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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

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

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**JOINT STANDING COMMITTEE ON
ELECTORAL MATTERS**

Friday, 12 August 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

Members in attendance: Senators Brandis, Mason and Murray and Mr Danby and Mr Anthony Smith

Terms of reference for the inquiry:

To inquire into and report on:

Conduct of the 2004 election and matters related thereto.

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Committee met at 9.28 am

CHAIR (Mr Anthony Smith)—I declare open this inquiry of the Joint Standing Committee on Electoral Matters into the conduct of the 2004 federal election. To date the committee has received 177 submissions, many of which are detailed, well written and self-explanatory. Accordingly, the committee does not need to hear from every person or every organisation that has made a submission. The submissions have raised numerous issues that the committee is carefully considering. While examining the submissions, the committee identified a number of issues which it wishes to take further evidence on in this final round of hearings. I would like to thank all of the witnesses who will appear today. I remind them that, although the committee does not require them to give evidence under oath, the hearing is nevertheless a legal proceeding of the parliament and warrants the same respect as proceedings in the House itself. The giving of false or misleading evidence is a serious matter that may be regarded as a contempt of parliament. The evidence given today will be covered by parliamentary privilege.

[9.29 am]

McGRATH, Dr Amy Gladys, President, HS Chapman Society

CHAIR—Welcome. It is good to have you back here, and we know you follow things very closely. We have received your submission on behalf of the HS Chapman Society. It has been numbered 41, and it has been authorised for publication. Do you wish to correct or amend the submission in any way?

Dr McGrath—No.

CHAIR—I invite you to make an opening statement on the key issues of your submission.

Dr McGrath—I wish to make a comprehensive statement because my submission made a comprehensive suggestion—that is, to change the entire way in which the election is conducted. I will read the principles on which I feel this change can be judged. I have left copies of the evidence I am tendering for all members of the committee. It is headed: ‘Barcoding for simple, quick, cheap, safe elections but preserving manual counting’. Barcoding will place responsibility where the Commonwealth Electoral Act intended: on the elector. The elector should only be issued a ballot paper for the address where he or she has lived for one month. Any other address renders the vote invalid. At present, the ‘nanny state’ role of the Australian Electoral Commission requires it to encourage or to enforce voter responsibility, which only encourages illegal voting it cannot enforce.

A solution to shift responsibility from a ‘nanny state’ has to be simpler, quicker, cheaper, safer and more accurate at all levels of process. A barcoding solution succeeds—I think South Africa has proved that in three elections—but computerisation does not. The Australian Electoral Commission and the New South Wales and Queensland electoral commissions have already been moving in that direction. All have sent barcoded letters to be presented at polling booths, as has the Australian Electoral Commission in Victorian council elections. My barcoding solution takes this a step further. All voters will have a simple alphanumeric barcoded voting card sent to them in the AEC mail-out after the close of the rolls.

This voting card will be surrendered in proof that I have attended the polling booth. The barcode reader will record it. I will be given a ballot paper and I will sign for it on the same barcode reader. It is a simple, read-only barcode reader. I will give each of you a copy of this. Graham O’Keeffe was there throughout the South African elections. It has a little tag on it, which you will have in a moment. It is this reader, on page 4, which will be supplanted by M70. It is what they call an enterprise digital assistant, and I will talk to that shortly.

The signal will be dispatched by mobile telephone technology to the divisional returning office which, through Telstra, can cover 98.3 per cent of the voters. The balance will be by wireless technology. No legislative change, and few to the divisional operations manual, will be required. Division-wide voting will facilitate the solution of the problems it has created: (1) a giant roll, now of 86,000 voters, on all tables and polling booths; (2) multiple voting in the same name; (3) multiple voting in different names; and (4) transport costs, including to and from

scanning centres. That is the end of my statement. I will leave my details to discuss in answer to questions. I tender these in evidence

CHAIR—That will be useful so that committee members can have a look at them.

Dr McGrath—I have one set for each member, including a copy of what I just read.

CHAIR—What you have just read will be fine. We will get that officially through the *Hansard*.

Dr McGrath—There are some details on it at the end.

CHAIR—If there is anything additional, feel free.

Dr McGrath—There is also a glossary of terms. I only have one set of net maps of what Telstra can cover by state.

CHAIR—I would like to have that. It might be handy in another context.

Dr McGrath—I have one for each state, which I will also tender as evidence. I believe that that coverage in a year or so will be complete.

CHAIR—We will take that into evidence so Senator Mason and Senator Brandis can refer to it. Is it the wish of the committee that we accept the additional submission from the HS Chapman Society? There being no objection, it is so resolved and we will take that into evidence. Thank you very much for that. Before we move to questioning, if there are further submissions that the society would wish to make in the coming days on any other matter, you have that opportunity given you have appeared as a witness. Thanks once again for appearing. We will now open it up to questions, starting with Senator Mason who follows these issues fairly closely.

Senator MASON—Why was this system adopted in South Africa and those other countries you mentioned—Bahrain, Costa Rica, Lesotho and Zimbabwe? Usually we do not adopt electoral practices from those countries. What is so imperative?

Dr McGrath—I would discard the others. I have looked at South Africa because I have a complete report. The point about South Africa is that it is similar to Australia. It has dense urban conurbations and big rural areas. The others do not conform to that. Also, the formula that has run in elections is that the size of polling booths is very similar as is the reach of polling booths and the number of people going through the polling booths.

Senator MASON—So it is comparable?

Dr McGrath—It is comparable.

Senator MASON—Was the big issue in South Africa an issue of security of the ballot?

Dr McGrath—Yes.

Senator MASON—And this system enhances the security?

Dr McGrath—Security depends on data matrix. Data matrix is encrypted. That is on that envelope.

Senator BRANDIS—Could we have a copy of that document?

Dr McGrath—I can tender it.

Senator BRANDIS—I just thought we could get a sample of it.

CHAIR—That would be useful.

Dr McGrath—I only have this sheet but perhaps it can be photocopied. The enrolments in South Africa were encrypted on data matrix.

Senator MASON—Unlike you, Dr McGrath, I am no whiz-kid with technology but I am sure you are. Does every elector have an individual barcode?

Dr McGrath—They have had them since 1987.

Senator MASON—Are there any security problems with those barcodes?

Dr McGrath—I think the Australian Electoral Commission should answer that, because that is not information that is publicly available.

Senator MASON—In South Africa, does every elector have an individual barcode?

Dr McGrath—Yes, but they were in a different position because they were enrolling for the first time.

Senator MASON—So they could in a sense introduce a new system. What information is held on that barcode? What information is available?

Dr McGrath—I have no idea. The Electoral Commission would have to tell you. I think you could guess.

Senator MASON—So it would be name, address and electorate?

Dr McGrath—Yes, and they very jealously guard that information and any other rolls that go to candidates or parties. You would not get that information—birth dates and so on—but they do keep it.

Senator MASON—In the past you have given evidence to this committee and you have often expressed concern about vote rorting and privacy. Do you think that this method would assist in stopping the rorting of the system? Also, are you concerned about privacy?

Dr McGrath—Yes, because you only need a simple barcode. Australia Post has a barcode for every address. The roll is address based. The Electoral Act is based on residence. You are only concerned with defeating fraud by attaching the vote to the residence—once you barcode, it cannot be used again. I would like to mention one more thing. When I said that division-wide voting facilitates the solution, I meant that it actually stops roll stacking in different names at multiple booths from occurring because, once you sign the ballot paper and hand in your voter card, an extra audit is in process.

Senator MASON—I am with you; I understand.

Dr McGrath—You have two audits in process. Then, if somebody goes along to another booth, that is already barred because it has gone back to the divisional office. The whole solution does not rest within the booth any more.

Senator MASON—I see. Are you concerned about privacy issues in respect of the information held?

Dr McGrath—No, it is not relevant.

Senator MASON—One last question: do you have any idea of the costs?

Dr McGrath—There are enormous savings. There were five estimates made in Queensland alone, where there were savings of \$11 million to \$16 million in the electorates.

Senator MASON—Who made those estimates?

Dr McGrath—I would prefer not to say.

Senator MASON—You are being coy, Dr McGrath.

Dr McGrath—I am. They are Queensland electorates.

Senator BRANDIS—Dr McGrath, I am a little concerned about the security issues with the system you propose. As I understood you, the idea would be to post out the barcoded voter identity card to the elector before the election. Can't you anticipate that in the ordinary course of events a very large number of those voter identity cards would go astray or would not catch up with the addressee?

Dr McGrath—Candidates send return to sender mail all the time. The Electoral Commission claims that the integrity of its roll is very good, but that is open to question—

Senator BRANDIS—But we know it is not.

Dr McGrath—You cannot introduce a system because a percentage, which the Electoral Commission says is so small as to be insignificant, should be the overriding principle and the choice. The security would be far greater than exists now. That was proved by the debacle of the postal voting, when 840,000 letters went out and 60-something thousand returned with all the voters details on the outside of the envelope. Anything would be an improvement on a system

that runs like that. That is more than three-quarters of a million people. Do not forget that a vast number of those are not legal votes, because they have not given documentation that justifies having those postal votes under the Electoral Act.

Senator BRANDIS—I guess my concern is that, under your system, the mere possession of the voter identity card would give the holder of that card an indefeasible right to cast one ballot, but there is nothing to guarantee that the voter identity card which carries that entitlement will get into the hands of the person whose entitlement it is.

Dr McGrath—He or she will give their signature on the barcode reader. Some deterrent is better than no deterrent. That is my view. At the moment, every point of the electoral system has a loophole for fraud.

Senator BRANDIS—There was only one other question I wanted to raise. I see the attraction of having a system whereby, once a person's name is struck off the roll as having voted, it should be instantaneously communicated via technology to every other polling booth by way of a common computer network. However, you do not need a barcoded identity card to do that. You could do it by computer methods other than scanning a barcode.

Dr McGrath—I have enclosed 10 pages with that evidence from Professor Caelli, who was just awarded the Order of Australia Medal. If you read that, I think you will realise that computerisation is a disaster. It is costly. A barcode is very cheap. You can reuse the equipment, and you can rent it out. The storage costs are very small. The investment is small. I feel that there is too much emphasis on the level of fraud, which the Electoral Commission says is negligible. The real emphasis is on the cost of elections.

Everybody complains about queues, and this would be twice as speedy. They increased the speed by 50 per cent in South Africa, and we have a comparison about this that can be investigated with South Africa. You have accuracy: one in 10 million errors. At the moment when they go to the booths and mark off the rolls, the error rate is very high. When they cast absent votes, the error rate of sending them to divisions wrongly is high. Four hundred votes were misdirected in Macquarie in 1993. The absent votes can be barcoded as well. The South Africans deliver results in three days.

Senator BRANDIS—I do not need to be persuaded that it is probably a near-to-fail-safe system, assuming that the card is in the right hands. But it seems to me that there is this huge gap at the front end of the process of ensuring that the card does come to be in the right hands.

Dr McGrath—You are right in saying there is a gap, but I have considered that very carefully and with other people who do canvass. You have to look at the amount of return to sender mail. It is quite high. You cannot abolish fraud altogether. What it is doing is introducing a safeguard in the voting booth that does not exist. Pat Bradley, a former chief electoral officer of Northern Ireland, said that if you want security and you have to choose between ID enrolment, which has stalled, and this form of ID, which does not depend on national identity cards, it will cost £220 pounds each in England. It is perishable. You only get it three weeks before, which is that time factor reduced. So you are presuming that a percentage of people will pick it up out of the post box or something, but they cannot use it anywhere but in one booth. Let me tell you the number of booths in which people can vote and have been voting.

Senator MASON—On Senator Brandis's point, which is a good point, it strikes me that the concern in South Africa would be with the security at the particular ballot station, the particular polling booth, which would be a big concern in South Africa—having regard to fraud and the security of the ballot box and so forth. That is not such a big problem here. Senator Brandis's point is merely that it is more secure perhaps than in South Africa to send these barcodes out. In some sense, it is nearly like sending out a blank voting slip.

Senator BRANDIS—That is quite right.

Senator MASON—There was a different issue in Australia compared to South Africa.

Dr McGrath—If this was really of such concern, why did Peter Beattie send a voters card out at the last election?

