, transparent and tries to preserve the integrity of your vote—all of those things. It may well be that particular ballot papers will need to be sent to you—I do not know. I am trying to flesh out a workable system.

Mr Clark—I agree with Chris there, from the point of view that it does not resolve the issue of a secret vote. Postal voting for some people, with a broad range of disabilities, is a very, very good option because they are housebound. For others, however, that is not the case. There are various options that would assist various people. For example, large print ballot papers would help a certain proportion of the community, but that would require legislative change.

Mr MELHAM—That is what I am thinking. If you have those large print ballot papers that can be part of a postal ballot that is sent out to you, could that overcome some of the problems?

Mr Clark—Yes, it overcomes some of the problems to a point, and I speak from a personal point of view and also from that of a lot of my colleagues: we just like going to the voting place. It is just a good social activity. You get your sausages and go to the cake stall and all that sort of thing. While it may assist some, I certainly think it is a bit of a bandaid solution.

Ms Dodds—I think Tony hit the nail on the head earlier when he was talking about the United Kingdom's experience in that they offered a choice. Not all vision impaired people are able to read braille, for instance, so braille would not be a blanket solution. People's vision varies dramatically; some may be able to read large print and some may not, so what you have suggested, as Tony said, may suit some people but not all.

Mr MELHAM—But what I am trying to do is come up with some options within the existing framework that we might be able to get the Electoral Commission to implement so that you can then exercise the option. Not everyone has to exercise the option of having a postal vote, in braille, or whatever it is.

Mr Clark—A large print version would help some. I would hate to see what an upper house tablecloth would look like—it would have to come out in A1 or something, I suspect. That may assist some, but it is certainly not what I would call a wide solution.

Mr MELHAM—What is your preferred solution?

Mr Clark—The preferred solution is electronic. When I say that, I think it is important to differentiate between online versus offline voting. I know that there is an awful lot of concerns when it comes to online voting regarding the ability to hack in, but you can actually have a closed system. From my perspective as a user, what I want to be able to do is cast a vote. I want to be able to sit down, cast a vote independently and verify it. There is nothing stopping you from printing out a ballot paper and putting it in the system as per any other ballot paper. It is non-traceable and is counted in the same way. Obviously there are significant issues with online voting. Electronic voting gives the greatest amount of flexibility to be able to adjust and adapt a system to work with as many people as possible. For example, electronic will also give the opportunity to enlarge the screen, to change the colours, and to have it talk out to you. It could even be set up to incorporate a refreshable braille display. So somebody could bring their own braille display, hook up to it and access voting that way.

Senator MURRAY—The government will be faced with, as we are, two propositions: one is to improve what we have at present, and one is to introduce a new system of voting. Electronic voting has not been introduced for the community at large. Let us focus on what we have at present, if the government decided to stay with that and not go to electronic voting. The system tries to deal with a large number of circumstances, such as pre-poll, declaration votes, postal votes, ordinary voting on the day, and so on. Also there is assisted voting for people who, for one reason or another, cannot vote. If the cost for the policy surrounding the introduction of electronic voting was not to be received favourably by government, it would seem to me that the next best way in which the parliament could ask that sight impaired people be assisted would in fact be braille voting documents.

Now, that could either just cover one category—that is, the postal category— or it could also include braille documents in the polling booth itself. Thus, if you went into the booth, you would

be able to vote on your own account, provided you could read braille. What is your reaction to that view, that if electronic voting is not established—and I have clearly understood it is your favoured option—the braille option should be added to what is provided at present?

Ms Smith—It would not be an option for a high percentage of vision impaired people. Tony may have the percentages, but not all vision impaired people know braille. In fact, a high percentage of the vision impaired people whom I know, do not know or use braille. Therefore you would only be addressing a certain few vision impaired people.

Senator MURRAY—Do you have any documentation? We are told that the RBS.RVIB.VAF have 30,000 blind or vision impaired people registered with them. Do you know how many of those are braille users?

Mr Clark—There have been no quantitative studies to determine that. It is very important to understand that braille is used predominantly by people who are blind either from birth or at a very early age. They need it from an educational point of view, because the only way you will learn to spell is through braille. People who lose their sight at a later age, which is the vast bulk of people, typically do not learn to read braille. There are two grades of braille: grade 1 and grade 2, just to add complexities to things. Grade 1 braille is a direct representation of the alphabet; grade 2 braille is contractions, like shorthand, and using grade 2 allows you to fit more in.

There are other issues that need to be considered when using braille ballot papers. Braille ballot templates were provided for the last Victorian election because there was no ability to change the ballot paper. There were some issues around that. It was not as useable. A fair bit of research would need to be put into producing braille ballot papers. For the life of me, I could not figure out how an upper house braille ballot paper could be produced. The logistics would be very difficult. Unlike standard print where it can be reduced down to 8 pt or 9 pt font to fit into certain dimensions, a braille cell is a braille cell.

Senator MURRAY—Just so I can understand your position completely: if the government were not to introduce electronic voting, where the full ramifications would need to be considered, you would not advocate adding braille to the facilities we already have, such as pre-poll, postal votes and ordinary votes?

Mr Clark—I think braille is an excellent means for supportive information that is available, but my view is that it would not be a widely adopted solution. Blind Citizens Australia would be another good group to ask this. A lot of people who read braille do not read it proficiently. For example, I only read grade 1 braille. I have a number of concerns with the use of braille. Do not hold me to these figures, but anecdotally it is suggested there are approximately 4,000 people in Australia who read braille proficiently. They are the people who could pick up a book and read it. There are a lot more who do read braille but would not use it proficiently.

Senator MURRAY—Thank you; I understand your position.

CHAIR—You talked in your opening statement—and this will be useful for the committee's evidence and report later on—about the simple provision of information by all political parties and candidates during an election. That is a very good point. I am the first to say it is not

something I have ever focused on. Do you have any arrangements with political parties about registering certain people? Which country do you think does it better? What should we be recommending in the public interest to all candidates about what they can do? Obviously all of your constituents would get all the campaign information that is delivered to letter boxes but which is of absolutely no use to them whatsoever.

Ms Dodds—As far as we go, the only agency that seems to try to relay messages to vision impaired people well is the tax office. I do not know what experience Vision Australia has, but that is one of the few agencies that proactively try to get in touch with our clients, and I assume others.

CHAIR—What happens there? Do your clients register and then receive special material?

Ms Dodds—Yes. They basically ensure that the information is out there, that there is an electronic option in terms of doing your own tax. Also, one of the welfare agencies also provides our clients with a tape of their written material that we are expected to pass out as people request it. Out of all of the agencies with which we have contact in Victoria, only two provide that option.

CHAIR—What would you suggest that political parties should do by way of service? Should they have some sort of register?

Ms Dodds—Vision impaired people would probably be like a lot of us and not want to make it known to the world how they vote. Whatever action was taken, it would need to still protect that right. Tony seems to have more experience in the voting world than I do, but I imagine that something on the internet or email is one option, but again, for those who are not that electronically minded, perhaps involving libraries or accessible areas in the local community to make information available. I would be looking at several options rather than just one that some people might miss. If the information was provided electronically, it should be covered in another way.

Mr Clark—I think there is a range of strategies that political parties could very easily apply and are quite manageable. The first is providing information on the web so it is accessible. That would mean not just having your documents available in pdf but putting them up in Microsoft Word or rich text files. I also think there is the opportunity to produce information in different formats and have it available on request, but also to let people know that it is available on request. Thirdly, in terms of political parties that do things, the Australian Labor Party produced and distributed information to about 3,000 people through Blind Citizens Australia using a database. There are other databases available; for example, we work with the Australian Electoral Commission and distribute information to about 24,000 people around Australia in their format of choice. There are mechanisms to target people and give them information, just as we receive information in our letterboxes, and also ways for people to request information and for parties to provide information simply and easily.

Senator FORSHAW—The submission from the Blind Society states that, as voting in Australia is compulsory, it is incumbent on the government to provide the means to facilitate independent and empowered access and so on, and there is also a comment about—as you say—it being better in the UK, Canada and the USA in terms of electronic voting access. Those

countries have voluntary voting systems. I am interested in whether you have any comment and data on the proportion of people with a sight impairment who do vote. I find it somewhat ironic that the means is provided in systems where voting is not compulsory, and we have not reached that stage yet. That is a good point you make. Do you have any other observations about that issue in the context that we require people to register and vote? What proportion of people vote in voluntary systems overseas compared with what happens here?

Mr Clark—I can only speak from an anecdotal point of view from the discussions we have had with, for example, the Canadian National Institute for the Blind and the Royal National Institute for the Blind. The feedback they have regarding that issue has been very positive. Certainly there was a view that a lot of people who had not registered to vote specifically because they did not have the ability to do it independently and secretly actually registered to vote. They were empowered to vote, and they made that choice to do so. I am not sure that there is any published data on that aspect. From the Australian perspective, there are many people who vote. I can think of three colleagues—I will not do them in—who choose not to vote because they are not able to do so independently.

Senator FORSHAW—I suppose I was looking to see whether or not, as one would hope and assume, it actually encourages people to vote in non-compulsory systems when that facility is available.

Mr Clark—I believe that that has been the exact effect.

Senator MASON—You have outlined succinctly the problems with voting faced by vision impaired people. To your knowledge, do many vision impaired people not vote because of those difficulties?

Mr Clark—I can think of people off the top of my head, yes.

Senator MASON—Who do not vote because of those difficulties?

Mr Clark—Yes.

Senator MASON—Because of the privacy aspect and the verification aspect?

Mr Clark—Because they are unable to do it independently, and they are doing it from the point of view of wanting to make a stand.

Senator MASON—Do you think that they would vote if the system were changed along the lines that you have suggested this afternoon?

Mr Clark—Absolutely.

Senator MASON—Ms Dodds, is that your view as well?

Ms Dodds—I have not met someone who has purposely not voted, but the other issue is the donkey vote—and not even the donkey vote, but just voting incorrectly. When someone is able to read the document for themselves, understand the process better and make an informed

decision, there are likely to be fewer votes that do not count. People who are trying to make their voice heard can actually make it heard by knowing that they are voting the way they intended and voting for something that they are informed about.

Mr Clark—The other point also worth bearing in mind is that we have done some focus group research—not specifically on this issue but it came out quite clearly—and a lot of people, particularly older people who have lost sight but still have mobility, just scribble on the ballot paper. This is because, first, they are too embarrassed to ask for assistance and, secondly, as they do not want to ask for assistance, they cast an informal vote.

Senator MASON—Ms Dodds, are you aware of any vision impaired person not voting because of the difficulties they face at the moment?

Ms Dodds—I have not met anyone, no.

Mr MELHAM—Is there any evidence of people who have not voted on the basis that they cannot vote independently being fined by the Electoral Commission or receiving a letter asking them to explain, and what has been their response and subsequent action?

Mr Clark—I do not know their exact responses. I do believe they have been contacted by the Electoral Commission. I have a feeling that it was not pursued by the Electoral Commission.

CHAIR—Finally, Ms Smith, was there anything you wanted to raise, having heard the questions and heard some of the answers? I just want to give you a brief opportunity.

Ms Smith—I agree with everything Tony and Christine have said. It is very difficult for people to accept, particularly if they lose their vision down the track, when they have been able to have the choice of voting independently to suddenly require somebody to help them. Often I have heard the younger generation talk about how they hate having to ask their parents to help them vote, because often mum and dad vote one way and the kids want to vote differently. They feel quite pressured to vote, and then they make the comment, ‘Well, I’m not sure how they voted for me anyway.’ I am sure they voted the way they requested, but there is just that feeling that they are not capable of being counted.

Mr Clark—It is important to recognise what technology has done for people who have alternate requirements. It has really equalised the playing field and allowed people to participate in our community. It is really important in what is the founding stone of our democracy for people to be able to participate equitably. Given that there is the ability to do so now, I strongly hope that that will be taken up.

CHAIR—On behalf of the members and senators here, I thank all of you for appearing today. You will have noticed from our agenda that this is a bit of a focus of what we are looking at while we are in Melbourne. We will no doubt be in touch. The committee will be reporting later in the year.

Mr Clark—Thank you very much for your time.