Senator BRANDIS—I have given up wondering why Mr Beattie does things.

Dr McGrath—He did send out a voters card. It is a very simple thing. It has no personal details. The Electoral Commission has run council elections in Victoria using voter cards, so they have not been concerned.

Senator MASON—I think the concerns are weighted differently in South Africa than they are in Australia. I suppose that summarises the differences.

CHAIR—Could I summarise with one last question. Thank you again for coming and for all this material, particularly the material you have presented today, which we will go through in some detail as we draft the report. Is it fair to say that your proposal for barcoding has the attractions of simplicity and cost?

Dr McGrath—Yes.

CHAIR—If, down the track, in future elections that was combined with some other form of identification, that might alleviate any privacy concerns. Would that be right?

Dr McGrath—I am here to discuss either, not either/or.

CHAIR—I might leave that thought with you and, if there is anything else you would like to submit, please do so.

Dr McGrath—An issue that has not been raised is staff savings. At the moment there is one staff per 600 voters. You would need extra staff perhaps at the count but, with the scanning, it must be remembered that you will not need to have them sent to scanning centres any more. That is another factor that is never mentioned. It is illegal, and always has been, for those rolls to be removed from polling centres and sent to scanning centres, because nobody can check false names against whether people have voted. I have spoken to former electoral commissioners—commissioners before 1983—and you used to be able to look at the certified lists and see whether people had voted. Now they are not in DRO offices for two weeks, until the declaration of the count. They will not go to scanning centres any more because the scanning happens in the booth.

CHAIR—On the spot.

Dr McGrath—With declaration votes you will need fewer staff—four to five fewer staff; huge savings there—and you would just scan the absent votes and they would tell you the right division, and you will scan declaration votes in the same way. So you do not need an envelope with all the details. They will enclose the voting cards.

CHAIR—Thank you very much for coming along and for your additional submission, which we will certainly study as we go about drafting this section of the report. As I have said at previous public hearings, our aim is to report in October. That is a year from the last election, which we think is about the right period of time to have looked at all the evidence and for government to have enough time to consider any recommendations we make prior to the next election.

[9.51 am]

BRUN, Mr Peter Edward Constantin, Private capacity

KIRKPATRICK, Mr William Bruce, Member and former chairman, HS Chapman Society

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

Mr Brun—I am a member of the HS Chapman Society but I am appearing as an individual.

CHAIR—The committee has received your submissions, Mr Kirkpatrick. They have been numbered 35 and 162. Mr Brun, yours is numbered 52. They have been authorised for publication. Is there anything you wish to correct or amend in any way?

Mr Kirkpatrick—I wish to make a supplementary submission. I will talk about that.

CHAIR—We will invite each of you to make an opening statement of a few minutes duration, and then we can perhaps move to questioning. If at any time you wish to make that submission, you will need to do so during the hearing or you can do it at the end of your evidence, whichever suits you best. Mr Kirkpatrick, would you like to go first, then Mr Brun and then we will go to questions.

Mr Kirkpatrick—Perhaps we had better start with Mr Brun.

Mr Brun—I do not have very much to add, but I refer to the first part of my submission. The committee has in the past expressed doubts about the value of habitation checks and I acknowledge those doubts, largely because of my own experience, which is detailed in my submission. My review did show that despite CRU, some voters are not living where they are enrolled. The checks that I did were in the week leading up to the election, so it was right at that point. The number was perhaps not significant in most seats but, if taken together with other things such as lost postal ballots and multiple votes, it could well affect the result in a close seat.

With respect to the 26 voters who were not living at their enrolled address at the time of the election, there are still 16 on the roll. I have given a list to the DRO, who is present today, and she has advised me that she will check them. I would also draw the committee's attention to AEC submission No. 169, page 30, covering postal vote application numbers, which were approximately 774,000. Those returned for scrutiny were approximately 660,000. The shortfall was 758 per division, which is substantially more than the margin in the very closest seats—Hindmarsh, Kingston and Swan. In my discussions with DROs and so on and from working in the booths, I have no reason to question the integrity of any of those people and I have had no difficulty in communicating with them.

Mr Kirkpatrick—A lot of the evidence I refer to in Parramatta was accumulated by a team of three of us: Mr Brun, Mr Batten and I. However, we embarked on this because we were concerned about the incidence of electoral fraud and we wanted to explore it. Members of this committee will be familiar with the numerous claims of fraudulent voting which have been

reported over the past 17 years or so. In several cases these have been dismissed by the AEC without much investigation. That does not mean the claims were necessarily false; rather that the proof was difficult to obtain and prove within the parameters laid down by the Commonwealth Electoral Act. Where the supporting evidence is not brought to the case for a by-election within the prescribed period and where the costs of preparation for a narrowly defeated candidate will sometimes be so immense that they decide to withdraw rather than continue, the evidence of personation, of wrongful allowance of incorrect votes or the exclusion of consideration of where some voting papers were for the wrong electorate means that real opportunities to clean up roting are not followed up.

We have a couple of examples in the supplementary submission, which support the view we took to carry out a review of part of Parramatta electorate. They relate to the election in Swan in 1993, where the AEC failed to act on a report of significant fraudulent enrolment which must have reversed the result if confirmed, and to an election time and place to be discussed confidentially later, if the members of the committee agree. The reason for that is that if it becomes public it will identify the person affected, and I would rather do that confidentially.

The Mundingburra by-election in 1996 brought about the fall of the Goss government, elected in July 1995 as a result of fraud uncovered in the evidence before Judge Ambrose, who ruled that there were 52 votes which would have made a difference in the first ballot had personation and electoral official incompetence not occurred. A comment to me by an AE official was, 'Yes but that was not a federal election,' despite the fact that the state and Commonwealth used the same roll. In 1999, the state election in South Australia was notable for the recruitment of around 2,100 in one day and fraudulent enrolment at Coober Pedy involving unwitting and apparently some non-existent Aboriginals. Mr Chris Schacht, Dean Mighell of the Electrical Trades Union, and Mr Baker all went public on television about their distress at this and what they wanted to do to clean it up and help the Labor Party survive, a sentiment that I endorse—that is, cleaning the whole thing up.

Parramatta is a marginal seat where heavy migration and turnover of real estate gave a high rate of churn of the roll. After Ross Cameron conceded defeat, his campaign manager granted us access to the feedback pages for one subdivisional area, the Parramatta subdivision. We had to accept that the pages of feedback roll contained an exact replica of the information which the AEC had supplied in accordance with section 90, subsection (3) of the act, which we understood to be based on CRU. We were not aware of what modification may have taken place in the production of feedback. Its value lay in being able to do street calling, which enabled us to discover whether or not residents were those recorded on the feedback roll and to check against the computerised roll at the AEC state head office.

Our approach to selection of the sample has been covered in the submissions numbered 35 and 162. From the 3,105 residences in this area, covering 59 streets listed on 120 pages, we selected 14 pages containing 700 names. We have a few lists which we did not include, but we picked those to prove the point, we hope.

CHAIR—What point was that?

Mr Kirkpatrick—That there is the possibility of fraud occurring in the way in which the roll is set up. These names were subsequently checked against the computer roll at the Campbell

Street office of the AEC. Where residences were not recorded on the list, we called on the residents to check if they thought they were on the roll or if names were listed of people who did not reside there. For example, in Arthur Street we discovered two residences where the residents were not on the feedback roll. They both had tried to obtain postal votes without success. Dr McGrath has referred to the problems of that particular action. Both names were, however, on the computerised roll at Campbell Street.

In Wigram Street, we were told by a resident that none of the four names listed on the roll at that address were known to him, but he had lived there for 37 years and had no knowledge of them being registered at his residence. Does this mean that the AEC had not sent mail to those four men checking why they had not voted, or does it mean that they had voted and that therefore there was no signal to the AEC that their address on the roll, which we checked against the computerised roll, was invalid? At the streets and residences called on, the names of 15 people not living at residential addresses are listed in the submission, No. 35. In addition, a further 10 possible names such as that of the squatter at the house in Dixon Street were noted. These extra names of people were not used in the calculation of the opportunities for fraudulent voting in submission 162—

CHAIR—Mr Kirkpatrick, are you intending to table what you are reading as a supplementary submission?

Mr Kirkpatrick—Yes.

CHAIR—It might be opportune if you do that now. I want to allow some time for questions so we can flesh the issues out. We have to keep running according to our schedule, so it might assist both you and the committee members if you were minded to put that up. We can take that into evidence and in that way we will be able to consider it all as we are drafting the report. We can move to questions in a minute or two, otherwise we are not going to have time to ask you anything.

Mr Kirkpatrick—Sure. I jumped over a couple of things which should be struck out, but I can table that.

CHAIR—If there is something there you do not want to table, you do not have to table it today.

Mr Kirkpatrick—Can I hang onto it until I take those out?

CHAIR—Of course you can. It is pretty hard to untable something. I will ask one general question of both of you. Obviously, to the extent that you discovered the rolls were inaccurate, there was a combination of reasons. There would be no one single reason. It is predominantly a case of people being incorrectly on the roll because they had once lived at the address but not updated their enrolment. That would be one major cause—is that right?

Mr Brun—That is right, yes, although there were some who had not lived in those residences for many years.

CHAIR—Yes, but they had lived in the residence at some point.

Mr Brun—We assume they did.

Mr Kirkpatrick—But not all of them.

CHAIR—No, not all of them. The other category would be people who have moved in who have not updated their addresses.

Mr Brun—There were one or two of those.

CHAIR—Occasionally I have constituents that complain when they have moved into a new house in my electorate and they have updated their enrolment details but the previous occupant has not. When I send them mail they get a letter for them and for the previous occupant, who has not updated their details. But what interested me most about your submission is another aspect, which is that you did this after the election.

Mr Brun—I did mine before. The one in Parramatta was afterwards.

CHAIR—Let me cut to the core of my question: you did it on the final electoral roll—that is, the roll that applied on election day.

Mr Brun—I got mine from Peter King in July. I recognised that it was out of date, but I did check how many of the names on that changed later. I know that of the 37 which you have seen in the submission 11 had been changed by the time of the election, so 26 were up to date.

CHAIR—So that was the roll at election day.

Mr Brun—Yes.

CHAIR—For those people whom you are referring to today, their enrolment details had not been updated in the period up to the election—

Mr Brun—That is right.

CHAIR—or in the seven-day period that applied between the calling of the election and the closing of the rolls.

Mr Brun—Yes.

Mr DANBY—I have a question for both Mr Kirkpatrick and Mr Brun. We will deal with Parramatta first. I am not sure I quite understand the feedback roll you were talking about versus the electronic version of the roll. What is the feedback roll?

Mr Kirkpatrick—The Liberal Party is given, under section 90(3), a copy of the roll. It is an alias disk and it is supposed to be exactly what is there on 7 September and 9 October. I gather they shuffle it in some way into street or electorate order rather than the whole thing being in alphabetical order.

CHAIR—You do too, but you would call it something else.

Mr DANBY—I see. So that is the Liberal Party name for the disk that they get from the electoral roll which they reorder to classify people for political purposes and for contacting them.

Mr Kirkpatrick—Yes. We were checking and found that the feedback roll was not strictly accurate and in line with the computer roll in Campbell Street. Out of all that—and this is what I was going to say—we found that there were opportunities for 5,700 fraud cases, if people took advantage of those opportunities. We did not check all of that. We turned up enough to show that that was the number. It is all set out in submission No. 35, which we were not allowed to table.

Mr DANBY—What I do not understand is that you say these were opportunities for fraud, but most of them involved people who had neglected to correct their address and were, as all members of parliament face, in incorrect situations for completely innocent reasons.

Mr Kirkpatrick—Not entirely. There is a large moving population. We went to one house in Victoria Street, and some of the people listed on the roll at that address were not living there. That was fine. Others had moved to some other address and the people living in the house did not know where they had gone. In another house there were four people registered. Two of them had never lived there. So we were trying to find out where—

Mr DANBY—This is assuming that people were responding to a group of well-meaning people investigating the roll and telling you their personal arrangements.

Mr Kirkpatrick—That is right.

Mr DANBY—People sometimes register with government agencies and may reveal what is really happening but will not necessarily tell people whom they do not know who come to the door and ask them these kinds of questions.

Mr Kirkpatrick—Let us take the man living in Wigram Street. He has been there for 37 years and he had never heard of these four people. Why hadn't he if they had been there all the time? They were not there.

Mr DANBY—So these four people were on Mr—

Mr Kirkpatrick—They were on both rolls.

Mr DANBY—And it is not possible that you or the Electoral Commission had mixed up the addresses?

Mr Kirkpatrick—No. If he has been there for 37 years, why has he not seen any correspondence with their names on it?

Mr DANBY—It does sound very odd. Is it your serious contention that the 2004 election in Parramatta was lost because of election fraud by Mr Cameron?

Mr Kirkpatrick—I am suggesting that there were opportunities for fraud. We found 5,700. If you take what we found in that small sample and extrapolate it across the 19 divisions, that does not prove anything other than that those opportunities for fraud exist.

Mr DANBY—Isn't it better to describe them as 5,700 inconsistencies that you claim rather than 5,700 alleged frauds?

Mr Kirkpatrick—I am not saying they were fraud.

CHAIR—He did not say that. He said earlier on in his submission that there were opportunities for it.

Mr DANBY—I would regard them as alleged inconsistencies. If you drill down into these kinds of things they often have explanations, but I will pass over that. Can I ask you the same question about Wentworth. Is it your contention that, because of these opportunities to defraud, Malcolm Turnbull was improperly elected?

Mr Brun—I have not used that expression and I certainly do not think that it would have affected the result. The margin was quite substantial.

Mr DANBY—Both of you are very concerned about the inconsistencies between the roll the unsuccessful candidates, Peter King and Ross Cameron, provided you versus the hard copy of the roll that you got from the Electoral Commission. Is that the basis of your methodology? I am trying to understand.

Mr Brun—In my case, definitely not. I have a point I could make here. I do not particularly want to make it because it relates to the situation between Malcolm Turnbull and Peter King, but basically I did not believe that Peter King had a chance, so I was definitely not motivated by that.

Mr DANBY—I was not questioning your motivation, I was just trying to understand the method by which you came to these inconsistencies and what the inconsistencies meant at the end of the day.

Mr Brun—I came to them because over the years things have been written about fraudulent enrolments and all this type of thing and I thought it would be a very useful exercise to go out and have a thorough look for myself. A thorough look is pretty limited when there is only one of you doing it, but nevertheless I have reported on my findings.

Mr DANBY—I have one last question for both of you. I see in your submissions that you are critical of the continuous roll update that the Electoral Commission undertake. If you compare it to electoral systems across the world, isn't this the most advanced, integrated attempt to quickly update people's correct addresses using the databases of other agencies where people voluntarily give their names, like transport accident commissions and organisations like that? My view is that you come to this committee with the same view that all of us hold: we want the electoral roll to have integrity. I cannot think of a system outside of doorknocking every home—which in some cases is appropriate—that is not like the CRU which could possibly be better.

Mr Kirkpatrick—If I can answer that very quickly, I have said that the lack of a properly and efficiently maintained habitation review has undermined the accuracy of the CRU. This has left the public exposed to fraudulent voting from non-eligible names being registered in the period coming up to an election and to multiple voting and impersonation at elections. Some evidence of this is contained in the attached statutory declarations which I have just submitted. Dr McGrath has already described how the thing can be tightened up with an efficient bar coding system. I believe that most of the people in the Electoral Commission are dedicated, honest and hardworking and do a jolly good job. The system is not as good as it ought to be. We are trying to reveal where it has weaknesses and hence what ought to be done about it.

Mr DANBY—I have one further question. You do not think the electronic updating of the roll—the CRU—together with habitation reviews produces a roll that has basic integrity?

Mr Kirkpatrick—Our report shows that CRU is not as good as it ought to be. It lets people through the system. The roll that we looked at was checked the day before yesterday and those names, including people who moved out two days after the election, are still on the roll. The people who do not exist are still on the roll. The Chinaman who has gone back to China, and does not live at the address where he is registered, is still on the roll. Something is wrong with the system.

Senator MURRAY—I have two questions. The first concerns the possibility that the information you were given in response to your questions might be incomplete or inadequate. I will give you an analogy: if the water meter man comes to my house, I am quite happy to see him and let him go about his official business. There is no problem at all. If a private citizen turns up and wants to question me as to the processes of water, how the meter is read and whether the meter is accurate and so on, I am likely to give him short shrift because I would think it was none of his business.

CHAIR—That is the difference between senators and members of House of Representatives. I would invite him in for a cup of tea.

Senator MURRAY—As you know, a wise man goes where he is wanted. I am sure your people were perfectly polite and pleasant in doing their duties but I think people react differently to officials, with the kind of status they have, and to private citizens. Did you have a sense that people were resistant or might be evasive or difficult in responding to your questions?

Mr Brun—None whatever.

Mr Kirkpatrick—I only had one. There are a lot of Indians and Sri Lankans and there are illegals and so on. In calling at some of their flats it was sometimes difficult to get them to open the door. But when they did they were quite happy to talk. We found no problem with the people in, for example, Arthur Street, Wigram Street or anywhere. Nobody seemed fussed at all. They gave us the information freely.

Senator MURRAY—In my mind there are three broad categories we need to be concerned about. The first is of most concern, and that is people who should not be voting and who should not be voting where they are voting. The second is people who should be voting but are just incorrectly recorded and do not have their details properly sorted, which—I agree with Mr

Danby—is probably the great majority. The third, of course, is those who should be on the roll and are not on the roll. It is their duty and obligation under the law as Australian citizens to register on the roll. Did you come across people who you thought were Australian citizens and had not registered?

Mr Kirkpatrick—Let us take the man at Wigram Street who had been there for 37 years. We said to him: ‘These four people are on the roll but you’re not. Why not?’ He said, ‘I never vote.’ Is this because he just doesn’t want to vote, is illegal or is not a citizen? We did not ask him those questions. That was not what we were after.

Senator MURRAY—Did you get the impression he was an Australian? Sometimes with a new migrant you will not know whether they are an Australian citizen or not, but somebody who has been here all their life—

Mr Kirkpatrick—He did not speak with an Australian accent. He had a continental accent. His name, if you look it up on—

CHAIR—But he had definitely been there for 37 years?

Mr Kirkpatrick—Yes.

Senator MURRAY—It seems to me that the point of your remarks is that there is an opportunity to test the integrity of the roll not just from the perspectives that you have enunciated to us but also from the perspective of harnessing additional voters who should be on the roll and are not.

Mr Kirkpatrick—I believe the habitation review should be carried out. We have the ANAO report of 2002, and it makes various recommendations. It does not actually talk about the habitation review. It talks about improving the efficiency of the collection of data. We have found that if they do carry out a habitation review—which is supposed to be carried out selectively once a year, I understand—that names are picked up. If it is properly organised, you can gather up quite a lot of those people. But I think the people in Dixon Street, for example, are just not interested in voting, so they do not register.

CHAIR—There is time for one more question.

Senator MASON—With the habitation review, do you think that is the best method of ensuring the accuracy of the roll?

Mr Kirkpatrick—It is a very time consuming and costly one, but it is demonstrably better, from experience, than some of the other actions taken. But it needs to be supplementary to what are very good information accumulation techniques now that come from gathering data from other public institutions—

Senator MASON—So it is supplementary to other forms. How often would you like to see that habitation review undertaken?

Mr Kirkpatrick—I would like to see it once every two years—

Senator MASON—In each electorate.

Mr Kirkpatrick—Yes.

CHAIR—Thank you very much for your submission and for your evidence today. I invite you to make a supplementary submission in the next day or so. Do not feel you need to table anything today if it is not in the form you prefer. The secretariat will accept any supplementary submission up until next Friday.

Mr Kirkpatrick—Thank you. I have suggested that the supplementary submissions be tabled today. I am quite happy for that to take place, with the reservation that the confidential bit around the first submission—the recent election—

CHAIR—It is quite black and white. If you want to table a public submission, table all the bits you want public. If you would like to put in a confidential submission, that is something we can consider at a private meeting. But we cannot table something and ask people not to refer to a bit that you have got printed in the document. Unless the document is in the form you wish—

Mr Kirkpatrick—Both the one about the possible electoral fraud in 1993 in Western Australia and the one about the election in Sydney can be tabled.

CHAIR—So you are happy for this document here—two pages signed by you with a statutory declaration, a handwritten letter from Mr Wyatt, and another statutory declaration. You are happy for that to be tabled?

Mr Kirkpatrick—Absolutely.

Mr DANBY—Where is the allegation about Sydney? What federal electorate is it in?

Mr Kirkpatrick—If I disclose that, it begins to disclose the person.

CHAIR—Why don't we do this. The one that he is happy to be public we will take as a submission, as we have done all the way through. Anything relating to the private issue with respect to Sydney, why don't you consider how you wish to make that? We do have a capacity to take confidential submissions, but we do not do so at a public hearing.

Mr Kirkpatrick—Very quickly, the confidentiality bit relates to Mr X, whose house was attacked, his vehicle's tyres were slashed and so on, and his wife fled the house. He does not want his name revealed for that reason.

CHAIR—That is no problem at all. That is the last thing the committee wants.

Mr DANBY—Mr Chair, you are suggesting that if Mr Kirkpatrick wants to provide that—

CHAIR—He can do it in the next day or so—

Mr DANBY—He can provide it to the committee and we will consider whether we accept it—separate from this other material.

CHAIR—That is right. That is exactly what I am suggesting. I will take a motion that we will accept into evidence this submission that you have handed up. There being no objection, that is so resolved. Thank you very much for attending today. If you would like to send us a letter in the form of a confidential submission, we can consider that at our next meeting.

Mr Kirkpatrick—Thank you, Mr Chairman.

[10.24 am]

FREYS, Mr Ivan, Private capacity

CHAIR—Welcome. Would you advise the committee of the capacity in which you appear.

Mr Freys—I am here as a private citizen.

CHAIR—The committee has received your submission, which has been numbered 134 and authorised for publication. Is there anything you wish to correct or amend in that submission?

Mr Freys—No.

CHAIR—The committee has had a look at your submission and thought it worth fleshing out a bit further today, which is why you have been asked to come along. We thank you for making yourself available. I ask you now to make a very brief opening statement just on the pertinent issues that you wish to bring to our attention. We will then go to some questions and explore them in greater depth.

Mr Freys—Thank you. Basically, the reason I am here is that I feel that the AEC is going in the wrong direction. What is happening is that the divisional staff, the expertise, have been greatly reduced. For example, in my office I am down to two people. It has been like that for two years so I do not have an assistant, and there are offices throughout the state that are in the same position. What I feel is happening is that all the planning and procedures are being centralised in our central office, but the procedures and instructions coming out are all over the place. Some of them just do not make any sense. A lot of money has been wasted on procedures that physically just do not work.

I am here because I would like to outline what has happened, what my feelings are, the direction in which we should be going and what we should be doing to address these matters to ensure that we have competent and free elections as cheaply as possible. I will give you one example: 15 years ago the AEC had a terrific system called a habitation index, which I think you were talking about just beforehand. There was a card for every single household in Australia. If you took a division, you would have a card for every address. When someone enrolled at that address we physically wrote them on the card, and when someone left we took them off the card.

That worked pretty well, except when our central office decided to come up with a system using a computerised roll brought out in an A to Z order. That system was developed without our consultation and without any input. We as divisional returning officers argued at the time that this was not the way to go, that we should not be going to an A to Z roll and that we should be based on the addresses, which we already captured. They did not listen to us and went ahead with the A to Z roll. The problem as you would know is that, in the past, we have had people suddenly enrolling at different addresses and people making up addresses. As returning officers with local knowledge we knew when a street did not exist and we would investigate further. For example, if there was a street number we could not check whether that street number actually existed or whether it was a park or whether it was a cemetery, and so in the past you would have

people enrolling with addresses at cemeteries and at places that just did not exist. We have had a lot of problems, and you have seen what has happened with fraud—

Senator BRANDIS—They existed, but nobody lived there.

Mr Freys—We do not know because we could not confirm it. There was no way of confirming that unless we actually drove out and had a look ourselves. The problem is that, after that was determined, we went back to an address based system but using the computer.