[2.05 pm]

MATTIAZZO, Ms Nadia, Victorian Advocacy Officer, Blind Citizens Australia

POWER, Mr John Martin, National Policy Officer, Blind Citizens Australia

CHAIR—Welcome. We have received your organisation's submission, numbered 135, which has been authorised for publication. Are there any corrections or amendments that you wish to make to it?

Mr Power—No, but there are some documents we would like to give to the committee, if we are free to do that.

CHAIR—The secretariat staff might just talk to you. While that is happening, in order to move things along, I ask you to make a brief opening statement.

Ms Mattiazzo—First, we would like to thank the committee members for inviting us here today. To give a little bit of background information on Blind Citizens Australia, we are the peak national advocacy organisation of and for blind and vision impaired people. Our mission is to achieve equity and equality by our empowerment, by promoting positive community attitudes and by striving for high quality and accessible services which meet our needs. As the national peak advocacy body, we are primarily concerned about the human rights of people who are blind or vision impaired. We have in excess of 3,000 individual members. We have branches on a nationwide basis, and around 15 affiliate organisations that are part of our organisation.

With reference specifically to the 2004 federal election and every other federal election preceding it, we come before this committee today to assert in the clearest of terms that Australia's democracy is discriminatory because it prevents voters who are blind or vision impaired from casting an independent, secret and verifiable vote when it is evident that the technology exists to prevent this discrimination from occurring. On polling day, people who are blind or vision impaired have no option but to compromise the sanctity of their voting intentions by informing another person how they wish to cast their vote. Under section 234 of the Commonwealth Electoral Act 1918, voters who are blind or vision impaired must disclose their voting intentions to a trusted partner, friend or family member who will execute the vote for them. If these supports are unavailable, they must rely on the discretion of the electoral official present at the polling station. In 1918, one could understand why such a law was introduced into voting procedures. However, in the present climate of Australia's wealth and technological capabilities, the continuation of these practices demonstrates an open prejudice towards people who are blind or vision impaired, and calls into question Australia's democratic reputation.

To date, only the Australian Capital Territory, in their last two parliamentary elections—that is, 2001 and 2004—have provided a system of voting conducted through electronic means that allows people who are blind or vision impaired to vote independently and in secret. In our submission to this inquiry, we included firsthand comments from our members who are blind or vision impaired on how they felt when casting their vote on Saturday, 9 October 2004. If the committee pleases, I would like to read a couple of the comments. One member wrote:

I felt disenfranchised by having to tell someone else how I wanted to vote when I knew there was a way that I could have had a private or secret ballot. I'm sure most Australians think that everyone in our great democracy gets a secret ballot, and they would be very concerned if they knew that this was not the case.

Another person—a 'despondent and embarrassed' young member—wrote:

My mother filled out my ballot paper when I told her my preferences; it felt as if I was still a child and not an adult even though I was twenty. I should have been able to vote by myself had it not been for my vision loss.

I ask committee members to reflect on how they would feel if the only option they had at election time was to disclose their voting intentions, knowing that the technology was available to avoid this practice. To stop this discrimination in our voting system, Blind Citizens Australia advocates for a brand of electronic voting called electronic assisted voting. Electronic assisted voting uses a standard personal computer equipped with audio technology and headphones to allow the blind or vision impaired voter to electronically complete their ballot paper. The completed ballot paper would be printed out, which the voter could then place in a standard ballot box. In this way, a blind person could cast an independent, verifiable and valid vote.

All of the components of EAV—the computer, the headphones, the printer—would be located in a private booth. To ensure the blind or vision impaired person knew precisely what was going to be printed out, the audio-synthesised voice would read back to the voter how they intended to vote prior to finalising and casting their vote. The printed ballot paper would print face down and the blind or vision impaired person would simply fold the ballot paper and place it in the ballot box. If the voter required guidance in locating the printer or the ballot box, this should be provided. However, under no circumstances should the secrecy of voters' ballots be compromised with this assistance.

EAV has the advantage of providing a secure environment because there is no networking involved. All of the components of EAV would be stand alone. Security would also be maintained because a paper trail remains. In relation to the concern about the cost of implementing such a system, Blind Citizens Australia asserts this should be a secondary consideration when the democratic rights of people who are blind or vision impaired are at stake. Every citizen in this country deserves the right to cast an independent, secret and verifiable vote, including people who are blind or vision impaired.

When it comes to human rights—and with them the right of the individual to vote in secrecy—there is no room for discrepancy. This view has been articulated in the United Nations draft comprehensive and integral international convention on the protection and promotion of the rights and dignity of persons with disabilities. Draft article 18 covering participation in political and public life asserts, among other things, that parties recognise the political rights of persons with disabilities without discrimination and undertake to protect the right of citizens with disabilities to vote by secret ballot.

During May this year, the Victorian parliament's Scrutiny of Acts and Regulatory Committee released the final report of their inquiry into electronic democracy. Blind Citizens Australia made a submission to this inquiry and provided evidence at their public hearings advocating for EAV. Recommendation 53 of the Victorian committee's final report states:

The Victorian electoral committee, in consultation with relevant stakeholder groups, should develop and implement a system of electronic voting machines for local and general elections in Victoria. These machines should permit the casting of a private, unassisted vote for the blind and Victorians with limited vision and Victorians with low levels of English literacy.

We call upon the committee, in cooperation with the Australian Electoral Commission, to make a similar recommendation to that proposed under recommendation 53 of the Victorian parliament's Scrutiny of Acts and Regulatory Committee, and join Victoria and the lead set by the ACT. Any trial proposal of electronic voting must include people who are blind or vision impaired if our federal electoral system is serious about ending discrimination.

In conclusion, securing the voting rights of people who are blind or vision impaired in a democracy should not be a challenge or something to weigh up or think about. One would expect that, in a mature democracy like Australia's, correcting voting procedures to improve the democratic rights of its citizens would be embraced with a strong sense of urgency, leadership and purpose. The time for thinking about whether the democratic rights of people who are blind or vision impaired should be improved or not, must end. At the next federal election, we want the same rights that others have had, and we ask for the leadership of this committee to secure it.

CHAIR—Thank you very much. That was most informative and very well put together. You have heard the previous witnesses, and we have heard your statement and we have read your submission. The principles you outline are ones which all members of this committee would agree with. Australia invented the secret ballot, and we are at the point now where, technologically, these sorts of things should not be difficult. We are happy to have you along, and that is why you are here. We have had hearings elsewhere in regional Australia where there are other difficulties with voting and the whole issue of technology, I can assure you, on behalf of all members of this committee—Labor, Liberal and Democrat—will feature quite prominently in our report of what technological advances can be made with the Electoral Commission.

I will now open it up to questions. As you answer them, any other insights you can provide about how the AEC could go about road testing something in time for it to work would be good. Certainly from my point of view, cost should not be an issue in terms of people having their democratic rights. That is my view, and I am happy to state it up-front as a member of parliament.

Ms PANOPOULOS—You read out the recommendation from the Victorian committee, which included a statement about assisting voters who are vision impaired, and also there was a comment regarding those who were not proficient in English; was that the phrase?

Ms Mattiazo—Yes.

Mr Power—That is correct.

Ms PANOPOULOS—Was that part of the submission that your organisation gave to the Victorian committee?

Mr Power—No, it was only on the issue of electronic assisted voting.

Senator MURRAY—Thank you for your submission. The chair pointed out an issue we have covered in rural and remote Australia, and that is circumstances where people living genuinely in the outback on stations and that sort of thing might not be able for weather or other reasons to attend on the polling day. They suggested the opportunity should be available for them to pre-poll a vote or, if necessary, to vote from their own stations electronically and not by way of a paper ballot, because if weather prevented accessing a station, it would also prevent the mail from operating, and the mail may only operate occasionally.

With that context in mind, one of the possibilities that parliament could consider is to give vision impaired people more authority over their own vote by making available on a pre-poll basis at selected points on the basis you outline—namely, with computers which have tactile facilities and so on. It might be much easier and much less costly than trying to do it in every polling booth throughout Australia on the day of an election. Would you react negatively or positively to the idea that people who wish to vote in the manner outlined in your submission should be able to vote in the fashion you suggest on a pre-poll basis?

Mr Power—We would definitely be in favour of pre-polling—as an opening reply to that question. However, it is our baseline position that we would prefer it that electronic assisted voted be available in all polling booths, so that people who are blind or vision impaired can participate in their local community's democratic day, so to speak, when you go to the local scout hall and that sort of thing.

Mr MELHAM—What if it is in the electoral office which, on the day itself, normally handles interstate votes? We could have a facility where pre-polling takes place in the electoral office in the lead-up to an election, but on the day of the election itself, if you want to avail yourself of electronically assisted voting, like an interstate vote, you are required to go to the electoral office in a particular division. So what you would have is, in effect, about 150 polling places around the country on the day properly able to entertain this particular kind of voting, which enables you to participate on the day as well? We would introduce amendments that allow the Electoral Commission to conduct that type of voting on the day, but at the electoral office. I have 33 polling places in my electorate, for instance. I do not know that it would be feasible to replicate that around the whole of the country.

Senator MURRAY—I take Mr Melham's interjection. Is the point that he is making what I suspect—that the electoral system and the government may not be at the stage where they could introduce the sort of voting you suggest across Australia in every polling booth, which they would be required to do. So it is really a selective policy, both on a pre-poll basis and an ordinary vote on the day, but at designated polling booths which, in this case, would be the Australian electoral office for the division?

Mr Power—It is the position of Blind Citizens Australia that we would be in support of that. We see that as definitely a step in the right direction. Naturally, coming from a broad based human rights perspective in the agenda of our organisation, we would prefer that it be in every polling station, but of course we can see that logistically and in terms of finance that would be a difficult proposition. Therefore, we would be in support of any type of pre-polling situation that allowed people who were blind or vision impaired to vote in secret and independently through electronic assisted voting. I should clarify: also on the day as well, at polling stations, and at pre-polling stations.

CHAIR—That is what Mr Melham suggested?

Mr MELHAM—That is what I am suggesting.

CHAIR—In each electorate the electoral office is often the pre-poll location, for ease of simplicity, but on election day you cannot pre-poll, you can only vote interstate. So it is open anyway, and it is where the senior people of the AEC are—sometimes handling disputes that for some reason are known to happen on election day. Mr Melham and Senator Murray's point, as a start—given that the technology has not been refined yet—is to have voting at that place where you would have expert staff and the most senior staff of the AEC. As you would appreciate, on election day a host of volunteers simply come in for the day. What I think they were drawing to, without trying to put words into their mouths, was that you want a provision of a service, but there is only one thing worse than the non-provision of a service and that is an inability of people to use it on the day. So, as a start, at his office in Banks—I am not sure where it is; mine is always in Lilydale in the electorate of Casey—if it is well advertised and signposted around, that might be a good first step.

Mr MELHAM—I understand that it does not go all the way to what you want, Mr Power, but it goes partially to where you want to go. Of course, there are the other facilities of postal and pre-poll where there would be people who are impaired who do not mind having someone to assist them. That still does not preclude people from getting assistance on the day at a normal polling place by an official or a friend. In this instance what we would have is a minimum of 150 places, one per division, and obviously some in capital cities, where you could go if you did not want to be assisted. There would be a designated place that you would know beforehand that would be advertised for people to attend both in the pre-poll period and on the day itself to register a vote without assistance. As the chair says, the facilities would be there. I am attracted to the fact that senior staff are in attendance at the electoral office; you do not have staff who are just brought in for the particular day, and it does not require a massive infrastructure. In some respects, there could be an argument in terms of its cost outweighing its use in terms of numbers. Then come economies of scale but, working within an existing infrastructure and existing electoral offices, we might be able to come part of the way.

CHAIR—Could I clarify one other point that a lot of people are not aware of. Were this to be a first step, it would not be a case of your not quite having the same rights as every other voter in every respect. In fact, the pre-poll arrangement would be an extension of the right of every ordinary voter. It is a common misconception that you can pre-poll as of right. You certainly cannot. That is not in the provisions of the act—as my bipartisan expert on the electoral act will tell you, and certainly the Electoral Commission in the last election. I hope it was in every electorate, but in mine they certainly clamped down on that.

Mr MELHAM—Only in limited cases.