CHAIR—This might be a good point to start some questioning.

Senator BRANDIS—Mr Freys, thank you very much for coming. You are not exactly a whistleblower, I suppose, but you are somewhat resembling one. It does take a degree of gumption to publicly criticise the agency for which you work, so I want to acknowledge and thank you for that. Mr Freys, how long have you been an employee of the Australian Electoral Commission?

Mr Freys—For 25 years.

Senator BRANDIS—You are currently a DRO, aren't you?

Mr Freys—That is right.

Senator BRANDIS—Is that the highest position you have occupied in the Australian Electoral Commission?

Mr Freys—No. I have acted in a position above that as an area or operations manager.

Senator BRANDIS—Is that a position in the central office in New South Wales of the AEC?

Mr Freys—Yes, it is.

Senator BRANDIS—So you are familiar with not merely the procedures and processes in a local divisional returning office but also the procedures and processes in the central office, at least in New South Wales?

Mr Freys—That is right.

Senator BRANDIS—Do you have any familiarity with the procedures and processes of the central office in Canberra?

Mr Freys—It is fairly limited. I have been on some working parties in the past.

Senator BRANDIS—And what about in other states—or is your experience specific to New South Wales?

Mr Freys—It is specific to New South Wales and some of the central office.

Senator BRANDIS—You raise in your submission a number of particular instances of mistakes, noncompliance with procedures or irregularities of other descriptions. Have you taken those issues up with your superiors in the AEC—and, if you have done so, what has been the character of the response?

Mr Freys—In the past I have, and I have had different responses. In the current situation, I have taken some matters up and I have had no response. Would you like an example?

Senator BRANDIS—Yes, by all means.

Mr Freys—For example, a working party was looking at election arrangements such as transferring of votes and what happens to the votes. I asked to be involved in the working party, because I was quite interested in that working party. I was put on that party and about two months later I got a draft saying, ‘It’s all finished; have a look and tell me what you think.’ I got quite upset about that. I took it further and said: ‘This is not what I wanted. I wanted to get involved, because I have got some active information to give and I thought your procedures were incorrect.’ I outlined the details of what was incorrect and that people who were writing this paper should be writing it not from the viewpoint of the state that they had picked, South Australia, but rather that of New South Wales, because New South Wales has 50 divisions out of 150—a third—whereas South Australia at that time had 12, which is about eight per cent. It is like doing a traffic management survey on the traffic in Sydney but doing it in Burnie in Tasmania. It is not going to work unless you do it in the most populous state.

The answer I got back was directed not to me but to the Australian electoral office in New South Wales, basically saying to lay off; that I had not made any previous applications to central office; that I should not be talking about people being selected to do these tasks who were friends of people or because they were going to different locations, but that they had been selected on merit. There was no evidence of the merit. When I took it further, there was an email saying, ‘Put it behind you and get on with your work.’

Senator BRANDIS—Would it be fair to say, generalising from that particular instance, that you were dissatisfied with the treatment of your legitimate complaints by superior officers at the AEC?

Mr Freys—I think, when you raise legitimate complaints, you outline the complaints and nothing happens to them, it is a problem. I outlined the problem in 1999; nothing happened. I outlined the problem again in this working party; nothing happened. There was a problem in the last election, and now suddenly there is another working party being formed to do exactly the same thing. I thought, ‘Well, it’s a waste of time; why get on a working party when this has happened election after election and still nothing is resolved?’

Senator BRANDIS—How would you in general describe the efficiency of the AEC? Is it efficient in your view? I do not want to put words in your mouth, but I am inviting you to address that issue and make whatever criticisms you want to make.

Mr Freys—I have to say that it is patchy. There are a lot of exceptional divisional returning officers. There are some new ones that are coming in that are very good and will improve with time. They could be excellent officers. But the instructions coming from Canberra and the

manuals we are following are patchy: some are good and some are not. I cannot identify any particular person. I really do not want to do that.

Senator BRANDIS—No, I am not asking you to.

Mr Freys—But something like this folder contains five weeks reading during the election period—instructions on what to do.

Senator BRANDIS—I think we should make sure the record shows that Mr Freys is holding up a very thick ring-binder which is obviously comprised of several hundred pages of paper.

Mr Freys—These are just the election memos to read. The problem is that for one of these—for example, on postal vote witnessing—there are eight different pages here, which are all contradictory and all talking about what should be done. It just does not make any sense.

Senator BRANDIS—Is that all for the 2004 election?

Mr Freys—Yes, just for five weeks.

Senator BRANDIS—Within that large volume of instructions that were generated by head office—

Mr Freys—The central office.

Senator BRANDIS—you are saying that there were eight different and inconsistent sets of instructions in relation to postal vote handling?

Mr Freys—That is right, and it was just on one topic of postal voting. The postal vote application has to be signed by the person asking for the postal vote and witnessed. These pages, these eight memos I have here, are all about what happens if it is signed before the writ is issued—you cannot accept it—if the date of the witness is different, if the witness does not date it, if the—

Senator BRANDIS—Are those confidential documents? Would you be at liberty to provide those documents to the committee if we were to ask for them or would you not feel comfortable doing that?

CHAIR—You could go away and check.

Mr Freys—I would have to check, but I understand that, with our circulars and any election memos, these go out Australia wide, so I would assume they would be available.

Senator BRANDIS—I do not want you to get into trouble. I want to make it plain that you have not disclosed those documents to us; you have merely made a commentary on them. If you are at liberty to give them to us, we would like you to, please. As the chair suggested, go away and check.

Mr Freys—I could check that. The main point is that there is so much contradictory information in these. We have five weeks to interpret these during an election period while we have other things going on at the same time.

Senator BRANDIS—I suppose it is the case, isn't it, that during an election period there is a vast increase in the number of casual staff, who would not be as familiar as you are with the procedures and therefore might be more likely than full-time staff to be confused by a volume of inconsistent information?

Mr Freys—That is right.

Senator BRANDIS—That, in turn, raises yet another issue, which I see you advert to in your written submission—that is, the training of staff.

Mr Freys—That is right. The submission I prepared was done quite quickly. I kept notes during the election period, and basically decided afterwards to do it. I had only a day to do it in, so I am sorry if it is a bit disjointed. I basically wanted to get the point across. The other thing about this memo here is that I might have a lot of temporary staff. It is my additional responsibility to read through this material, interpret it and dissect it into blocks. If I do have temporary staff, I need to be able to say to four of them, 'You need to know that much of it,' and to another eight of them, 'You need to know that much.' I have to interpret it and then relay the information to them and give them copies so that they understand what is going on. What concerns me about postal voting is that this is simply about witnessing the application. This happens in every election. This could have been done two years before the election. Why leave it until it is announced?

Senator BRANDIS—I am going to ask you a few questions about postal voting in a minute. You, helpfully and atypically, in many ways, offer a solution to the problem you have identified in your submission, which is to cut expenditure by reducing management staff to a maximum of 10 per cent of the divisional total and use divisional staff to form working parties to review, refine and develop election procedures, and you go on with a couple of other things. I must say that your submission strikes me as having very much the character of the tension one often finds in large organisations between the people at the coalface and the people at head office. Would that be a fair comment?

Mr Freys—I think that has always occurred in my organisation.

Senator BRANDIS—Do you think that is particularly acute in the Australian Electoral Commission?

Mr Freys—No, I think that would happen in every organisation. What has exacerbated this position is that the instructions are conflicting and very difficult to follow. We feel that the expertise out at the coalface is being lost by not using our expertise in developing these procedures.

Senator BRANDIS—You seem to be saying that the AEC, in a managerial sense, is too much of a top-down and not enough of a bottom-up type organisation. Is that fair?

Mr Freys—Yes.

Senator BRANDIS—Let me ask you about specifics, please. I am not going to take you through all of them but there are two that particularly interest me. One is the question of Mr Peter Garrett, the member for Kingsford Smith, and the discovery that he had not been on the electoral roll for 10 years. I do not want to be political about this, but Mr Garrett offered a variety of different and inconsistent explanations as to that. How could that have come to be if the Electoral Commission's procedures had been followed? What procedures, if Mr Garrett is telling the truth, should have been followed but were not followed so as not to pick him up?

Mr Freys—If you go into your local polling booth to vote and your name is not on the roll, you can put in a provisional vote, which basically is a vote in an envelope. You put in your details, and you are basically saying to the Electoral Commission that you should be on the roll with this address and here is your vote. We check it to determine whether that is correct. If you are out of your division—there is no roll—you fill out an absent vote for the division you should be in. There is provision on both of those to put in your current address.

The instructions that we have specifically tell us what we are to do when we, for any reason, reject the vote, whether it is rejected wholly or partly. It could be partially rejected because a person may be enrolled in New South Wales and claims to be in the division of Greenway but they are actually on the roll at Parramatta. In that case, their Senate ballot paper is counted but their House of Representatives ballot paper is not because they have voted in an incorrect division. It is a requirement that we write to all these people and tell them that their vote has been rejected. I have done that up to the 1999 referendum. In that referendum, we captured the data and we began to write but then we were advised: 'Hold on, don't write. The draft letter that has been approved refers to an election.'

Senator BRANDIS—Are these instructions coming from—

Mr Freys—They come from my central office.

Senator BRANDIS—The New South Wales central office?

Mr Freys—No, from Canberra central office. They told us, 'Don't do anything; hold off until we redraft this letter.'

Senator BRANDIS—So we would expect that to be uniform across the country?

Mr Freys—Yes, across Australia. Our assumption was that it would be as simple as crossing out 'election' and replacing it with the word 'referendum'. But, no, five months later nothing had happened. Six months later, we got a message saying, 'It's too late to send these letters, so we're not going to send them. We'll do it next election.'

CHAIR—So it happened in 2001 and 2004?

Mr Freys—No; the letters were sent out in 2004. In 2001—

CHAIR—The evidence you are giving is important but, although the time has almost expired, we would like to continue for a little while if you are happy to do that. It will mean that we are running slightly late but we think the evidence that you are giving is important. Please continue.

Senator BRANDIS—Mr Freys, so these letters were originally instructed to be sent out, they were not sent out; there was a delay for a period of months and then a contradictory instruction came down from on high that it was too late. Was that because of the imminence of the election?

Mr Freys—No, the election was over. The referendum was over and we had captured the data and were ready to send out the letters and we were told, ‘You can’t send out the letters; the letter is being redrafted. When you have the approved draft, you will be able to send that out.’ That approved draft never materialised and after six months we were told: ‘I’m sorry; it’s too late We’re not going to send out the letters.’

Senator BRANDIS—Why was it said to be too late?

Mr Freys—It was six months after the election. These are people who did not vote. I think the assumption was that they may have moved on and enrolled at a different address and it was too late to send the information.

Senator BRANDIS—So these are the letters that should be routinely sent to people who have apparently not complied with their obligation to vote?

Mr Freys—No, these are people who have voted, have filled out an absent vote or provisional vote and the vote was rejected. They should have been told that their vote had been rejected but they were never told.

Senator BRANDIS—How many people did that concern? How many letters should there have been?

Mr Freys—Australia wide?

Senator BRANDIS—Yes.

Mr Freys—About 750,000.

Senator BRANDIS—About 750,000? And you base that, as I see from your submission, on assuming that it is about 5,000 affected voters per division.

Mr DANBY—Can you tell the committee what happened at the 2001 and 2004 elections?

Mr Freys—In the case of the 2001 election, I do not know why they were not sent out. We captured the information electronically. We typed in the name of the elector and the address which they claimed to vote for. We typed in the name of the current address they claimed to be living at, so the letter could be addressed to that address. The details were electronically kept. All our central office had to do was mail merge the data and send the letters, but they were never sent. I do not know why.

Mr DANBY—But it was done for 2004?

Mr Freys—Yes, it was done for 2004. I was in Vietnam and when I came back I heard the wrap-up about what happened with Peter Garrett and I assumed that what had happened was that he had filled out the envelope—he could have put in an absent vote—and the vote has gone in with the address he had claimed to vote for, his current address, but he was never advised that his vote was rejected and never contacted that there was a problem. How can you expect someone—

Senator BRANDIS—With regard to 2004?