CHAIR—You have to absolutely be unable to make it to a booth on polling day. For instance, it cannot just be that you are going on a day trip. You have to prove it, so it is quite limited. What we are suggesting is that that be available to your constituents over and above the entitlement of ordinary voters. It would be the case that if you did not have it in every single polling booth on election day it would not be quite what you want at this point in time, although that would come,

but if you had pre-polling every day that would actually be voting opportunities that no other voters have. That is an important point to make.

Mr Power—We would definitely be in favour of that type of move forward. We would see that as a great benefit to people who are blind or vision impaired.

Senator MASON—You heard the previous evidence. Was there anything that you disagreed with from the previous witnesses?

Mr Power—First, I want to clarify that when we stated our approval of the model that you put forward, we were talking about electronic assisted voting—is that correct—at these polling stations?

CHAIR—Yes.

Ms Mattiazo—For pre-polling.

CHAIR—And election day.

Mr MELHAM—For pre-polling and on the day in question.

Ms Mattiazo—Yes.

CHAIR—What it would mean is that in an ideal world—which we do not live in—you would be able to go along to any polling booth and have available the facility you have been talking about as a first step, because things always have to start somewhere—if that were available at a location in every single House of Representatives electorate, every day of pre-polling and on election day. That is what we were suggesting.

Mr Power—Just on that clarification, yes, we are very much in support of that.

Senator MASON—Is there anything from the previous evidence that you heard with which you disagree or would like to elaborate on?

Mr Power—No, but I would like to put that question to Nadia and see if she has any comments.

Ms Mattiazo—I have some figures from the Centre for Eye Research Australia which might help the committee in relation to projected vision loss in the future. As we probably already know, over the last century the life expectancy of Australians has increased by nearly 40 years. In the next 20 years the proportion of older people over the age of 65 will double, and the amount of vision impairment and blindness will increase threefold with each decade of age. I guess by the time you are 95, if you are lucky enough or unlucky enough to get there, whatever the case may be, the chances are you will probably be blind. I reiterate that it will be an increasing issue. You will have a lot more people who will need some assistance or will need to have a different way of casting their vote than the standard print ballot paper.

Senator MASON—Thank you very much. That does help the committee. We did need to know that. I have one final question and it is a specific one: I listened with interest about how the technology available in the ACT would assist vision impaired people to vote, but you were really talking about the House of Representatives. I am a senator; so how would they go about voting in the Senate? If I can throw a real spanner in the works, how would they go with respect to voting below the line?

Ms Mattiazo—I would ask for extra time, probably. I actually would enjoy it; I would find it an excellent opportunity to be able to vote below the line. I have to say—and I will admit this freely because I guess there is parliamentary privilege—that there are times when I actually have not voted simply because I have not had somebody to assist me or I have received a postal vote in the mail and I have not been able to read it because it is in print and I cannot read standard print, and I have not got around to finding out when the due date is. All those things are advertised in the paper and they might be advertised on television, but that is assuming I am watching television at the appropriate time. So often I have just missed out through, I guess, my own fault, but also through not being able to access the material. I would find it an absolute pleasure to be able to have the choice to vote below the line and individually line up who I wanted.

Senator MASON—The technology would translate to it—

Ms Mattiazo—That would work, yes.

Senator MASON—But it could be an exercise that could take some time.

Ms Mattiazo—Yes, it might take some time, and I guess that is an issue. There may have to be some changes made. There may have to be more computers available in the particular electoral office if, for instance, it is taking too much time, or whatever. I do not know but, initially, I would vote below the line simply because I have never really had the opportunity to do that independently before. Therefore, I would find it a pleasure; maybe not the second time.

Senator MASON—It is something you only do once?

Ms Mattiazo—No, but it means that I have the ability to do that, as would you or anybody else in this room.

CHAIR—Thank you both for coming. Before we let you go, just so we have it on the record, we will take into evidence your document so it is considered with all the other papers and submissions as part of our deliberations. Is it the wish of the committee that the document handed to each member entitled ‘Blind Citizens Australia’ and presented by Mr Power be accepted into evidence and included as an exhibit? There being no objection, it is ordered. Thank you very much for attending. We will certainly be pursuing some of those issues and will make a note to raise them with the Australian Electoral Commission when we meet with them in a couple of weeks.

[2.45 pm]

DOYLE, Mr Michael Patrick, Private capacity

CHAIR—Mr Doyle, welcome. We have received your submission and it has been numbered 13. Are there any corrections or amendments you would like to make to that submission?

Mr Doyle—No, I do not have any changes.

CHAIR—I invite you to make a brief opening statement for four or five minutes and then we will open it up for questions.

Mr Doyle—Thank you for the opportunity to attend here today. I would like to talk on a couple of issues. I know that it is unlikely that you will decide to recommend voluntary voting. Nevertheless, I sense a growing number of politicians are feeling uneasy about compulsory voting. I sense they know, as I do, that the arguments against voluntary voting tend to verge from the illogical to the ludicrous, whilst spending some time in between with the ridiculous. One argument is that the Labor Party, the Liberal Party or both would use their resources to bus their supporters to the polling booths so that the party that spent the most effort in getting voters to the booth would gain a huge advantage. Simplistic nonsense, of course. If you imagine that offering a lift to take someone to the polling booth is going to sway their vote or having your dwindling party resources arrange appointments, to give car rides to potential—and I mean potential—voters to take them to and from the booth will win you the election, then I may as well go home now.

Then we have the old, ‘If we had voluntary voting, it would be like the United States, where there are such low numbers voting.’ Now, this is an embarrassing argument for any supporter of compulsory voting with a modicum of intelligence. It is as daft as my saying that because the vast majority of democratic nations have voluntary voting, we should have it as well. Our culture, our system, our federation may have similarities to the United States: similar, yes, in the same way that chalk and cheese can both be white. We are far more like the UK and New Zealand, both of which have voter turnouts of 70 per cent, often more. I would remind the non-government members of this committee that, unlike here in Australia, those nations have had Labour in government for the last decade or so. Voluntary voting in the UK and New Zealand does not seem to swing the balance much to the Tories.

Then there is the ‘voluntary voting would increase the chance of electoral fraud’ argument. The logic is that, unlike in other nations, our political parties are corrupt and would fall to the temptation of using impersonation, where the same person uses the votes of people opting not to vote. How on earth could anybody be certain as to who is going to vote under a voluntary system? The implied corollary is that, under our compulsory system, we have no opportunities for electoral fraud. At first glance, the old ‘compulsory voting means that everyone has played a part in the electoral process’ argument makes sense. The logic is that ‘people feel that they are part of the loop and matter’. That is a quote from previous members of this committee. I mean, seriously, how do they know? Presumably, as in the film, *The Castle*, we are talking about ‘feeling the vibes.’

CHAIR—Mr Doyle—

Mr Doyle—I do not have much more.

CHAIR—You have not?

Mr Doyle—No.

CHAIR—I was just going to say that we want to leave time for questions, that is all.

Mr Doyle—Okay; I am two-thirds through. I know when I last ‘felt the vibes’—that was when handing out how-to-vote cards. I have seen people who attend polling booths looking decidedly undemocratic; they are furious that they have to queue, grab the cards and vote without any real consideration. I have no idea of how much consideration, but under a voluntary system, I think we can be 100 per cent certain that people vote with consideration.

Then we have the ‘It’s not actually compulsory to vote’ argument. I address this in the submission, but I do want to say how sad it is that some politicians in all parties parrot this idiocy. It is sad because the community relies on our politicians to create legislation—legislation which citizens are expected to respect and obey, yet we have senior politicians telling us that, although the law says one thing, it is okay to do another.

I have two more quick points: it has been said by previous and current members of this committee that there is a misunderstanding among the community as to whether we have compulsory voting. I agree, there is. So is it of concern that some people misunderstand the voting process? I think so. If you do too, I respectfully suggest that there is a requirement for this committee to make recommendations that would reduce it. Lastly, I sympathise with this committee: you have a very difficult task. You are required to travel all over Australia, often listening to fanatics such as me, and it must be very hard. But I think the hardest thing that you will have to do is not to choose to stay with compulsory voting; it will be to write your report, in which you will have to defend the illogical, the ridiculous and, yes, the indefensible. I wish you luck.

CHAIR—Thank you very much, Mr Doyle. Thank you for that statement, and we have your submission. You may or may not be aware that, in a private capacity and not as chair of this committee, I have publicised my view in favour of voluntary voting. So whether you were or were not aware of that—

Mr Doyle—I was, yes.

CHAIR—That is for a range of reasons that are on the public record. The committee is always looking at longer term issues. We are happy to hear submissions on this subject, but from a government point of view—and I am a member of the government as well as chair of the committee—we have also said we will not be altering it before the next election because we did not go to the last election saying that we would do so. So it is in that long-term context. I am happy to see a debate on it, philosophically, but my longstanding view has been in favour of voluntary voting, and that is on the public record. I respect other members and senators from

both parties who have different views on a range of topics. I will let some of those ask you some questions, and I might ask a couple at the end.

Mr MELHAM—I am on the record as supporting compulsory voting. You made reference in your opening remarks to former members of this committee. I know that Senator Robert Ray, as a former member of this committee, is one who is always on the record as saying it is not compulsory voting, it is compulsory attendance, and then it is up to you as to whether you actually register your vote. What is required under the Commonwealth Electoral Act is that you go along and get your name marked off; whether you register a vote that counts then becomes a matter for you. The statistics show that since the introduction of compulsory voting, it has hovered at around 90 to 95 per cent attendance, with around a 95 per cent formal vote, depending on the nature of the electorate et cetera. It seems to me that that is a pretty good acceptance of the system and that people have within that system the discretion if they do not want to register a preference for a candidate. It is still a small price to pay for our democracy, which is one of the few—I think there are only three in the Western world—that for the whole of the last century had its parliament elected by the people and did not have its election suspended.

Mr Doyle—That is where we differ.

Mr MELHAM—I respect where you are coming from.

Mr Doyle—You have hit on the crux of the argument. You say that the only requirement is to attend the polling booth and have your name crossed off.

Mr MELHAM—That is what the Electoral Act requires, and if you do not, you are eligible for a penalty.

Mr Doyle—No, I beg to differ.

Mr MELHAM—You then have in most instances—although we have just had submissions from people representing the visually impaired—the opportunity, in the privacy of the polling place, to register or not register a vote, and then drop that ballot paper in the ballot box.

Mr Doyle—The Australian Electoral Commission puts out a frequently asked questions sheet, and the first question is: is it compulsory to vote?

Mr MELHAM—The answer is yes.

Mr Doyle—Yes.

Mr MELHAM—What I am doing is—

Mr Doyle—It is really clear-cut.

Mr MELHAM—I am just using Senator Ray's terminology that he has argued previously, which you picked up in your opening remarks, that it is not really a compulsory vote. When you look at it, it is a compulsory attendance where you get your name marked off, and whether your vote counts is then a matter for you. So those who have the philosophical objection to voting can

exercise that in the privacy of the polling place by, for instance, dropping in a blank ballot paper, of which we get many. Indeed, the Electoral Commission has had a number of studies of the informality of a vote, and a good percentage of that is blank ballot papers; some is ticks and crosses; some—

Mr Doyle—Yes, but isn't there a penalty for failing to vote?

CHAIR—Mr Melham and I come from different sides on this, and we have been on *AM* and I have been arguing your case and he has been arguing against it, but he is right in as much as once you get your ballot paper—

Mr MELHAM—And your name ticked off.

CHAIR—and you get your name crossed off, what you are required to do is put it in the ballot box, and that is it. I concede that as someone who is in favour of voluntary voting.

Mr DANBY—You have to put it in the ballot box, do you?

CHAIR—You are not meant to walk out with it, no. But it is very hard—

Senator FORSHAW—Almost 100 per cent of people do that. You might find one or two—

CHAIR—Once they have got there, yes.

Mr MELHAM—Given your philosophical objections, what I am saying is that a lot of the objections you mount can be dealt with in the privacy of the polling place where you can make a personal choice as to whether you actually want to have an informed vote in a particular way, or whether you want to then not exercise a vote by putting in a blank paper. So what I am arguing is that, frankly, the current system allows you your conscientious objection, because no-one is standing over you making sure that you vote in a particular way or that you actually register a proper vote.

Mr Doyle—I do have a philosophical and conscientious objection. However, leaving that to one side, I think—

Mr MELHAM—You do not think you should be required to attend?

Mr Doyle—I agree with you in that there is a misunderstanding in the community on this point. Whether it is a huge misunderstanding or whether it has any significance is for you to decide.

Mr MELHAM—I think 98 per cent of people have that perception. The reason I have just clarified it for you is that, in your opening statement, you pointed to it, and I know it has been a catchcry of Senator Ray in past hearings where we have had people like Dr Amy McGrath submit to us and—

Mr Doyle—I am sorry, you have not clarified it for me. I believe that I understand it with clarity, and I still believe that the situation is that we have compulsory voting.

Mr MELHAM—Let me say this to you: we have compulsory attendance; whether you actually register a proper vote—

Mr Doyle—Well, the—

Mr MELHAM—Electoral figures—

Mr Doyle—The Electoral Act has wording, a subheading, ‘Compulsory Voting’.

Mr MELHAM—Yes, I understand that.

Senator FORSHAW—Mr Doyle, do you believe that compulsory voting means that you actually have to fill out a ballot paper?

Mr Doyle—Yes.

Senator FORSHAW—Well, that is the argument here.

Mr Doyle—Yes, it is.

Senator FORSHAW—It is not. Compulsory voting means turning up at the polling place, having your name ticked off and being given a ballot paper; that is what it means.

CHAIR—As I have said to you, I have written about and spoken in favour of voluntary voting, and I do so for philosophical reasons, but let me put these two points: would you acknowledge that one of the features peculiar to compulsory voting is the donkey vote?

Mr Doyle—Yes.

CHAIR—Inasmuch as when someone effectively just runs straight down the ballot paper?

Mr Doyle—Yes, certainly.

CHAIR—That does not happen in voluntary voting—it may well happen, but it certainly would not happen to the same extent because, by virtue of the fact that someone registers a donkey vote, they are registering really their lack of care and the fact that they would rather not be voting. In certain House of Representatives elections throughout our history, we have had seats decided by, I think, 14 votes once, and certainly by less than 60 votes—whichever candidate happened to be from the major party highest on the ticket. Compulsory voting could well have decided the election.

Mr Doyle—Very likely, and this has impacted on the type of government we have sometimes. I believe it is unfortunate that the votes of people who blindly follow a how-to-vote card that is stuck in their hand without any real consideration outweighs the votes of other people who have taken a long time to consider their vote, whether they be Labor supporters, Liberal supporters, Democrats or Nationals supporters.

CHAIR—You mentioned the United States. I would contend that the US system is not the ideal comparison at all. It is very difficult to register; you have to register a long time ahead; their elections are held on a Tuesday; and their elections are for everything, which makes it a fairly cumbersome process, depending on where you live. New Zealand has voluntary voting but compulsory enrolment. That is something I have been attracted to, fully acknowledging that compulsory enrolment itself is still an infringement of liberty but, in my view, a pedantic one.

I will give one example from the last election, without trying to be controversial. In the US system you could have a group of potential voters who were not interested in the political process; they might not like the candidates or for whatever reason had decided not to register. If an issue had arisen in the last week of that election campaign that motivated them to vote, they would have been unable to vote because they had not registered at an earlier date. Under the New Zealand system, because of compulsory enrolment, right up until 6 pm on election day they could say, 'I've decided to vote,' and they would be able to vote. The best example is an issue that arose at the last minute in the last election campaign concerning the Tasmanian forest industry. Under a voluntary system there might have been a group of people who might not necessarily have voted in the previous election but, for special reasons because the issue was directly related to them, would have determined to vote, which they did. How do you feel about that New Zealand process?

Mr Doyle—I think I understand what you are saying. Compulsory registration and voluntary voting seems to me to be the ideal.

CHAIR—I was interested in that because there are as many people in favour of voluntary voting who do not like that New Zealand position, which I think carries it to extremes.

Mr Doyle—It seems to be the democratic way. There are some people who have argued that there should be a little box at the bottom of every ballot paper saying 'none of the above'. It would be an improvement on the present system if you could say that.

Mr MELHAM—You could put in a blank ballot paper.

CHAIR—Well, the ballot eventually elects somebody, and you cannot elect somebody who does not exist.

Mr Doyle—It still takes a conscious decision to put a cross in the 'none of the above' box.

Senator FORSHAW—Are you saying it is not a conscious decision by a voter who puts a blank ballot paper in the ballot box, or who writes a message across it which I will not repeat?

Mr Doyle—That is a conscious decision, yes. They are saying that they do not want to be part of the process; that is a conscious decision.

Senator FORSHAW—Or they may not want to cast a preference for any of those people?

Mr Doyle—But they failed to vote, as far as I am concerned.

Senator FORSHAW—That is where I differ with your interpretation of the law, but we will leave that for another day. One could take your argument to a logical—you might say it is an illogical—extent, and that is to say: why have voting at all? You would probably say that that is inconsistent with the concept of a democracy where the people are obliged to participate in a process of electing their representatives. From a philosophical point of view, because your arguments are, as you say, philosophical, why have voting?

Mr Doyle—Because we are part of a democratic parliament.

Senator FORSHAW—Yes, and what does a democratic system mean? Doesn't it mean reflecting the will of the people?

Mr Doyle—It does, indeed. But I believe if you are compelling people to attend polling booths then it is not by their free will.

Senator FORSHAW—This is where I differ from you, and my position is clear. I obviously support compulsory voting. The issue then becomes how you best reflect the will of the people, because you must have some system to end up with representation in a democracy. Under your model, it is conceivable—it might be totally ridiculous but it is conceivable; and you have classed some of the arguments in favour of compulsory voting as ridiculous—that nobody might actually turn up to vote. In a local government area or in a polling booth, no-one might actually turn up to vote.

CHAIR—It might be lack of interest.

Mr Doyle—Yes, I know. Taking it to the other extreme, being just as ridiculous, you could have the situation where 99 per cent of the people who attend polling booths vote illogically, could not care less and have no interest whatsoever.

Senator FORSHAW—You said earlier that in the UK it is something like 70 per cent who vote?

Mr Doyle—Yes.

Senator FORSHAW—I think you are wrong. I think you have actually doubled the figure. I think the last election had one of the lowest turnouts ever—

Mr MELHAM—Sixty per cent at the last election.

Mr Doyle—Sixty per cent; that is interesting, I am glad you brought that up, actually. In the 1950s when the Tories won power—

Senator FORSHAW—Sorry, the previous one, I meant.

Mr Doyle—the electoral turnout was of the order of 80 per cent. Over the years it has decreased, and as it has decreased, the Labour Party has won government. You can draw your own conclusions.

Senator FORSHAW—My apologies, it did go up, but it reached one of the lowest votes in recent elections. But it is a first-past-the-post system, so that is a different argument again.

Mr Doyle—Yes, a different situation.

Senator FORSHAW—But in many instances, one can demonstrate that voting can be as low as 30 to 40 per cent. My question then is: how do you respond to the argument that, if that is what voluntary voting could possibly produce, it does not reflect the will of the people? It does not give a mandate, if you like, to a government compared with the system we have where, at the end of the day, despite arguments at the margins, people say that the system effectively results in a government that is reflecting the will of the people who have voted?

Mr Doyle—The figure I have is that 61.5 per cent turned out in the UK, and I think we can be absolutely certain that those 61.5 per cent of people voted with a deep consideration—

Senator FORSHAW—But in the US it was 40 per cent or thereabouts.

Mr Doyle—Well, we do not know.

CHAIR—I might ask you what the New Zealand figure is, just in fairness, because he is advocating the compulsory enrolment model.

Mr Doyle—I have 83 per cent here.

CHAIR—It does lift it significantly.

Senator FORSHAW—That may be the case, but a lot of the argument is not about compulsory enrolment either.

CHAIR—No, that depends on—

Mr Doyle—The problem with compulsory—

CHAIR—He said that is the model that—

Mr Doyle—With compulsory voting, we do not know how many people give consideration to their votes.

Senator FORSHAW—To my mind that is the hypocrisy of the argument—that you could argue for compulsory registration but non-compulsory voting, but that is my philosophical view.

CHAIR—There being no further questions, thank you, Mr Doyle, for making a submission and taking the time to come along. If those figures that you were quoting are not in your submission, feel free to make a supplementary submission, and you can do that either today or with the secretariat staff over the coming days, just so that your side of the argument is put.

Mr Doyle—Okay, thank you.

Proceedings suspended from 2.59 pm to 3.17 pm

LEWIN, Mr Stanley John, Private capacity

CHAIR—Welcome, Mr Lewin. We have received your submission, which has been numbered 29, and which has been authorised for publication. Is there anything you wish to correct, amend or add to in any way?

Mr Lewin—No, there is nothing to amend. I just got the feeling that the way the electoral office was operating was to say, ‘We don’t really care whether you vote or not,’ and I have been getting the brush-off. That was my concern.

CHAIR—We have read your submission. We have had a number of hearings already, some of which, naturally, relate to the conduct of the election with respect to the Electoral Commission. We have had hearings in regional Queensland where there were well-known problems with postal voting generally; that is, with ballots not getting to people, or applications not being completed, where there was a problem with their distribution. In the course of those discussions throughout our inquiry, the very issue you raise has come up from time to time. Given that you were the first to put in a submission on that issue, we wanted to hear directly from you here in Melbourne. Could you take us through some of that?

Mr MELHAM—Mr Chairman, I do not know whether the secretariat has a copy of one of the postal vote applications, but it might help if we give a copy of one of those to the witness so that he could talk us through it.

CHAIR—That is a great suggestion. Could Mr Lewin be provided with a copy of one of those.

Mr MELHAM—Is that similar to the one that you complained about?

Mr Lewin—That is the one I was given.

CHAIR—Asked to complete, yes.

Mr Lewin—I have to say that for 40 years I have been involved as a returning officer for federal and state elections, and for the last 30 years I have had a staff of 12, so I am familiar with the postal vote routine within the polling booth. It is only since I have come to Melbourne that I have not been involved with federal or state elections in that capacity. As soon as the elections were announced, I contacted the divisional officer at Kooyong, and he told me he would send out the form, which I received. On the Saturday prior to the elections I was due to go overseas. On the Monday I telephoned the office to find out what had happened to my application for a postal vote, and the receptionist virtually tried to talk me out of casting a vote, saying, ‘You’ll be out of the country on the day of the elections, there’s no need for you to do it, it’s going to involve a lot of time.’

Mr DANBY—Was this the Monday before you were leaving on the Saturday?

Mr Lewin—Yes.

Mr DANBY—You were speaking to the divisional office of the AEC?

Mr Lewin—I was talking to a receptionist; I cannot remember whether she put me through to an office staff member, but it was in the Kooyong office on the Monday prior to the election. So she virtually gave me the brush-off and I objected to that. Then she told me the ballot papers that I had to fill in had to be printed and I should receive them on the Wednesday, which I did. It was like this one that is in front of me. I filled it in and posted it, but from the time I dropped it in the mailbox to the time it was received in the electoral office, every Tom, Dick and Harry knew that I was going to be out of Australia on that particular weekend, knew where I lived, and everything else about me—

CHAIR—And knew that you were voting by postal ballot?

Mr Lewin—Yes.

Mr MELHAM—There is a second point I would like to raise at this point, as well. Correct me if I am wrong, but I think in previous elections there was also a second envelope that you could put your ballot paper in, whereas in this election I think you only had the one envelope, didn't you?

Mr Lewin—I think so, but as I said, I was a returning officer, and if my memory serves me right, when they delivered their postal votes to me at the booth, it was in a plain envelope, and I then passed it on in the package of absentee votes in the bundling process to the electoral office concerned.

Mr MELHAM—As I said, my recollection is that in previous elections people had an envelope to put their ballot paper in, and then put it inside the postal ballot, but this time there was only—

Mr Lewin—Just this.

Mr MELHAM—this particular document and no other. I had complaints in my office about the privacy of the actual ballot. I was just interested; your particular complaint is not necessarily that you were missing another envelope to put the—

Mr Lewin—It is the privacy.