Mr Freys—That was 1999 and 2001. Everyone was contacted about 2004. Everyone was written to.

Senator BRANDIS—After the 1999 referendum and the 2001 federal election, when this procedure was not complied with, was a reason given for the noncompliance?

Mr Freys—Only in 1999. A letter was not approved, so we could not send it out.

Senator BRANDIS—That is hardly a reason.

Mr Freys—That is the only reason I have been given.

Senator BRANDIS—What about 2001—no explanation at all?

Mr Freys—I have no idea. There was no explanation on that. There may be a reason, but I do not know what it was.

Senator BRANDIS—There must be a senior officer of the AEC responsible for compliance issues, in whose direct responsibility this would have fallen. You are just not aware of what happened at the higher levels of the AEC?

Mr Freys—No. Communications between the higher levels and the divisional offices, which actually do the work, is fairly poor.

Senator BRANDIS—I must say I find that rather alarming. Do you want to say anything more about that? I was going to go on to another topic. Chair, if others want to pursue this specific topic, maybe this would be the time to do it.

Mr DANBY—I think this is very interesting questioning. Mr Freys, there is one thing I want you to elaborate on. In the periods between the 1999, 2001 and 2004 elections were routine letters written to people that would have updated their addresses?

Mr Freys—Yes, there were.

Mr DANBY—So all the data you have captured was not entirely lost—

Mr Freys—No.

Mr DANBY—A lot of changes of address happened in that period. At both the 2001 election and the 1999 referendum you would have had a massive input of information if those letters had been sent out?

Mr Freys—That is right. There are files where the data was never used.

Mr DANBY—But it was not as if no data update was being done. So you did get a data update done, but you missed those two opportunities?

Mr Freys—That is right.

Senator BRANDIS—Mr Freys, I want to move to what you said on 28 September 2004 about the postal debate debacle at the 2004 election—that is my expression, not yours, although you might care to adopt it. Because your comments were very brief, I will read quickly into the record what you said about this:

As everyone is now aware, there have been major problems reported with Postal Vote Certificates (PVC) throughout Australia. It seems that large numbers of PVCs were issued in outer envelopes addressed to the voter with another persons PVC and ballot papers inside.

It took a long time for DRO's to be advised of NSW errors in the postal voting system. I was not aware of problems in other states and territories, until two electors who had not received their PVC from the Division of Canberra telephoned me 2 days prior to polling day. When I checked with that Division as the system showed the certificates were issued three weeks earlier, I was advised 6000 plus, General Postal Voters (mainly ill and incapacitated people) PVC's were not issued, in error, and all had to be reprogrammed for a re-issue to take place.

I find it hard to believe all AEC staff were not kept informed of these errors as without this knowledge we were advising electors to wait as the certificates were assumed to be in the mail.

That is, in full, what you said about that topic in your submission. We have heard evidence—particularly in Queensland, in the electorate of Maranoa and, to a lesser extent, the electorate of Kennedy—about how this debacle affected the Senate election, in particular, but also the House of Representatives election. For example, somebody from the DRO in Kennedy came along and told us about waiting and waiting and waiting to receive the material from central office until it seemed to be too late. You have posed this question yourself, so let me pose it back to you: how could this have happened with such a large volume of PVCs and an election imminent? What management checks existed in the AEC, and were those safety procedures not complied with?

Mr Freys—That is a really good question and I wish I could answer it. I am in the dark.

Senator BRANDIS—Why don't you approach it this way? Why don't you take us methodically through, step by step, what should have happened and where what should have happened failed to happen?

Mr Freys—The postal voting system we call APVIS is quite a good innovation; it would work extremely well provided it was maintained and audited. When we get an application for a

postal vote, we tap it into the system and the computer system captures the address and the address to post the application to. All the general postal voters, who are people incapacitated at home for whatever reason, are registered on a long-term basis. They are electronically entered into the system. As you all know we cannot send anything out until after the ballot papers are printed. So we have a lot of applications coming in, we input the data and then wait. Once the candidates are known, the ballot papers can be printed. The material goes to the contractor and the contractor then envelopes it and posts it out to the electors. On our system it updates electronically—

Mr DANBY—Is it always the case that the GPV voters applications go out first and then the other temporary postal vote applications go out after them, as they come in?

Mr Freys—That is right. They get posted out. On our computer system, an update shows the date of posting. That is the date it has been processed and posted. We assume that if the nominations are known on the Friday, over the weekend the ballot papers are printed and from the Monday they start going out. So we get a notation appearing electronically that it has gone out on Monday or Tuesday. We know that if it has gone out on that particular day, it would mean that the ballot papers have been printed, they have been boxed, enveloped, taken down to the post office and put in the mail that day. We then give them maybe a day to get to the location and a day to be distributed by the post. So there is a two- to three-day delay. What was happening was that four or five days later, people were ringing saying, ‘Where’s my postal vote?’ The problem with the early part of the election is that a lot of people ring us before the nominations have closed saying, ‘Where are my ballot papers?’ You know that it is physically impossible, you cannot do that. So we have a lot of problems telling people: ‘You have to wait. It won’t be until the end of next week, once we know who the nominees are, that the ballot papers are printed.’ Towards the end of the first week, we started getting phone calls again and we did not know what was going on.

Senator BRANDIS—Was it from across Australia?

Mr Freys—No, just locally at this stage. We said, ‘They’ve all gone.’ We checked and said, ‘There is a bit of a delay but they have definitely gone, so we assume they’re in the mail.’

Mr DANBY—Mr Freys, I want to make sure I know what you are talking about. Towards the end of the first week, after the close of nominations—

Mr Freys—The nomination ballot paper draw was on the Friday. The following week, on the Monday, we could start issuing. I believe on that Monday—

CHAIR—The first week of possible voting.

Mr Freys—That is right. At the end of that first week, we started getting queries about what was happening.

CHAIR—From general postal voters?

Mr Freys—From all across. But the problem there is that a lot of people—

Senator BRANDIS—When you say that, do you mean in the divisional returning office of Mitchell?

Mr Freys—That is right.

Senator BRANDIS—Are you aware from conversations with your colleagues in other divisional returning offices that these problems were being experienced elsewhere?

Mr Freys—It was not until later, at the end of that week and early the second week, that it started to become more commonplace and we were getting more calls. On that basis, we could not put them off for any longer.

Senator BRANDIS—As I have said before, we have heard evidence about this in Kennedy, for example. So you are now telling us about your direct experience of it in Mitchell. What I am trying to understand is whether or not one can assume from the nature of the problem that it was a uniform problem across the country?

Mr Freys—I do not know how uniform it was. All I can say is that there were delays in the postal votes going out. We were advised there was a delay.

Senator BRANDIS—Do you think, with your greater knowledge than ours of the way these systems work, that if this problem were experienced in Mitchell it was unlikely to be locality specific? Was it a general systemic sort of a problem which you noticed in your own particular locality?

Mr Freys—It generally became noticed as more systemic but, again, during election time we are flat out—we do not get a chance to talk to our colleagues even if they are in neighbouring seats. It was only when more and more problems started occurring that we started to realise there was a problem. You asked me before about how to stop that. I do not know what the procedures were, but I can put you through—

Senator BRANDIS—Before you address that, there is another thing that I did ask you to address and that is: were there check mechanisms or failsafe mechanisms in place that were not observed?

Mr Freys—In a divisional office or in a contractor—

Senator BRANDIS—From the central distribution point.

Mr Freys—That is a problem. I just do not know—

Senator BRANDIS—You do not know.

Mr Freys—We do not have any communication on that. During the Constitutional Convention I was involved in the ballot papers going out to the electors, and I can tell you what happened there. We had a contractor—I believe it was Salmat. They were enveloping and posting out the ballot papers to every elector in every division in New South Wales at the time. Our job was to do a sample of two out of every hundred. What we did was we got a box of them

that were printed, pulled out two, opened them up, made sure that the envelope was addressed to the elector, made sure that the inside envelope was addressed to the elector—that the two matched—made sure that the ballot papers were there, sealed that back up in the envelope and put it back in the box. So we checked two in every hundred—a two per cent check. What we would then do was check, if in that time there were 37,263 to be issued, that the actual finished boxes came to 37,263—that they matched—and then check that the postage records matched what was going out, so we kept strict control.

CHAIR—I interrupt for just one second. In fairness to other colleagues, we have extended the time. Senator Brandis has asked a whole series of questions. In the interest of bipartisanship I have ceded him my time and Senator Mason's time. We will go until about 11.15, so when Senator Brandis wraps up we will go the Deputy Chair and Senator Murray. That does not mean I do not have any questions.

Senator MURRAY—I am very happy with the line of questioning. It is very rewarding.

Mr DANBY—I am too.

Senator BRANDIS—Thank you very much. Go on, Mr Freys, and tell us where these errors could and should have been picked up and how it came to be that they were not.

Mr Freys—Again I really cannot say because I simply do not have that information. We were basically kept in the dark.

Senator BRANDIS—For God's sake! Mr Freys, I am not criticising you, I am just expressing frustration. But if we hear from you down here in Sydney in Mitchell and we hear from some bloke up in Far North Queensland in the eastern end of Kennedy, you have the same problem right across Australia apparently. You must have had the divisional returning officers pulling their hair out and screaming to their superiors in central office: 'What is going on?' What response are you getting?

Mr Freys—Very little: 'There's a delay. We've been swamped in postal votes. They'll be sent out. There's a delay.' That is all we were told.

Mr DANBY—Isn't that little phrase perhaps the key to the whole thing? Is it your impression that part of the delay is caused by this inevitable march of increase of postal votes? Do you see that in Mitchell? Is that an explanation for what Senator Brandis is asking about?

Mr Freys—Yes.

Mr DANBY—So there is a huge volume of postal votes now?

Mr Freys—That is right. It is increasing.

Mr DANBY—Do you know how many there are in Mitchell?

Mr Freys—Four and a half thousand, but that was pretty much on par—

Mr DANBY—That is GPVs and PVAs?

Mr Freys—That is right. But it is pretty well on par as at two elections ago.

Mr DANBY—So it has not increased much in Mitchell?

Mr Freys—No. It actually went down in between for the referendum, but it came back up again.

Senator BRANDIS—That in fact makes it worse. Mr Freys, I want to ask you two last things. First of all, do you have a view as to the extent to which these problems with the postal votes may have been the consequence of the contracting out of the services by the AEC to a private contractor? You may not have a view, but if you do please give it to us.

Mr Freys—My view is that I do not think it is sufficiently monitored. I think it should have been monitored very closely—monitored in the number of electronic transactions that were received, what was going out, and the two checked against the postage records to ensure that it was going out. I would treat ballot papers like bank notes.

Senator BRANDIS—Lastly, Mr Freys—this is a bit outside your bailiwick, I know—can you offer any possible hypothesis as to how it could be, as we heard when we sat in Maranoa, that hundreds of Maranoa voters were sent the New South Wales Senate ballot paper to fill out? How could a mistake like that have been made?

Mr Freys—I do not know. I am not familiar with that.

Senator BRANDIS—You would think if there were checks in place an error of that volume would have been caught, wouldn't you?

Mr Freys—I would imagine so. It is so frustrating and so embarrassing when this happens.

Senator BRANDIS—All right. That is very helpful.

Mr DANBY—Mr Freys, thank you for your presentation and submission. I want to start with a couple of routine things that arise out of your submission and testimony. I think your idea of youth enrolment and youth enrolment campaigns is excellent. I am surprised by the implication in your submission that no automatic procedure or campaign to enrol young people is conducted by Electoral Commission offices according to a plan or kits provided to them by the central office of the Electoral Commission. Are you saying that you run a particularly effective youth enrolment campaign but other electorates do not?

Mr Freys—I try to. We get a shell on what to do. The shell basically involves going to schools, giving a talk and following up enrolments. I am doing it a little differently. I am looking at other innovative ways to increase my enrolment. I am in a very fast-growing division; it has the highest enrolment in this state. Quite a few people are in the 16-, 17- and 18-year-old age group, and I am trying to capture them. I am going round to the schools and picking up that enrolment. As you would know, to start school in New South Wales you have to be a certain age at 1 April. I would assume that, when you extrapolate that out, most people only turn 18 after

April in a particular year, which is year 12. So it is really pointless for us to go early in a year because there are no people then who are 18 and those who start a year earlier are only 17 at that stage, so it is more important going towards the end of the year..