Mr MELHAM—It is the privacy aspect of that. So what do you suggest—that they revert to the previous position where that sort of material was—

Mr Lewin—Yes, I would say that a plain envelope be attached in the package when I receive my ballot papers and everything else, so that there is privacy, and it is just posted in an ordinary way. As I said, anyone could ransack the house while I was overseas; they knew I would be away.

Mr MELHAM—I do know that when I was scrutineering in the federal seat of Parramatta, there was an instance where the officials had to be pulled up because of the way they were unfolding the ballot papers and the name was in view. Again, it was just a procedural mistake

that only occurred for about 30 seconds. But your preference is to go back to the old system; is that the situation?

Mr Lewin—Yes. This is just a slap in the face to our privacy laws. There should be a plain envelope also provided so that either I deliver it to the voting booth, to the officer in charge, or I put it in the mailbox for it to be posted.

Mr MELHAM—Are you saying that that is a cost that the Australian Electoral Commission should be prepared to bear in view of the privacy aspects? With respect to an argument from the Electoral Commission that they are doing this to save cost, I do not want to verbal you, but your view would be that in this instance the privacy of the vote outweighs the cost of an extra envelope?

Mr Lewin—Yes, I agree with you in that respect. The privacy factor is more important than the postage stamp.

Mr MELHAM—The postage stamp would not be any different. What you have is—

Mr Lewin—But I am talking about the extra envelope.

Mr MELHAM—But you would not have your details revealed on the envelope through the mail?

Mr Lewin—That is right, yes.

Senator MURRAY—I always like submissions which agree with my point of view! Just to explain, I am a silent elector, and I also have a silent phone number. In this case, I had exactly the same problem: not only was it exposing details which I regarded as personal on a publicly available document, but also it was detailing a phone number which is silent. I can imagine many people—you, single women and others—being offended by this. I agree with you: the only solution is a second envelope. I put it into a second envelope and posted it off, and marked on the outside of the second envelope that there was a ballot paper inside. You did not do that? Why did you not do that?

Mr Lewin—The thought that occurred to me on privacy did not come until I had dropped it in the mailbox. It was probably on the Thursday that I mailed it, and I was leaving the country on Saturday. I run a business, so I had to get everything tied up with that. You are right in what you say: I should have provided another envelope but, as I said, the thought did not occur to me until I had dropped it in the mailbox.

Mr MELHAM—Did you get a reply to your letter of 1 October addressed to the divisional returning officer?

Mr Lewin—No.

Mr MELHAM—So you have never had a formal response?

Mr Lewin—I wrote a letter to the returning officer, and to the member of parliament—

Mr MELHAM—Yes, I saw that, dated 1 October. So you have not had an acknowledgment or a reply from the electoral officer to your letter?

Mr Lewin—No, none whatsoever.

Mr MELHAM—Okay, that is something we can follow up.

CHAIR—It was forwarded to us by Mr Georgiou as well, who knew that you wanted it to be passed on to us. That is why you were asked here today.

Mr Lewin—That is right.

Senator FORSHAW—Thanks for drawing this matter to our attention. I fully appreciate what you have put. Your concern about this information becoming publicly available when the form could be easily put in an envelope and sent back is certainly a legitimate one. I want to be the devil's advocate for a moment and put a proposition or two to you to test that out. I note one of the concerns in your correspondence was that people could find out that you were away from home.

Mr Lewin—Yes.

Senator FORSHAW—What I would put to you then is: what would be your response to the argument that, even though that is the case, there are many other ways they can find out through a process anyway? For instance, you have to make arrangements at the post office if you are going away for an extended time, or with someone else to collect your mail. At other points in the chain, people can become aware, even if they received your postal vote application in an undisclosed form, in an envelope, and that could be quite a number of people. It is not just the person who opens the mail; it might be—

Mr Lewin—The person who delivers it or sorts it.

Senator FORSHAW—Yes, and the person who registers it and so on. You understand the point I am putting to you: your concern seems to be a legitimate one but it may also be said that that is something that can occur throughout the process in any event?

Mr Lewin—If you look at the breaking and entering point of view that could have happened while I was away, that could happen while I am here now, because there is no-one in attendance at my home. That is a risk you run. But when it is publicly made known that you are away, there is a greater risk. If the insurance company were to find this type of thing, they might jib about paying because of the fact that everyone knew I was away. With respect to the post office and getting the mail redirected, I get it redirected to another address, so whether I have changed it or not—

Senator FORSHAW—Yes, but with returns of applications for postal votes, they can come in in bulk through the postal system, so it will alert a thief or whoever in the postal system. They could work out—

Mr Lewin—They could do that, yes.

Senator FORSHAW—I am not trying to dismiss your argument; I am just looking at those other aspects that could be argued in order to say that there is a risk in any of this at some point in time. Why should we worry about going to a lot of expense if that is the case?

Mr Lewin—Yes, I suppose you could look at it like that. As I said, I was a returning officer in a polling booth, so we would handle all these postal votes. I could ring up people right, left and centre and say, ‘So and so is away, there’s a job to do tonight or this weekend, get it over and done with.’ But if it came back to me, I would be held responsible. I feel that a greater need for privacy has to be observed in the light of all these privacy laws we have now. Whether it was the fault of the clerk for forgetting to include the envelope, or whether it was an administrative process that was adopted for the elections, I feel that something should be rectified so it does not happen next time.

Senator FORSHAW—In any event, we know there is a way it can be dealt with, and at least it removes that one avenue of concern.

CHAIR—Are there any further questions?

Mr Lewin—I would like to make the comment that no-one took me up on the fact that I got fobbed off by the office staff at the returning office.

Mr MELHAM—No, we are going to take it up with the Electoral Commission.

CHAIR—That is right. Mr Melham pointed out that we will take up the fact that they have not replied to your correspondence, and implicit in that were these other issues. I should have mentioned at the start that we certainly will be taking that up. There is a range of issues that we want to raise with the Electoral Commission; this is one of them. We had some hearings with them initially, but we are having a full one-day hearing with them in Canberra on Friday, 5 August, and this issue, along with a number of others to do with postal voting, will certainly be taken up. Have no doubt about that; the issue has been raised anecdotally and we wanted to hear from one witness, and that is you, so you are the witness, and it will be taken up in Canberra with them.

Mr MELHAM—That is why we hear from them at the end of the process as well. They have officers who monitor the transcripts and the submissions to the committee, and generally they come to us and we question them in that wrap-up procedure to try to get responses to the issues raised.

CHAIR—They will certainly be aware of your submission because they follow all of the submissions very closely, and they are publicly available as well, as you probably appreciate.

Mr Lewin—Very good.

CHAIR—So that is where it is at. I did not want you to think that we were not going to follow it up; far from it. You have articulated these matters with great clarity, and they are quite straightforward. I will summarise them in case we have missed anything: there is a lack of privacy; they should have the proper envelope; and when you complained about it, you did not receive satisfactory service.

Mr Lewin—That is right.

CHAIR—Okay. Nothing further?

Mr Lewin—As a side issue, we were in London and Edinburgh on the day of the elections, and everyone who found out we were Australians were interested in knowing the results and were keen to know what would happen. So there was great interest in what was happening in our elections on that day.

CHAIR—I have one further question before you depart: was your letter to the Electoral Commission in a single envelope, or was it enclosed?

Mr Lewin—A single envelope.

CHAIR—So it was a separate letter; you did not enclose a letter with your postal vote?

Mr Lewin—No.

CHAIR—You wrote a letter similar to what we have here as your submission, being your—

Mr Lewin—I did the three letters at the same time.

CHAIR—Okay, so the letter we are looking at is the letter, and that did not go in that envelope? Sorry, we have a copy of your letter to the divisional returning officer.

Mr Lewin—That was posted separately, on a separate day; that was posted in time for the mail to be cleared at 4.30. I then went home and—

CHAIR—Just in a normal envelope—

Mr Lewin—wrote the letter after I posted this.

Mr MELHAM—That is what I took to be the case.

CHAIR—You have not received anything back at all?

Mr Lewin—No.

Mr MELHAM—Even though you say ‘attached to the postal votes for myself and for my wife’—that is what your letter says. We might show you the letter we are talking about.

CHAIR—We just want to clarify how they received the letter.

Mr Lewin—In that case, I must have posted the letter at the—

CHAIR—In that—

Mr Lewin—Put it in with the ballot papers. So it was quite possible, then, that that came through the system that way. An office staff member may have just filed it aside and it ended up in the shredder.

Mr MELHAM—Well, that is what we will need to—

Mr Lewin—That is what could have happened.

Mr MELHAM—check out, because it may well be that, as a result, if you have attached that with your postal ballot, it might be one of the reasons you have not had a reply.

CHAIR—It might be an automatic—

Mr Lewin—It probably went through the shredder.

Mr MELHAM—We just need to check that.

CHAIR—Okay, we will follow that up, but notwithstanding that, there is the other issue when you telephoned them as well.

Mr Lewin—I did indicate in this letter, ‘I have not used the facility of a reply paid envelope as provided by the post office’—I have ‘office’ there, which should read ‘post office’. So there was that comment regarding another envelope.

CHAIR—Thank you very much. As I said, we will be hearing from the Electoral Commission on Friday, 5 August, and obviously when our report comes out, as a matter of course, the secretariat staff will make sure you receive a copy of that report. Anyone who makes a submission will receive a copy.

Mr Lewin—Very good. Thank you very much for giving me this opportunity.

Proceedings suspended from 3.37 pm to 3.47 pm

COUSLAND, Ms Alison Gwendoline, Private capacity

CHAIR—I welcome Ms Alison Cousland to today's hearing. The committee has received your submission, which has been numbered 30 and has been authorised for publication. Are there any corrections, amendments or additions you would like to make to the submission?

Ms Cousland—No, thank you.

CHAIR—We have read the submission. I invite you to make a brief opening statement and then we will move to questions.

Ms Cousland—I lived overseas for a long time and I came back to Australia to find a new layer of bureaucracy in the form of different identification, earning 100 points for different things like Medicare and bank accounts et cetera, and when I went to vote I did not have to show anything. All I was asked is, 'Do you live at this address?' On the day of voting, I could have been anybody. I was stunned. That is why I wrote to you.

CHAIR—I will just flesh through some of the issues first. We have received nearly 170 submissions, and we do not hear from everyone, but you were chosen because you had made a submission on an issue to do with voting in which we are interested. You would be aware also that the lack of requirement for identification really applies at enrolment level. Just so that I am aware of your position, are you advocating that there be a simple identification requirement along the lines that is required in everyday life—even when hiring a video—when you re-enrol to vote and on election day?

Ms Cousland—I did not think about it when I was re-enrolling because that was in the first couple of months of returning to Australia. However, I did ring my local electoral office last week just to check, and I realised then that all I really had to do was state that I was eligible to be put on the roll, and have that declared in front of somebody else who was on the roll—all of whom could be made up. So I was a bit stunned to find that. But the point of my email related to voting day. In the various primary schools, I guess there are lots and lots of electoral lists, and it is just a matter of saying, 'Yes, I live there.'

CHAIR—Just as a further point of clarification—not that you would do this—your point is that you could say you are anybody whom you know, or vice versa, in the electorate in which you live, which would be—

Ms Cousland—Good question!

CHAIR—Isaacs?

Ms Cousland—Maybe; I have only voted once, but, yes, I think it is Isaacs.

CHAIR—It would be a suburban seat, and like in my electorate, there would probably be 35 or 40 polling booths. Your point is that someone who knew you and knew where you voted could conceivably go and vote at all the other polling booths, and that would not be discovered

until after election day. You would then get a letter from the Electoral Commission asking why you had voted 35 or 40 times, to which you would attest that you had not, and that someone else must have. That would probably be the beginning and the end of it, but the one thing that would not alter would be that all of those 35 or 40 votes would count.

Ms Cousland—Yes, and I am not convinced that, if there is not an identity check, that dead people are still not voting. I would think, if I had bothered to go down to Somerville on voting day where my mother used to live before she died, I probably could have voted in her place too. If the only question is, ‘Do you live at this address?’ I could have said ‘yes’.

CHAIR—It is good that you arrived here a little bit early because you will find that, without wanting to predict my colleagues’ viewpoints, there will probably be a range of robust opinion on this topic. Just on a side issue, the Electoral Commission carries out checks on enrolment by way of letter. If somebody does not respond to a letter or does not confirm their enrolment, after a certain period of time, they would be taken off the electoral roll. It is good that they do that, because that is a check. Would you concede that, in a period very close to an election or even when the election is called, the ability to enrol remains open at present for a further seven days. In that time, if somebody falsely enrolled, it would be very difficult to detect that in the period of time that the Electoral Commission requires to do checks. Does that make sense to you?

Ms Cousland—Yes, but that is only a small window of opportunity. All of this information is digital. It just stuns me that it appears, even around the rest of the Western world, that it is still done on pieces of paper as in the subcontinent, for example. I do not understand why voting is not done on touch screen computers.

CHAIR—In the last election, my understanding is that, as a pilot program in one electorate, the Electoral Commission did operate a computer-based system so when names were crossed off, the computer was updated. That would have prevented people from voting in their name in other polling booths. What you are saying is that you would like to see that pilot program extended into a full program?

Ms Cousland—Yes, and then results could come in real time.

Mr DANBY—Thank you for coming in and making your presentation. In response to what you have already said, I agree with you about the use of modern technology in polling booths. It would seem ideal to have computers and touch screens, and the Electoral Commission working off databases where they are able to cross people off the roll when they attended to vote. Having said all of that, I suppose you are aware that, while they have all of these kinds of things in various parts of the United States, you would have to say that our election was conducted in a much more efficient way as far as reflecting the views of the vast bulk of people concerned. There were no hanging chads or tens of thousands of people disfranchised in the manner in which they were in the United States.

Further to what the chair said, you are aware that, if you had attempted to vote several times in your name, the electoral office would have made attempts—as it is obliged to under the act—to contact you and, if necessary, pursue fraudulent behaviour against you. Interestingly, you should be aware that in the period between 1990 and 2001 there were six opportunities for all 12 million

Australians to vote, and on those occasions, the Electoral Commission only came across 72 proven cases of electoral fraud. So 12 million Australians voted at six different elections—

Senator BRANDIS—There is the question of the word ‘proven’.

Mr DANBY—Senator Brandis, you can fight with a lawyer over the words, but my point is the commonsense one about there being 72 proven cases in 12 million occasions of voting. I am mindful of what you say, and the incredibly expensive change to that new technology is something we should certainly consider, but in the context of elections I think we are doing a lot better than other countries.

Ms Cousland—Perhaps 72 might have been proven, but how many people are still out there who voted who may not have been caught? How many dead people continue to vote? And, under the Australian system, how many people do not vote?

Mr MELHAM—Are you aware that the Electoral Commission has an enrolment process where someone who is notified as being deceased has a mark put against their name, and in the interim election period, from the time nominations are called to voting day, there is a process that would identify—

Ms Cousland—So the Electoral Commission is in contact with the Births, Deaths and Marriages for that?

Mr MELHAM—As I understand it, there is a process whereby divisional returning officers in the Electoral Commission monitor and record death notices—

CHAIR—We might come back to you. Senator Brandis?

Senator BRANDIS—Ms Cousland, I was just going to make the observation that if it is good enough for dead people to vote in Labor Party plebiscites, why can't they vote in general elections?

Ms Cousland—Well, yes, and why can we not all get lots of mobile phones and Medicare cards by not providing ID?

Senator BRANDIS—I am just struggling to think of any transaction in contemporary society, short of a cash purchase, which does not require some form of identification; renting a video usually requires identification, does it not?

Ms Cousland—Yes.

Senator BRANDIS—Going to the doctor?

Ms Cousland—Yes, and that is my point: why don't we need it for voting?

Senator BRANDIS—Going to the bank?

Ms Cousland—Yes, going to the bank, going to Medicare.

Senator BRANDIS—Travelling overseas?

Ms Cousland—Yes, of course.

Senator BRANDIS—Making any transaction involving the use of a credit card?

Ms Cousland—Yes.

Senator BRANDIS—Getting money out of an ATM requires the ATM card?

Ms Cousland—That is the ATM card; I am not sure whether that is actually recognisable identification, but yes.

Senator BRANDIS—Well, it is sufficiently specific to the individual because it is only operable by reference to a four-digit code that that person knows and is assigned to that person. Then there is getting a book out of the library?

Senator FORSHAW—Joining the Wentworth branch of the Liberal Party?

Senator BRANDIS—That is a very good point, Senator Forshaw—joining a political party. Let us pursue the point that Senator Forshaw so sensibly makes. If it is necessary to produce identification to join a political party—

Mr DANBY—I am not sure that it was in those days.

Senator BRANDIS—would you not say that exercising a vote at a general election is a more central act in a democratic system than the act of joining a political party?

Ms Cousland—Yes, but I am missing your point, because I am advocating ID for voting.

Senator BRANDIS—To be honest, I just want to put these instances on the record, and I am sure I am saying things to you with which you agree. Perhaps you have already told us, but what do you think of a system of a democracy in which exercising your sacred right to vote is regarded with less significance than renting a video or using an ATM?

Ms Cousland—Well, I get back to why I wrote the email. I came out of a country which is basically more or less a police state with an ID card. For 18 years I am used to carrying an ID card—

Senator MASON—Which country was that?

Ms Cousland—Singapore and Hong Kong. I came down here, and we have these point-making forms of identification—passport, full birth certificate, drivers licence, Medicare card or credit card, which might make up 100 points for various organisations. I thought at the time what a lot of nonsense it was, after having one ID card for everything for 18 years. And obviously that has become topical here in the last couple of weeks. When I went to vote, I was just very surprised that, having played games with Telstra and Medicare et cetera, to get my points to be

able to qualify as an Australian citizen to be able to get a Medicare card, I then get to go and vote by just saying, 'Yes, I live there.'

Senator BRANDIS—This committee has the capacity to make a recommendation to the parliament along the lines you suggest. Given the discussion we have had, do you think it would be absurd and preposterous for us not to make a recommendation to that effect?

Ms Cousland—To what effect, sorry?

Senator BRANDIS—The effect that you suggest?

Ms Cousland—About providing identification?

Senator BRANDIS—Yes. Do you think it would be absurd and preposterous for us not to make that recommendation?

Ms Cousland—It would be to not make the recommendation, yes.

Senator BRANDIS—Yes, I thought you would. Thank you.

CHAIR—I have a couple of generic questions which I will leave to the end. Mr Melham?

Mr MELHAM—I think you have said already that the substance of your submission is that you believe you should be required to provide identification when voting to verify you are who you are; is that correct?

Ms Cousland—Yes, that is correct.

Mr MELHAM—I take it that you were not in Australia at the time of the 1990 federal election?

Ms Cousland—No, I was not.

Mr MELHAM—That was a time where the Electoral Commission internally changed the people working within the polling booth, and it resulted in long queues at the 1990 election, for which there were many complaints, both to members of parliament and to the Electoral Commission. I take it that you do not object that, as a result of your suggestion, one of the consequences is that there will be queuing on election day for you to be able to register your vote, unless, of course, the Electoral Commission massively increases the number of people assisting on polling day?

Ms Cousland—Or unless the Electoral Commission garners the technology that is actually available so that we do not have this nonsense, year after year.

Mr MELHAM—Okay, that is another matter.

Senator BRANDIS—Why would there have to be massive queuing if a person just had to—

CHAIR—We might come back to that.

Mr MELHAM—The Electoral Commission's supplementary submission shows in table 15 that the votes cast at the 2004 federal election indicated a voter turnout of 12,420,019. There was an enrolment of 13,098,461, so there was 94.82 per cent turnout. My understanding is that about 20 per cent of those people would have voted prior to the election day by way of postal or pre-poll voting. So, as a result of your suggestion, what I am saying to you is that 80 per cent of 12.4 million on the day would have had to produce some form of identification. That is why I would assert that it would result in queuing on the day. It would take some time to administer on the day. So, for every action there is a reaction. I am not dismissing what you are saying. What you are saying is that that way you would have a better integrity of the roll and people voting.

Ms Cousland—That is correct.

Mr MELHAM—What I am saying to you is that one of the consequences of that could be queuing and a whole series of other things: people who do not have identification with them might be refused a right to vote.

Ms Cousland—It is exactly the same as when you leave the country and you are required to show a passport; you queue at Medicare and you have to show your Medicare card. At other places you have to show your licence; of course, it takes time to get something out of your wallet and put it on the bench.

Mr MELHAM—What I am asserting is that we have a system that has been in operation for some time, and I would like to pick up some of the figures that Mr Danby has asserted: in a 15-year period, there have been but 72 prosecutions for people who have fraudulently voted, who should not have voted. On the face of it, I would assert to you that, despite the cynicism from some people in the community, the system actually works reasonably well and that there are some checks and balances that the public are not aware of in terms of computer generated rolls and checking systems to monitor as best they can who is actually voting. What I am suggesting to you is that, whilst no system can be perfect, what we have is, on balance, a system that is working reasonably well. If we go to the stage that you suggest, that is fine, but the consequences will be that, on election day and in terms of processing of votes prior to election day, it will involve a lot of red tape and extra delays.

Ms Cousland—I am sorry to say that I think that sounds to me like sticking with a system and not changing it just because it is perceived as not having any problems. If you take it to the next level—for example, if we all had our own ID number—we should technically be able to log on to the Electoral Commission, vote with our little number and we would get through this log jam that you are suggesting—

Mr MELHAM—I do not dispute that if we had an ID system. I am not an agent against change, but what I am asserting is that, before you engage in change, those proposing change come up with more than just anecdotal evidence or fears or prejudices about how bad the system is and come to the committee and show a demonstrable number of cases of fraud or abuse, where people have been demonstrated, in a numerical way, to be rorting the system in a way that demands change.

I do not believe that any system is perfect, with the greatest of respect, and I understand where you are coming from. I am not dismissing that what you are saying would not provide better security in terms of the vote on the day. What I am asserting to you is that there could be consequences that flow that some might say are unacceptable, given the small level of abuse that is occurring.

Ms Cousland—That you know about, yes.

Mr MELHAM—All I am saying is, if you can demonstrate to us, if there are people out there in the community—

Senator BRANDIS—Let her answer the question, Mr Melham.

Mr MELHAM—Sorry, I am following on from what Ms Cousland said. I did not think I cut her off. This is the sixth election that I have reviewed. I have been on this committee for some time, with some small exceptions. This argument has come up time and time again. Governments of either political persuasion, and indeed the Electoral Commission, have not embraced what you have said because, whilst it has been asserted, my retort is that the committee and the commission and governments and oppositions have not been given sufficient evidence to accept the widespread practices that are asserted—that's all.

Ms Cousland—Or perhaps it is not politically expedient to make any changes. That might be another option.

Mr MELHAM—No, no—

Ms Cousland—Look, if I go along to my local primary school and I am asked, 'How do you spell your name? Do you live at this address?' then usually the name is misunderstood, so part of the delay would be minimised by actually providing my drivers licence so that the person has the written name there that they can then find on the roll. I do not agree with your argument that there will be longer queues because a form of ID is required.

Mr MELHAM—Thank you. I have taken it as far as I want to.

Senator FORSHAW—I understand the submission you are putting, and I cannot argue with the proposition that, in a large range of other activities, proof of identity is required. One of the problems that does arise with proof of identity is that it does not necessarily guarantee a foolproof system.

Ms Cousland—No.

Senator BRANDIS—As opposed to the current system, which has no safeguards.

Senator FORSHAW—Well, Senator Brandis, that is actually where you are wrong. This is what I wanted to run through. The process at the moment is that people who wish to place themselves on the roll for the first time, like you did, or change their enrolment, go along and enrol. Those things are then subject to a process of checking by the Australian Electoral Commission, because this is generally for an election and, other than that short period of time

before the election when there is an increase in enrolment, there is sufficient time available to have it all checked. One of the factors that militate against people seeking to fraudulently enrol in general is that it can be picked up and it will be picked up fairly quickly. We know that there are heaps of people out there who have Medicare cards who should not necessarily have them, or they have false passports and so on. You have referred to your overseas experience. I see this argument as somewhat linked to the argument about voluntary voting, although you have not put in a submission on that. You have real opportunities for fraudulent voting where you have voluntary voting, because people just have to be clever enough—and not too clever—to work out that, if only 30, 40 or 50 per cent of people are going to vote, the scope for going along and voting in another person's name is easy. I thought you may like to comment upon that. I assume your experience been associated with systems overseas?