Mr DANBY—This is invaluable local knowledge.

Mr Freys—When you are doing any type of roll activity, you should look at how you are going to capture it and the most effective way of doing that. That is what I have been trying to do. My reasoning is that, if you know an election is going to come up, say, at the end of the year, in October or November—because of the three-year span—the logical time to look at capturing the youth enrolment is around June or July, when it is a bit quieter.

Mr DANBY—The public would be intrigued by your use of the word ‘capture’. I think their sense of its meaning is different from the way that electoral officers use it. In your opening testimony you talked about how electoral officers used to have street-by-street index cards and that since the adoption of the A to Z system—the continuous roll update process—you have lost that body of knowledge. Is it right that no index cards are kept in the electoral offices?

Mr Freys—We have lost that body of knowledge. But what is happening now is that we have spent over \$8 million on sending our divisional people out to drive around the streets and write down house numbers to build up the database again.

Mr DANBY—What did you spend \$8 million on?

Mr Freys—We have spent \$8 million getting people driving around the streets and writing down street numbers so we can get that data back.

Mr DANBY—Who drives around the streets?

Mr Freys—We employ casual staff to drive around the streets to write down numbers so that we can get that database back.

Mr DANBY—How long has this been going on?

Mr Freys—We started maybe a year and a half to two years ago; it is continuing. Now we have the CRU, which involves postage. A lot of divisions have asked for additional funds to do a drive-by to new areas which are just being created.

Mr DANBY—You have a computer record of addresses, plus the A to Z record of what you capture from the CRU.

Mr Freys—The two are matched. What I am basically saying is that previously we had a manual card and now we have an electronic card. It has gone back to what we had 15 years ago but it is done electronically. So now the enrolments are all address based.

Mr DANBY—After the last election we were taken to the New South Wales headquarters of the AEC where they showed us this very modern system that was coming in, which had a

complete list of streets because of the very problem that you have identified. There were whole areas that had new street numbers. There are whole streets and districts that did not exist.

Mr Freys—That is right.

Mr DANBY—Your claim may have been a bit overstated, in the sense that you said that we have no idea where these houses are or if this place is a graveyard or whatever. Don't you have that system from the AEC where you have the geography of your electorate laid out, and the street numbers, so you can check where is 90 to 110 Wentworth Street?

Mr Freys—Yes, we have now.

Mr DANBY—Okay. How long have you had that?

Mr Freys—Since we have gone to the address base. Maybe for the last seven or eight years it has been more and more an address base that is being updated continuously. It is becoming more and more accurate.

Mr DANBY—You have a computer based system whereby you are able to try and find out where these addresses are?

Mr Freys—Where we know of a particular address, we electronically put the address in and the address forms a record in an address register. We can only enrol people to that address. If we get an enrolment from someone for an address that does not exist in the system, we will investigate that and find out whether that address exists. We would contact the council to find out whether it is a new house that has just been built or whether it is an old house that has been pulled down and a block of flats built there. We now have the capacity to obtain that information.

Mr DANBY—I want to turn to a different area. At a recent hearing in Canberra, the Electoral Commission advanced some tables to the committee that included three categories of people who sought to enrol after the close of the roll. They were new enrollees, re-enrollees and people who had changed addresses between electoral divisions. Are you familiar with those three?

Mr Freys—Yes.

Mr DANBY—The tables provided by the Electoral Commission indicated that there were 76,000 new enrollees across Australia, 255, I think, people who had changed addresses across divisions and 78,000 people who had re-enrolled—they may have been overseas and have come back to Australia and have used that seven-day period of grace after an election is called to re-enrol. Are you aware of that process and those three categories of people?

Mr Freys—Yes.

Mr DANBY—Are you aware also that it has been the policy of this committee, under whatever political majority has existed in parliament, to support that period of grace to allow people to be enrolled after an election is called?

Mr Freys—Yes.

Mr DANBY—Are you aware that it has also been the policy of your head office, and all the divisional offices therefore for the last 20-plus years, that it is a vital task for the Electoral Commission to make sure that we have the best roll possible before a compulsory vote takes place Australia-wide?

Mr Freys—Yes. We will do whatever we can to minimise the impact of last minute enrolments from the CRU and from school visits to get 18-year-olds onto the roll. Also, during this last election, I put ads in the paper advising people that if they wanted to check their enrolment, they could do so through the internet. The idea was to stimulate enrolments so that I could reduce the impact of last minute enrolments from the time the election was announced to the close of the roll.

Mr DANBY—You would have had thousands of people in Mitchell who used that period to enrol in those three subcategories?

Mr Freys—Yes.

Mr DANBY—Are you aware of some foreshadowed ideas from Senator Abetz or someone else in the government to close the rolls on the day the election is announced?

Mr Freys—Yes.

Mr DANBY—What would the effect in Mitchell be on those thousands of people who use the period after the election is called to re-enrol?

Mr Freys—It would disenfranchise a lot of people. We would have to go to a lot of expense and advertising to ensure that the rolls were as up-to-date as possible and do that on a continuing basis.

Mr DANBY—What is the principal trigger for the younger people in Mitchell to enrol in that seven-day period after the election is called?

Mr Freys—Mainly, it is just to get on the roll; they do not want to be fined. Very few have an interest in politics, but that changes as they get older.

Mr DANBY—If you were to run an advertising campaign, do you think that would get all of those people on the roll, most of them on the roll or a minority of them on the roll? What is your gut feeling as an experienced electoral officer?

Mr Freys—I think it would get a fair few on the roll. I found by going to the schools, talking about elections and how important they are and explaining how it works—

Mr DANBY—I am not just talking about young people; I am talking about people who have changed addresses and those Australians who have returned to Australia and are re-enrolling.

Mr Freys—They are a lot more difficult to follow up. A lot of them tend to assume that they are on the roll and, even if they change address, they still feel that they are on the roll and that they are okay, but they will not update their enrolment. That is a continuing problem that we have.

Mr DANBY—Does your memory go as far back as the 1983 election, when the roll was closed on the day the election was announced?

Mr Freys—Yes.

Mr DANBY—And what happened then? Did the fact that people had no opportunity to enrol after the election was called cause some kind of upset?

Mr Freys—Yes. It created a lot of confusion and a lot of provisional votes, and a lot of people go in to vote, find they are not on the roll and just walk out.

Mr DANBY—And people expressed anger at being what they thought was disenfranchised?

Mr Freys—Yes.

CHAIR—Do you have any questions, Senator Murray?

Senator MURRAY—I do not have the time, but I do not mind because the questioning to date has covered things I wanted to ask about.

Mr Freys—Could I just say one thing? I put in a solution to that issue of closing the roll. What I was suggesting is that it would be quite simple, once the roll closes, to put out a CD. Everyone who is enrolled is on that CD, but anyone who has been enrolled and has not updated their enrolment appears in red as being taken off. These people who have been taken off are people who we know are no longer living at their listed address but someone has advised us. We have taken them off by what we call objection actions. They are no longer living there. They appear in red. Someone who might have gone overseas and been taken off will appear in red.

If that CD has been given to every polling place, when someone comes in to vote, if they are not on the list they go to this CD. If the polling place were a school, you could borrow a computer. All you would need is a monitor to run it. You type in a name and it will come up. If it comes up in black, the person is enrolled. You have the current enrolled address and the division they belong to. They will get a correct ballot paper. If they are not enrolled, it comes up in red, straightaway saying: 'You're not on the roll. You were last enrolled here.' Then you have that person in front of you, so you can immediately correct their enrolment and explain to them why their vote will not be rejected. They are not on the roll and they have not been living at that address.

Mr DANBY—Why it will be rejected or will not be rejected?

Mr Freys—It is a possibility. It depends on where they were taken off the roll. In the past, if they were within the division they could be reinstated and put back on the roll. But we now have

a memo saying that that does not happen now. From 10 August, they can only be reinstated to the address that they were taken off from.

CHAIR—Could I invite you to consider making a supplementary submission on that issue?

Mr Freys—Yes.

CHAIR—I am conscious of Senator Murray's time and we have other witnesses. It has been great evidence and we have gone over time, but I want to give Senator Murray—

Mr DANBY—Can we get a copy of that memo that he was talking about too?

CHAIR—If he is able to give it to us, that is fine.

Mr Freys—Yes. That is my own submission. I have that here.

Mr DANBY—On the same basis as before.

CHAIR—On the same basis as before.

Senator MURRAY—I do not have time to drill down into your submission, but I do not mind because the questioning has been to the point, from my point of view. I want to deal with broader issues. Before I do, I want to say to you that, for those of us who are sometimes given alarming stories about the Australian bureaucracy and the processes and procedures within it, it is refreshing to see a person prepared to come forward and give us independent advice in the good traditions of public service, so I will add my commendation to those that have already been given to you.

Your evidence does draw to my mind the possibility that other DROs may have information which they think this committee should be put in touch with. If you know of any, if you could encourage them to put in submissions—they would need to do so fairly smartly, but I know the committee would appreciate further information. The second point I want to make to you is that some of your evidence seems to indicate the stresses and inefficiencies that result when budgetary constraints affect the ability of people to perform their duties. I think that is a timely reminder of the dangers of that approach. Am I correct in understanding that is your view?

Mr Freys—Yes.

Senator MURRAY—The third point you make leads me to another question, and that is about the ways in which the AEC take account of DRO and DRO offices experiences and experience. I have previously been critical that the AEC has provided this committee with information and submissions based on their central office understanding of the matter and they have not consulted with the DROs, which seems to me a foolish way to proceed. I want to ask you: is there a designated internal audit function in the AEC?

Mr Freys—There is an audit team, yes.

Senator MURRAY—An internal audit team?

Mr Freys—Yes, an internal audit. They will audit certain aspects of the election after it is over, in different areas: in finances and in actual voting and informal voting, as you have seen in the informal voting survey.

Senator MURRAY—As you know, an internal audit function is not just financial, it is performance based. Do they audit the areas that you have brought to our attention?

Mr Freys—No, I do not believe they do. I have had an auditor with me. He put a recommendation in and asked my central office to talk to me about what I had in mind, but nothing happened.

Senator MURRAY—In your view, would it be helpful if the committee were to consider this matter, discuss it with the AEC, and possibly consider a recommendation that the internal audit function be improved to ensure that inadequacies of process, procedure, execution et cetera be properly addressed?

Mr Freys—Yes. At present, I think the feeling in our commission is that internal auditors are basically coming in and bayoneting survivors after the battle.

Senator MURRAY—Lastly, in view of the fact that the AEC know that we are reviewing the performance at the last election, I want to ask you a very specific question. Following the election, have you and the other DROs been formally asked to provide, in detail and in writing, your views and your concerns to the AEC for them to collate so that they have a total picture of all the DROs and their views on matters?

Mr Freys—Yes, there was. There was a memo quite a while ago on that.

Senator MURRAY—Was it detailed?

Mr Freys—No, it was not very detailed. It just said that if there were any submissions or concerns to put them in to central office.

Senator MURRAY—Are you familiar with the concept of prompted awareness and spontaneous awareness? What that means is: if I say to you, ‘Name a motor car,’ that is spontaneous and you will pop up a name. And if I say to you: ‘Here is a list of motor cars. Do you remember them?’ then that is prompted awareness, and of course that will elicit far better answers than the spontaneous approach. In my view, unless you ask a DRO detailed questions covering the full area that they would have to deal with in an election, you are not going to get a substantive response. So my question back to you is: was there a detailed questionnaire covering the full field of election issues?

Mr Freys—No, there was not. It was very basic. From memory, it was: ‘If you have any concerns or suggestions, submit them to us.’

Senator MURRAY—Do you consider that a cursory examination of DRO views?

Mr Freys—Yes, very cursory. In the past, people that I know have submitted recommendations and nothing has happened. I have submitted suggestions and I have not even

had the courtesy of a reply to say, 'Thanks for the submission,' or 'This won't work because of X, Y or Z.' There has been no explanation, so there is no real feedback.

Senator BRANDIS—You have not had an acknowledgement of what you have submitted?