Ms Cousland—No—

Senator FORSHAW—Compulsory voting does largely prevent—and I think the stats prove it—fraudulent voting or what is called ‘double voting’, because it will be picked up; whereas it will never be picked up, really, in voluntary voting.

Ms Cousland—I suppose that when voting is not compulsory, it is obviously open to corruption as well, because you can buy votes quite easily, although I am sure in this system you can too. But you were talking about when people enrol; you are only talking there about the integrity of the electoral rolls. You are not actually talking about people who have been on the roll and who may have gone overseas, disappeared or died. So it would seem to me that you have electoral rolls full of people who have been there since they enrolled, you have new people who have enrolled—

Senator FORSHAW—No, but that is the point, they are not. That is an assertion that is made that is increasingly being demonstrated to be untrue. Over the years the Electoral Commission has been developing its means to more periodically and more regularly check accuracy of the roll. There are people on databases, intergovernmental linkages. It is the same with the tax system and Centrelink, where they can crosscheck. No system is foolproof. That is the point I am making—that is all available. The point I am putting to you is that, for instance, in the UK, where proof of identity may be required, it is not going to stop fraudulent voting. If I know, from looking at the figures from the last four or five elections, that only 20 per cent of people on the roll have voted, it is not hard to take a punt and have people voting for a whole lot of other people who may be legitimately on the roll, because the chances of that getting picked up are almost impossible, even with ID.

Ms Cousland—I suppose it depends on how they run their voting system. If they run their voting system with identification, and 20 per cent of the voting population bother to vote, then you still have to go to the polling booth and show your ID.

Senator FORSHAW—Show an ID.

Ms Cousland—Well, your ID card, your licence or whatever that country actually requires. I think it is a bit of a quantum leap to say that because only X per cent of the population will bother to vote, they might go around and vote at other places.

Senator FORSHAW—But that is my point. Isn't that largely the reason why ID is required in that system, otherwise you could have the potential for substantial fraud, as distinct from a compulsory system of voting?

Ms Cousland—I am not sure. Are you able to tell me that the people on the electoral roll here tally with the Bureau of Statistics number of people over 18? Are you able to tell me that that is exactly the same?

Mr DANBY—Basically, yes, we are. All these databases—the Transport Accident Commission, Medicare—are measured against practically every three months. That is what we pay them for.

Senator FORSHAW—I have no further questions. I just wanted to explain the point I was trying to make. As I said at the outset, I am not necessarily disagreeing with the philosophical position. I was trying to point out that using overseas examples is using situations where there is voluntary voting.

Senator BRANDIS—You are not expressing a philosophical position; you are expressing a thinly disguised opportunist position.

Senator FORSHAW—I am not. You may be surprised to know what my view on this issue is.

CHAIR—I just want to ask some wrap-up questions. I want to reiterate that Ms Cousland has come here of her own free will to give evidence, and a number of members, including the deputy chair, made the point earlier that witnesses should be able to answer questions and do so freely. I just reaffirm that to him, given that he raised it earlier in the day.

Could I take up with you the propositions put by the deputy chair and Mr Melham and put to you an alternative proposition. Their proposition was that, in 10 or 15 years, there had been only 72 proven cases of fraud; therefore their response to you is that there is no need to fear. Leaving aside your very good point and Senator Brandis' point that they are only proven cases of fraud—they do not attempt to quantify those about which we do not know—if we accepted in theory the point made by Mr Danby and Mr Melham that there have been only 72—

Mr Danby interjecting—

CHAIR—Mr Danby, I know it is late in the day, but I did not interrupt you, and as I said—

Mr DANBY—I will show you the statistics.

CHAIR—You can give me the statistics when we are on the plane to Adelaide, tomorrow morning or in the tea break, but Ms Cousland has come here and I think she deserves to be asked questions and be able to answer them. I think constant interjections, with all respect, give the false impression that you are agitated about something to do with this, and that would be wrong. I will go back to the start, Ms Cousland. There were seventy-two cases over that period, but, to you, isn't the test not how many cases there have been but what the capacity is for fraud? There is a gaping hole that in a close electorate, and some are decided by 100 votes, would enable five or six people to vote 30 or 40 times and for those votes to be counted—in fact, for it not to be

known whose they were—thus affecting the result. Would you agree with the proposition that, if there is a gaping hole, it is better to fix it before and not after there is a major case of fraud in Australian politics?

Ms Cousland—Yes, I agree.

CHAIR—Do you think the proposition that because there has not been a problem demonstrated and therefore we should not worry about the capacity for fraud is a bit like the major banks in Australia saying, ‘We will leave the safe and the front door open every night, and only when the money is stolen will we begin to lock them’?

Ms Cousland—Yes, there is a propensity for people not to do anything until something major goes wrong.

CHAIR—Would you also agree that providing ID on election day ought to be easy to consider in a technologically advanced world? As the AEC moves as it should from pure paper rolls, which you would have seen when you came back and voted, to something more sophisticated, would that allay many of the concerns about people queuing?

Ms Cousland—Yes.

CHAIR—Even if in the near future you did not have a full system of ID on election day but rather a system where the Electoral Commission could randomly ask for somebody’s ID—and therefore anyone seeking to perpetrate fraud would know that they could be asked for ID—would you agree that that would have a good effect in at least raising the risk bar on them perpetrating fraud?

Ms Cousland—I suppose it might. It is like a random search at the airport, isn’t it.

CHAIR—That is right. It is not as good as a system of full searches, but it is better than none.

Ms Cousland—Yes, but it seems to me it would be a half-baked system when at every other place we need to show something to prove our identity. Why wouldn’t the Electoral Commission require that we need to provide ID when we vote? Why have something random, particularly when the voting in primary schools et cetera is assisted by volunteers?

CHAIR—I do not have any further questions. I think Senator Brandis has one follow-up question.

Senator BRANDIS—To draw the threads together, are you generally of the view that the seriousness with which we take the protection of the integrity of voting is a reflection of the seriousness with which we respect our democratic system?

Ms Cousland—Yes, and that is why I was surprised there was no ID required.

CHAIR—Thank you for making your submission and for taking the time to be here today. There is a very live debate around electoral reform, and it is for that reason that the questioning

was vigorous, not because people wanted to vigorously question you personally. I hope you appreciate that.

Ms Cousland—Not a problem.

CHAIR—We will conduct further hearings and a report will come out this year. You will notice that these sorts of issues are very much at the forefront of debate, and that is why we called you along.

Ms Cousland—I just wish more people would write and complain about things and make suggestions rather than talking about it among themselves. We never get change unless people are prepared to stand up.

CHAIR—And that is why these committees exist, so thank you very much.

[4.24 pm]

MULHOLLAND, Mr John Vincent, Secretary/Registered Officer, Democratic Labor Party

CHAIR—I welcome our next witness. We have received your organisation's submission, which is numbered 121 and has been authorised for publication. Are there any corrections, amendments or additions you would like to make to it?

Mr Mulholland—Yes, there are just a few small points. At paragraph 4 on the first page, the reference to personally identifying information should include 'together with political allegiances'. Perhaps it could go after 'political party', so it would read: 'However, it is the view of the Democratic Labor Party'—

CHAIR—Could I make a suggestion without tying you up in too many formalities. Perhaps you could just generically tell us what the amendments are rather than convey all the wording. If it suits the committee, you could simply make a supplementary submission that cleans that up a little bit. I presume you have still got—

Mr Mulholland—It is only the reference to personally identifying information. Governments need personally identifying information all the time, but personally identifying information that includes political allegiances is really what—

CHAIR—That includes political allegiances—I think we have that. Before you leave, perhaps you could check that with the secretariat and make sure you are happy with it. There are no further additions?

Mr Mulholland—On the first line of page 3 there is just the omission of 'to burden'—'held the 500 rule and no overlap rule not to burden'—

CHAIR—Okay.

Mr Mulholland—There are a few minor—

CHAIR—As I said, you would still have this on computer, wouldn't you? Even we make typos and that sort of thing! If you would like to and committee members are happy, you can simply submit another version and the secretariat will check it and ensure that the changes go on the web site. We have read your submission and we understand the substantive point, and that is why we have invited you here. I would like to open with some questions, unless you particularly wanted to make a statement, although your submission is pretty clear, concise and to the point.

Mr Mulholland—The last sentence in the submission may sound as though it is a bit over the top, so I wonder if I might present something that would put that in context. I have a copy of an affidavit which was submitted during the course of the proceedings, about which—

CHAIR—You would like to tender that as an exhibit?

Mr Mulholland—Yes, if I may.

CHAIR—Okay.

Mr Mulholland—Paragraphs 3 and 4 of the affidavit contain the background to the DLP's concerns about the changes to the Electoral Act.

CHAIR—We will need to move to accept it as a supplementary submission. Now that members have it in front of them, I will take a motion from Senator Brandis, seconded by Mr Danby, that we accept this affidavit as a supplementary submission. There being no objection, it is so resolved. Could you briefly talk to that affidavit, then we will go to questions.

Mr Mulholland—Paragraphs 3 and 4 of the affidavit are the relevant parts. That just explains what motivated the DLP in opposing the registration provision of the Electoral Act and resisting the requirement of the Electoral Commission for submitting the names over a lengthy period of time. There is also something which may help to put that last comment in context. In the judgment of the High Court—does the committee have copies of that?

CHAIR—We certainly have access to it.

Mr Mulholland—Paragraph 258 of that judgment has this statement from Mr Justice Kirby:

There were times in the past, and they may return, when public signification to government officials of political allegiances could carry risks of present or future disadvantage.

He was referring to the Communist Party case at the time. That, I hope, will give some indication as to why it is important for us to make that last statement about the provisions requiring the registration, in effect, of electors who belong to political parties. I have lost the—

CHAIR—I think you have made it all pretty clear. Members and senators have had the opportunity to read those pertinent paragraphs and that short affidavit. I might open it up for questions. Some submissions we are less clear on than others, but on this one, as political practitioners, we are certainly across the detail of it and what the requirements are, and all of our respective parties go through this sort of process.

Senator MURRAY—There are two main aspects I can see, and maybe there are others that follow. With respect to registration of a political party, do you believe there should be a threshold of members to allow for the recognition of a political group as a party? In other words, do you think there should be a minimum?

Mr Mulholland—The feeling of members of the Democratic Labor Party is that it is unnecessary. The recognition of a party is a matter for the members of the party, but when it is publicly recognised or registered, there is no need for members of that party to be identified.

Senator MURRAY—No, that is a separate issue. I first of all want to know whether you think there should be a minimum number of members—in other words, a threshold—that a political party must have in order to gain the advantages that attach to a candidate who is identified as a candidate for a registered political party?

Mr Mulholland—I think there should be a minimum number of electors rather than members of the party.

Senator MURRAY—Are you then advocating the American primary system?

Mr Mulholland—No, I think the American primary system is perhaps a relic from a time when secret ballots did not exist. There would be a danger in that. What I am saying is that the system that we had before the registration of political parties was introduced was one where a candidate nominating for election to the federal parliament required six electors to make that nomination. It may have been 10; I am not sure of the number now, but it was a small number of electors. It was not necessarily members of the same party. If I wanted to stand at that time, I could have gone to my next-door neighbours, regardless of their political inclinations, tell them that I wanted to stand for parliament, and ask if they would support my nomination as an elector.

Senator MURRAY—The second area, which I gather is your prime area of concern, is that there are members who have had experience of being victimised because of their membership of the DLP—this is my summary, not your words—and believe that, even though they are giving their names to an independent authority on a confidential basis, that is no guarantee that their political allegiance will not become publicly known. That is your main concern, isn't it?

Mr Mulholland—That is a concern, and it is not just in relation to this issue of registration of political parties, or the identification of the members of a political party; it applies to many areas where databases are kept by governments and government agencies. The fact that we have privacy legislation does not prevent information being disclosed. All it does is punish those who get caught. We believe that the identification of political allegiances is completely unnecessary for the purpose of registration.