Mr Freys—No.

Senator BRANDIS—That is extraordinary.

Senator MURRAY—To your knowledge, is that a characteristic of the New South Wales regional office or is it a characteristic of the entire organisation?

Mr Freys—I think our New South Wales office is more proactive. The central office tend to be very insular. It is very difficult to get information, and when I give them suggestions there is no feedback.

Senator MURRAY—As somebody with considerable experience in these matters, may I say it sounds like bad management to me.

CHAIR—Mr Freys, thanks for coming, for your evidence, and for staying for some additional time. If you could be good enough to put in any supplementary submissions on any of those issues, or any other issues, the committee would be very grateful to receive them. Consistent with your consultations within the AEC, if you could provide any of those documents, that would be good. I know the AEC have provided some already. I am not quite sure which ones; we have a number of submissions from them. If you could also point out in those discussions with your colleagues at the AEC that we can certainly receive material for public exhibit but we can receive material confidentially as well. We have already done that with respect to certain aspects of the postal voting issue. In an ideal world, we would like to see all those advices and manuals that come out prior to drafting our report. Thank you once again.

Proceedings suspended from 11.20 am to 11.31 am

GREEN, Mr Antony John, Private capacity

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

Mr Green—While I am appearing as a private citizen, I note that my major employer is the ABC. However, the ABC has no particular involvement in my submission.

Senator BRANDIS—Are you an employee of the ABC or a contractor?

Mr Green—Technically I am an employee, but I am on a substantial period of leave at the moment. I just want to make it clear that this comes from my own research, background and experience and the ABC has no particular interest in the issues before this committee.

CHAIR—Thank you. Your submission has been received and published as submission No. 73. Is there anything in it you wish to correct or amend?

Mr Green—I have two very minor corrections. On page 2 I state that in New Zealand you can get your name on the electoral roll on election day. I am not sure that that is right. You can get onto the electoral roll after the close of rolls in New Zealand, and you then vote with a declaration vote. I have not been able to clarify with electoral officials there whether you can actually do that on the day.

CHAIR—We might take a further letter from you on that in the coming days.

Mr Green—I will advise you on that. The second correction is on page 10. I say:

Every state using compulsory voting shows a clear relationship between the number of candidates on the ballot paper and the incidence of informal voting.

That should say ‘every state using compulsory preferential voting’. That is what the correlation is.

CHAIR—That is fine. In that sense, for the record we might get a corrected version from you at some point.

Mr Green—I will do that for you.

CHAIR—Because there are a number of aspects to your submission, and members and senators have informed me throughout this week that they all have questions for you, it would be good if you would make a very brief opening statement and then we will go through the aspects of your submission in three parts. We will start with optional preferential voting, which is a big issue. That is an area on which members of the House of Representatives would have a view. Then there is a whole section around Senate voting, where we will defer to the Senate experts on our committee. The third area we will discuss involves the enrolment procedures, party

registration and that sort of thing. That seems to be a sensible way to proceed. I now invite you to make a brief opening statement.

Mr Green—The two main interests I have in the submission—there are some supplementary things—are informal voting and the ticket voting system in the Senate. Regarding informal voting, my interest is to cut the level of informal voting. I do think that there are informal votes cast now which could be counted, and various procedures or optional preferential voting could be adopted, which would allow those votes to count. If people have made the effort to come along and have filled in the ballot paper expressing what they think is a correct preference, it should be counted and should not be tossed out just because it does not meet the very strict criteria which are currently set down in the act. Clearly there is some contradiction between what is allowed in the Senate and what is allowed in the House, and it is pretty evident that maybe a third of informal votes are simply caused by people using the Senate voting system on their House ballot paper. We need to find some way to save those votes.

On the second matter, the ticket voting system, the increasing size of the ballot paper and the complexity of the ticket voting system has produced a situation whereby people come along and are presented with an option to vote for a single number above the line for a ticket which they do not know about, which it is very difficult for them to find out about and which, if they could find out about, they probably would not understand what it means anyway, or else they have to number every square below the line. In New South Wales at the last election, there were 78 candidates below the line. I do not understand how any voter could know more than a third of the candidates on a ballot paper.

Therefore, I would like to see some system which allows people to express their own preferences by easing up the formality rules below the line in particular or providing some alternative form of above-the-line voting. I think at the moment, and Victoria finally crystallised it with the election of Mr Fielding—it is no criticism of him—the way the ticket voting system works means that there are serious questions about whether Senate elections are now reflecting the will of the electorate or a series of deals done in the background without the voters' knowledge.

CHAIR—I have a couple of questions around informal voting and optional preferential voting. Clearly the interaction of optional preferential voting at a state level in New South Wales and Queensland with full preferential voting at the federal election causes some complications. We have had evidence on that. To what extent do you think that is a factor?

Mr Green—It is certainly a factor. It seems to be increasing the incidence of people numbering one square in New South Wales and Queensland compared to other states. It seems to be more prominent in New South Wales and Queensland. Oddly enough, in the tables of Senate figures, for some reason Victoria's are lower than those of the other states, but Victoria has a higher Senate informality than any other state. So there are complex interactions.

Mr DANBY—Can you say that again?

Mr Green—The informal vote in the Senate is higher in Victoria than in any other state. It is two per cent higher than in New South Wales. Victoria does not have an upper house that uses a large ballot paper so the only time Victorian voters face one of those funny ballot papers with a

big black line is at federal elections. In New South Wales—and I am unfurling it again for those here who did not see it—in 1999 they had the famous tablecloth ballot paper. They had 264 candidates.

Mr DANBY—I wish you were on camera.

Senator BRANDIS—The ballot paper is almost as big as you, Mr Green.

Mr Green—Yes, I have usually annotated pictures of me with, ‘The author is only 163 cm.’

Senator MASON—It could be your shroud.

Mr Green—The tablecloth of that election was replaced by what I call the beer mat at the following election.

CHAIR—When was that?

Mr Green—That was 2003. That only had 17 columns but 284 candidates.

Mr DANBY—How many did the tablecloth one have?

Mr Green—It had 264 candidates and 81 columns.

Senator BRANDIS—Can you put on record what you told us informally before—how many people cast formal ballots below the line?

Mr Green—In 1999, 639 people managed to number all the squares from 1 to 264. New South Wales has some tougher restrictions on voting outside the squares, which makes formal voting valid. It is optional preferential voting. But one of those 639 votes was a donkey vote. The point I am making is that New South Wales also has a much larger Senate ballot paper. There were 29 columns and 78 candidates. I suspect that one of the consequences of these ballot papers is that people in New South Wales are walking in and just numbering one square.

CHAIR—They know what to do.

Mr Green—They have a rough idea what to do. They have seen how hopeless it is to try and fill in that sort of ballot paper and they are just numbering one square. If you take Queensland and New South Wales together and compare them with the other states that do not have optional preferential voting, the difference in informal voting is not that great for the same number of candidates. If you have four candidates in Victoria and four candidates in New South Wales, the incidence of informal voting is not that much different. You are seeing more candidates in New South Wales. Again because of the larger size of the ballot paper, more minor parties stand in the lower house to try and supplement their upper house vote. I think that is increasing the informal vote in New South Wales. New South Wales is certainly a problem. I think the shape of some of the state ballot papers is encouraging the people to number one square. If you are given a giant ballot paper and a little ballot paper and you know you only have to vote once on one ballot paper, you take the small ballot paper and do the same thing. That is pretty evidently what is happening in New South Wales.

CHAIR—I have two other questions on that that I would like your view on, given your expertise. One is that, clearly, where people vote informally because of this confusion they would do it in two ways, wouldn't they? A certain percentage would just put the No. 1—and let us be bipartisan about this—against Michael Danby. That tends to happen with sitting members of both political persuasions as they get known, and that would not be counted. But then there would be another group, to take the example of Greenway, where you had a lot of candidates and someone might fill in numbers 1, 2, 3, 4, 5, 6, 7 and then muck up No. 10 when there are 13 candidates, and that would not be counted. I have sympathy with what you are saying there, because they are trying to do the whole thing and in all probability they do not know that they have perhaps put two No. 10s or the numbers do not add up, and that is knocked out. Are you suggesting that we should look at a recommendation that allows those votes to be counted—both groups?

Mr Green—There are several recommendations. Certainly the incidence of just voting No. 1 is higher in New South Wales and Victoria, and it is clear that confusion about the ballot papers is causing that.

CHAIR—Certainly people in my electorate who were assisting me said, 'A lot of votes just had No. 1 next to your name.' Particularly if people filled out the Senate ballot paper first, that seemed to be an assumption. It was the larger paper, and they read on that that they only had to put No. 1.

Mr Green—I have the suspicion that at the last two federal elections how-to-vote cards had become more complex as parties made quite an effort to put One Nation last. It used to be that you could pick No. 1 or No. 2 and then just number straight down the ballot paper. Increasingly, at the last two elections there have been fewer One Nation candidates in Victoria and therefore the party had not gone to the effort to do that. If you go to the last federal election, Warren Snowdon, in the electorate of Lingiari, breached the rule of putting One Nation last simply because he has a high proportion of people in his electorate who cannot read. His how-to-vote cards just numbered straight down the ballot paper, and that certainly seemed to cut the informal vote. I think the how-to-vote cards have become complex, which raises the question in a seat like Greenway about what to do if someone has numbered all the way down the ballot paper and mucked up at the 12th preference. It seems ridiculous to toss them out. But they are a different category to the just vote No. 1s.

For the just vote No.1s, I suggest the South Australian solution, which is a savings provision where all candidates who stand for an election can lodge a ticket of preferences. Basically, if someone has just voted No. 1 then the vote for that ballot paper will be saved and will default to the registered ticket of the party. A party cannot recommend that people just vote No. 1; it is not a way of encouraging people to just vote No. 1 and capture the preferences.

CHAIR—But if someone does just vote No. 1—

Mr Green—It saves the vote.

CHAIR—then by not giving any other preferences they are ceding their right to the party to allocate them?

Mr Green—In this case we believe that most of those votes are just from people using the Senate voting system on the lower house ballot paper, and they do not understand that that is actually informal.

Mr DANBY—Has it already been adopted in South Australia?

Mr Green—It is used in South Australia.

Mr DANBY—How extensively is it advertised before election campaigns?

Mr Green—It is not advertised, because it is not a formal vote. A party cannot issue a how-to-vote card with just ‘vote No. 1’ on it. You have to issue a full how-to-vote card. I will just indicate here—

CHAIR—Yes, take us through this; this is good.

Mr Green—that this booklet says that in South Australia every party can lodge a how-to-vote card as well as a registered ticket. These registered how-to-vote cards are placed on the voting partition in South Australia. So if you turn up at your polling place and you have not been given a how-to-vote card outside but you want to vote for the Family First candidate, that how-to-vote card will be displayed in front of you where you vote. The parties have the right to lodge those. They also lodge a ticket vote, and the ticket is a list of preferences that is normally the same as on the how-to-vote card but it does not have to be. If on election night, when they are counting the votes, a ballot paper comes up that just has No. 1 or numbers 1 and 2 on it—and I have provided examples of how it works in my submission—then the vote would be put aside and dealt with later. It is then saved back into the count and deferred to the ticket. You cannot recommend to just vote No. 1, but if anyone uses the—

CHAIR—That was what I was going to go to. How would you stop someone, particularly a minor party throughout an election, saying, ‘You only need to vote No. 1. It will be counted at the end of the day when it comes around’?

Mr Green—You come into this issue of perhaps then having to specify that a how-to-vote card cannot say just ‘Vote No. 1’. It must indicate that—

CHAIR—But currently you could not stop a minor party candidate going from public meeting to public meeting.

Mr Green—No. It is a hard provision. The main push for people wanting optional preferential voting is so they do not have to direct preferences. If you just vote No. 1 in this circumstance, you end up directing preferences according to the party. On page 30 of my submission I included some information on this, and I think I included it in the main part of my submission. Basically, if the federal provisions applied in South Australia, the informal vote would be twice as high as it is. In South Australia it is about 3½ per cent.

CHAIR—But it does not cause any problems in South Australia.

Mr Green—No. It saves as many votes as are cast as informal.