Senator FORSHAW—There are many other areas where registers of members must be kept and be available. In some cases they must be provided to government authorities; in others, they must be available for perusal or inspection. A couple of examples include trade unions, which must provide a register of members to the Industrial Registrar, and registered clubs, which must keep a register of its members, and that must be made available if required to licensing authorities, government et cetera. Whilst your concern is about a fear, if you like, of action or discrimination being taken against people who might be identified on a database as members of the DLP or any other political party, do you have any other argument that a registered political party should not have to provide proof that it is a registered political party? A party can only exist if it is made up of members, in the same way as a club, a trade union or any other organisation, particularly in a situation where that body, namely, a political party, is participating in a process which involves, in a quasi way, if you like, the administration of government in this country through the election process, through getting electoral funding support et cetera.

Mr Mulholland—Other organisations, such as clubs and maybe even businesses or trade unions, fall into a different category from political parties, particularly where the requirements relate to the ordinary members. The ordinary members of a political party should be separated from the office bearers within a political party. When a trade union is registered, my understanding is that approximately 50 members are required—

Senator FORSHAW—To have it registered?

Mr Mulholland—to have it registered.

Senator FORSHAW—There is a range of other requirements contained in the act, but the actual register of all members of that body must be kept by the organisation and, certainly in my day as a union official, had to be provided to the Industrial Registry or at least be available on the premises of the organisation. It has to be available not only for the conduct of ballots but also because the act requires that it be available. If you are going to claim the status of a registered industrial organisation under what was then the C and A Act or the Industrial Relations Act, you had to be able to demonstrate that you had the members that you claimed you had, and who they were.

Mr Mulholland—In relation to a court controlled ballot, I think—

Senator FORSHAW—That was only one reason. I am just saying the principle of being able to demonstrate that you are a party or an organisation made up of members inherently, to my mind, involves providing proof that you actually do have members, and the only way you can do that is by identifying them by name and address. The real concern I think you have, and I share that in some respects, is if people use that in a way illegally to discriminate or injure those people.

Mr Mulholland—There are two issues in this regard. One is the issue of whether or not the actual number of members of a political party, any more than two, ought to be required to indicate that it is a party that is entitled to registration. If two people want to set up a party, they are not independents or individuals; they are a group. Two people should be able to say to the general public, ‘We are the Two People Party.’

Senator FORSHAW—The Fred Nile Party.

Mr Mulholland—‘We believe in whatever; we want you to support us.’ Why is it necessary to have 500 members in order to promote the policies that are appropriate for a two-people party?

Senator BRANDIS—Can I help you here, if I may intervene? It was not very many years before the Russian Revolution that there were fewer than 500 members of the Russian Communist Party. That might be an inappropriate metaphor for a member of the DLP, but the point is well made that very significant political movements have emerged very quickly from a membership base of quite a small number of people.

Mr Mulholland—I do not think we need to go to Russia. The Australian Labor Party and the Liberal Party of Australia were formed with fewer than 100 members.

Mr DANBY—I think Senator Brandis has made a good point. We are in an era of potential matching of funding of public moneys; we are in an era where a registered political party attracts some benefits vis-à-vis placement on above-the-line voting. The DLP has a long history as a political organisation in Australia which has legacies to both the Liberal Party and the Labor Party. I would not consider you in the same league as, say, the LaRouche Citizens Electoral Council party, which does have trouble finding 500 people as members. It may cause you a great deal of trouble in going out and finding 500 people who are actually signed up as members of

the DLP et cetera, but because of your long history, I cannot see why it was an insurmountable barrier, whereas with an organisation that is a bogus foreign entity planted here—like Erich Von Daniken—by Mr LaRouche, they do have that barrier that they cannot jump over, and that is a very good thing for the Australian electoral process. Do you see the difference? Senator Brandis gave the example of the Russian Bolshevik Party, but I give it as a democratic comparison between the DLP and the Citizens Electoral Council. It is a positive point. I am not criticising you; I am just saying it is a barrier but it is a barrier that we have to think of because of electoral matching funding, Senate placements, above-the-line voting et cetera.

Mr Mulholland—My answer would be that it is a matter for the electors rather than the executive government to decide who is acceptable for registration as a political party. When the executive government or its agencies, including the Electoral Commission, decide what is for the good of the people, we are going a little bit beyond what I think the Electoral Commission was set up to do.

Mr DANBY—But aren't we, the parliament, deciding rather than the executive government? Isn't this committee, representing different groups in the federal parliament, deciding that and making non-partisan recommendations which government accepts? Shouldn't your argument really be with us, if you have an argument?

Mr Mulholland—I suppose in a sense it should be. I do not wish to be disrespectful in saying this, but I think that the Electoral Commission has far too much influence with the parliament in determining what the rules should be.

Senator BRANDIS—When I refer to the DLP I guess I mean the Victorian branch of the DLP, but I will just speak about the DLP for the sake of brevity. Was the DLP at one stage a registered party, and it ceased to be registered because its membership, or the number of people prepared to sign the declaration, fell below 500?

Mr Mulholland—No. Since registration was introduced in 1984, we have been continuously registered.

Senator BRANDIS—I must be missing something in your submission. Why did you cease to be registered?

Mr Mulholland—We did not cease to be registered. We have been registered all the way through, but the Electoral Commission threatened to deregister us because we refused to provide the names.

Senator BRANDIS—As I gather from your submission, you refused to provide those names on privacy grounds?

Mr Mulholland—Well, largely on privacy grounds.

Senator BRANDIS—So you assert that in fact you do have more than 500 members in Victoria?

Mr Mulholland—Yes.

Senator BRANDIS—But of those members, fewer than 500 were prepared, largely for privacy reasons, to sign the declaration?

Mr Mulholland—It was a party decision that we were opposed in principle to the idea of handing over the names of the ordinary members.

Senator BRANDIS—So it was an ideological decision in effect rather than a decision based on an aggregate of individual concerns about personal privacy. I say ‘ideological’; I mean it was a matter of principle rather than privacy.

Mr Mulholland—It was a matter of principle. We took it to the Federal Court and then the High Court, and the membership accepted that what the High Court decided was in effect the umpire’s decision. We had to either comply with it or become deregistered. The problem that we had was that most of the members who had opposed the idea of handing over the names were not happy about our changing our position. The way that we were required to overcome that, according to a party decision, was that only the names of members who agreed to have their name submitted to the Electoral Commission would be used.

Senator BRANDIS—I am a little bit with Mr Danby on this. I can understand and sympathise with the policy reason for having a minimum number of registrants in order to avoid basically abuse of the system, but it seems to me that the position of an established existing party about whose authenticity as a political party there is no doubt is a little different from the position of some group that nobody has ever heard of arriving out of the blue and declaring themselves to be a political party. You may not agree with me, but nobody has any doubts that the DLP has historically been at various times over the last 50 years a very significant political party in this country.

Mr Mulholland—I heard an interview not long ago where Robert Manne said that the DLP died in 1974.

Senator BRANDIS—Well, Mr Manne says a lot of silly things! It seems to me that there might be a middle course here, that the threshold issue for a new political party—for all the reasons Mr Danby explored with you—could well be pitched at a higher level than the threshold of an existing political party. Let’s say for the sake of argument that the membership of the DLP had fallen below 500 but the few hundred souls who continued to be the DLP in Victoria wanted to continue to operate. There is no logical reason why the threshold for deregistering a party on the ground basically that it was defunct should not be set considerably lower than the threshold for registering a political party in the first instance where issues of bona fides need to be established. Would you agree with that?

Mr Mulholland—I can understand that the registration of a political party in the first instance has a purpose.

Senator BRANDIS—Would you agree with me that, in order to prevent abuse or to prevent gaming of the system, there is a respectable argument that the bona fides need to be established?

Mr Mulholland—Yes, but I would say that that can be established on the basis of electors rather than members of the party.

Senator BRANDIS—It becomes a chicken and egg question, does it not, because it has to be—

CHAIR—I am going to have to wind this up in the next couple of minutes, so you will be the last questioner.

Senator BRANDIS—All right—because it will have to be registered in the first instance before the first time at which it contests an election?

Mr Mulholland—Yes. What I am saying there is that electors, rather than members of the party, should determine whether the party should be registered. I am saying that 500 members is totally irrelevant to the issue.

Senator BRANDIS—Okay. But putting to one side your issue of principle about the privacy point, do you think a way of accommodating your concerns might be, as I suggested before, to have a lower threshold for deregistration than for registration? Because once a party is registered, it has competed in the electoral marketplace. Like the DLP, it has been a significant part of Australia's political history; bona fides issues are irrelevant—the only question of the continuity of its registration is a different question, and that is whether it has become defunct.

Mr Mulholland—I think most parties that become defunct stop standing candidates.

Senator BRANDIS—Yes, that is a fair point. Do I have time to ask one more?

CHAIR—Yes, one more, briefly.

Senator BRANDIS—On the other point of your submission about the Senate above-the-line voting provisions, I have just been looking at the provisions of the act that you mention in your affidavit. In your submission to this committee, you connect the two, but in fact they are not necessarily connected, are they? Because there are three categories of Senate candidates: the registered political party candidates; the grouped candidates, who are not members of registered political parties; and the ungrouped Independents. I cannot see why the provisions dealing with the use of a name for above-the-line groups need only apply to registered political parties without doing violence to the principles underlying the registration system. In other words, even if you were an unregistered political party standing as a group, it would not do violence to the scheme of the act to allow you to put your name beside the box above the line above your group, would it?

Mr Mulholland—I would not have any problem with that if the name of the political party could be included on the ballot paper. The registration system for that purpose would be unnecessary. I understand that when the registration system was introduced there were three elements: one was that public funding was going to be introduced, the list system of voting in the Senate, and I have forgotten the third one just for the moment. As far as the public funding is concerned, registration of political parties is not relevant to that issue, or at least—

Senator BRANDIS—I am not sure about public funding, but my point is that it is not necessarily relevant to the shape of the Senate ballot paper either, because section 211(5) of the Commonwealth Electoral Act that provides for groups is a different section from the section of

the Electoral Act that gives registered political parties but nobody else the right to have their name included beside their above-the-line box, which is section 214(2). So you could reform one without doing violence to the other.

Mr Mulholland—Yes, I think that is correct; I do not disagree with that.

Senator BRANDIS—Thanks, Mr Mulholland.

CHAIR—Thank you very much for your evidence and for your submission, and particularly for coming along today. That concludes our witnesses for today. I would just like to have a motion authorising the publication on the parliamentary database of the proof of the transcript.

Mr DANBY—Before you do, could I just put one thing on the record, because I feel obliged to do this since they made the effort to come in here today. The author of submission 155 attempted to make a presentation today but, after deliberations with the chair, decided to present their photographic, affidavit and coloured how-to-vote cards, which reveal different things, as a supplementary submission to the ALP. I think I have managed to convince them to provide all of that as sets of evidence to all members of the committee. They were unable to make their personal presentation here but they will be able to make it, as I understand it, as a supplementary submission to the ALP submission. I regret that it will be in late to the inquiry.

CHAIR—For the record, it is the case that someone who had made a submission who was not called as a witness sought of their own will to appear as a witness, as is the case with all our hearings, and we have made it clear at the outset of the hearings that we receive submissions and it is only those submissions that we wish to flesh out in further detail when we invite people to attend. The right that everyone has, throughout Australia, is to make a submission, but attending as a witness, as Mr Mulholland has done, is done by invitation, and that is well established.

I would also point out as a matter of fact that, whilst our official date for submissions has closed, we have accepted all additional submissions, and naturally we will accept any forthcoming submission. It is certainly the case that the person making the submission, I am advised, is a member of a major political party, that major political party being the Labor Party which is listed to give a submission. They will be giving a submission in Canberra. It is simply the case, no matter what one's determination or passion might be, that our witness program has to operate according to a priority and not simply on the basis of somebody turning up and demanding that they appear before us. They are able to put it in writing and do so concisely, and that has been done.

Resolved (on motion by **Senator Murray**):

That, pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this committee authorises publication of the evidence given before it and submissions presented at public hearing this day.

Committee adjourned at 4.59 pm