CHAIR—How many end up being counted that otherwise would not have been counted, in percentage terms? How many people just put No. 1?

Mr Green—Voters that just put No. 1 and ended up counting in the 2002 election were four per cent of the total.

CHAIR—How long have they had it in South Australia?

Mr Green—Since 1985.

CHAIR—And it has not really gone up over time?

Mr Green—It has varied between four and six per cent over five elections. It is a savings provision. As I also point out in the comparative chapters, South Australia is the only state where their lower house informal vote remains lower than the upper house one. In the states that have ticket voting systems, the upper house informal vote is now lower than the lower house informal vote. Victoria is the other one where they get the same ballot paper in both houses and there is no confusion. To me, if you look at the comparison from state to state and federal, it is absolutely clear that the ticket voting system applying in the Senate is what is causing people to vote just No. 1 in the lower house, because they are using the same voting system. It does not occur in Victorian state elections because they do not have that system yet, and it does not occur in South Australia because, if they do use it, the vote remains in the count because it is saved.

Senator MURRAY—If the how-to-vote card is registered, does it then stop all the aggro that goes on at present in the federal system, where there are complaints—and we are dealing with it right now—about misleading and deceptive how-to-vote cards?

Mr Green—I am not very familiar with the South Australian provisions. It may be best to take it up with the South Australian electoral office. These are registered how-to-vote cards which go on the partitions. You do not have to hand these out outside the polling place—you can hand something else out. I am not sure if what is actually handed out is registered. I suspect it is not. But this material that I have displayed here goes into the polling booth.

Mr DANBY—What is that booklet you have there? Is that what the local electoral officer has and then sees that this is what I put up on the board or—

Mr Green—No. This is for every electorate. This is the standard book. I presume there would be one in every polling place for someone who is voting absentee.

Mr DANBY—But it is up to the divisional returning officer to put the registered how-to-vote cards up on a partition beforehand?

Mr Green—I am opening the booklet to the entry for the electorate of Heysen. These small how-to-vote cards would be illustrated on the polling booths. New South Wales registers how-to-vote cards and you cannot hand a how-to-vote card out that has not been registered. That causes all sorts of problems for environmental groups and anti-abortion groups who want to hand out how-to-vote material, because they cannot. Queensland registers candidates' how-to-vote cards

but does allow third party material from those groups which is not registered. It is a complex area. Victoria also registers how-to-vote cards.

Mr DANBY—If you had a choice between ideas like the saving provisions that are in South Australia and other methods of increasing education and awareness in the preferential voting system or going to optional preferential voting, what would you prefer?

Mr Green—My preference is for optional preferential voting, because you cut the informal vote substantially. It also ensures you only capture the preferences that people actually have. If people have to number every square, they start to use other reasons. To have their vote counted for the candidates they do want to vote for, they have to express preferences for every other candidate and I do not see why that should be required. In New South Wales it is constitutionally entrenched and that provision cannot be removed without a referendum. In Queensland it would take a simple act of parliament to change it. Any attempt to try to correlate the state and federal provisions on this is very difficult in New South Wales because it is constitutionally entrenched.

If optional preferential voting were not adopted, I would recommend as a second option the South Australian system. I think that is the fairest way of using a savings provision. I would not like to go down the track of allowing votes to stay in if their preferences are not counted. I think I pointed out in my paper that, if someone voted Liberal or Labor in Greenway and mucked up their 12th preference, then why should the vote be knocked out? It could actually stay in the count because its preferences are not counted. Adopting that method advantages the two candidates that finish first and second in every electorate but results in votes for other parties being excluded. I do not think that is fair. I suggest that there is a particular category of non-sequential preferences whereby people mark 1, 2, 3, 99, 100. These votes are currently informal. I see no reason why they should be informal. Someone is sending a message by putting the two major parties at 99 and 100. What they do not realise is that their vote is, therefore, not counted. If someone can vote using roman numerals and their vote is counted as formal, I do not see why a non-sequential vote should be declared informal.

Senator BRANDIS—As long as the rank order is apparent?

Mr Green—As long as a rank order is apparent, it should be formal. It should not be required that it be sequential. I will pass around an example of a ticket vote that was used for the lower house in Western Australia. I will hold it up for a moment. This is the same as the Western Australian upper house. They introduced ticket voting in both houses at the same time in 1998. Rather than using a Senate system of voting across the ballot paper, they split it down the ballot paper. You vote on the left for the ticket and on the right for candidates. That system still applies in the Legislative Council, but they ditched it after three by-elections for the lower house because it caused confusion and an increase in the informal vote. It is also a peculiar provision in Western Australia that you can only lodge one ticket; you cannot issue a split ticket. That meant the Democrats had to direct preferences; they could not split their preferences.

CHAIR—What happens if some clown fills out both?

Mr Green—The same as occurs under the Senate system: the formal vote below the line counts first before the vote above the line.

CHAIR—It has precedence?

Mr Green—Yes. There is precedence. If the below-the-line vote is formal, it always has precedence over the above-the-line vote. That was a provision tried in Western Australia but, as you can see, if you adopted that sort of system for the House of Representatives you would have to redesigned the ballot paper. You could not do it horizontally because you would cause more confusion. So I do not think ticket voting of that sort in the lower house is the way to go.

CHAIR—Is it the wish of the committee that the exhibit be accepted as a supplementary submission? There being no objection, it is so ordered.

Mr DANBY—If this were to be adopted for the Senate vote, would it have the effect of increasing the informal vote for the House of Representatives?

Mr Green—This would just be rearranging the ballot paper if you adopted this for the Senate. I am not sure it would make much difference for the Senate.

Mr DANBY—Can you envisage circumstances, if we adopted optional preferential voting, in which people with less than 50 per cent of the vote are elected?

Mr Green—It is a consequence of optional preferential voting that there are situations where a candidate can win with less than 50 per cent of the vote. I tried to work this out last night from all the instances in New South Wales and Queensland, but I got a bit snowed under with other things and did not get a chance to finish it. I can provide you with a list, but I think there are generally instances at every election of candidates getting elected with less than half of the vote remaining in the count. It depends on how many exhausted votes there are, how many candidates are on the ballot paper and whether the parties have directed preferences. In the 1998 and 2001 Queensland elections, the number of candidates elected with less than 50 per cent of the vote increased, simply because there were more votes for minor parties—in the case of One Nation—and in 2001 because there was a vast increase in the exhausted preferences, which meant more candidates were elected with 50 per cent of the vote. In my example, I pointed you to a by-election in the mid-eighties at Warrnambool in Victoria which was conducted under compulsory preferential voting. The Labor Party directed preferences to the Liberals—Labor ran third and a Liberal was elected. At the next election, the Liberal vote went up, the Nationals vote went down and the Labor vote went down but, because Labor changed its preference ticket this time, the Nationals won.

If there are concerns that optional preferential voting is invalidating electoral choice, because you are not getting a majority, I would point out that, under compulsory preferential voting, you are often constructing majorities that do not really exist. There are concerns in Queensland—

Mr DANBY—That may be true, but Labor voters may have changed their view that the National Party was more preferable at one election or is the lesser of two evils. Isn't that the idea behind preferential voting?

Mr Green—I think the incident in Victoria was a basic case of the Labor Party's longstanding tradition of always directing preferences against whoever the sitting party was to destabilise the coalition. That used to be the tradition in Queensland as well. They would direct preferences to

Liberals or Nationals, depending on who was already the sitting member. It was simply an attempt to destabilise the coalition. What I am pointing out in that case is that in Queensland the bronze medallist is determining who is winning gold and silver in every case. For those who are concerned that optional preferential voting encourages parties to say, 'Don't direct your preferences,' what I am asking is: why is that any more invalid tactic than, under compulsory preferential voting, parties engineering results by directing preferences in a particular way?

Senator BRANDIS—Except that where you have coalitions and a seat held by one of the coalition parties falls vacant—take the recent examples of Indi or Farrer—the 'Just vote 1' recommendation that is popularised by the Labor Party, and which will reach the ears of more than just Labor voters, of giving people the option of preferential voting may have the effect of producing a perverse result. That is because, to the extent to which one can think in terms of two-party preferred outcomes, one would have the Labor Party on one side and the two coalition parties on the other. But, where there is optional preferential voting in a seat like that and one party which would not be likely to win makes mischief by saying 'Just vote 1,' it can produce a perverse result. We see this all the time in Queensland in state elections.

Mr Green—It is a question of perverse or reflective results; it depends how you define it. I will turn to Queensland next, but first I will deal with Clarence in New South Wales. Harry Woods, the former federal member for Page, won Clarence in 1996 in a by-election after the federal election. In the 1999 New South Wales election he needed a swing of about 8 per cent to win. He faced a Nationals candidate, Steve Cansdell, and a Liberal candidate, Bill Day—he was actually the son of a former Labor member for the seat. At that election the Liberals ran third and directed their preferences but 30 per cent of their votes were just exhausted. There was quite a deal of bitterness between the Liberals and the Nationals in that electorate and many Liberals did not direct preferences. The same occurred in Burrinjuck on the same day where Katrina Hodgkinson won for The Nationals but there was a huge leakage to exhaustion of Liberal preferences. That was caused by disputes between the two parties arguing over who should have run in the seat.

Senator BRANDIS—Sure. That is what usually happens—

Mr Green—In Queensland it is a different matter.

Senator BRANDIS—in those circumstances.

Mr Green—Yes. If you go back to when there was compulsory preferential voting throughout the 1980s in Queensland, there were a number of three-cornered contests which Labor won because the leakage of Liberal preferences was between 20 and 30 per cent because of bad relations between the coalition parties. When optional preferential voting was introduced in Queensland in 1992 the proportion of preferences flowing to the Nationals did not change; it was still about 80 per cent. What changed was that there was a proportion of Liberal preferences to Labor which exhausted instead.

Senator BRANDIS—That, in other words, were not allocated.

Mr Green—That is right. The big changes to occur in Queensland are the rise of One Nation and the City Country Alliance and bitter disputes between competing conservative candidates. It

was the exhaustion of those preferences which was the biggest problem for the coalition at the last election.

Senator BRANDIS—Could you say that, taking the broad left-right spectrum, whichever side of politics is more Balkanised than the other at any given time will be worse affected by optional preferential voting?

Mr Green—Exactly. Optional preferential voting always advantages the party with the higher primary vote. There are two effects in trying to measure the effect of optional preferential voting compared to compulsory preferential voting. The first is what I call the exhausted factor, which is that, if the preferences for the third parties are splitting 50-50 and half of those preferences are exhausted, just the simple exhaustion will increase the vote of the leading candidate more quickly than for the second-running candidate. It is a simple mathematical fact that, if you take votes off the denominator, the party with the higher vote at the start is advantaged.

The second factor which can be measured is what I am calling the missing preferences effect. I have an example, which I can provide as a submission. I am not so sure I want to go through it in detail, but members might want to look at it. I have used the example of Charters Towers at the 2001 election. Basically, 70 per cent of the preferences from One Nation to The Nationals and the Labor Party at the top of the page—

CHAIR—Just for procedure, I will ask that the committee accept that as an additional supplementary submission. There being no objection, it is so resolved. Please continue.

Mr Green—This is more about the political effect of compulsory preferential voting, and some would suggest that, in terms of electoral matters, that is not really what we are interested in. But I thought this was worth explaining.

Senator BRANDIS—We are very interested.

Mr Green—I thought you would be.

Mr DANBY—Can we get some spare copies for members of the committee who are not here?

Mr Green—I will arrange for some copies. In this example, the Labor Party led on the primary votes with 44 per cent. The Nationals had a bit over 34 per cent, and One Nation had 21.5 per cent. Of the preferences from One Nation, just under half exhausted, with 40 per cent to The Nationals and 15 per cent to the Labor Party. That meant that the vast majority of the preferences that were distributed went to the National Party—but not enough to get them ahead of Labor in this distribution.

The basic problem under optional preferential voting for a candidate running second is that it is harder for you to catch the leading candidate. Under compulsory preferential voting, the party that is advantaged is always the party that gets the majority of the preferences. But, if you are getting the majority of the preferences under optional preferential voting, you are then disadvantaged by the number that actually exhaust.

I have gone through five scenarios, trying to assess or come up with a measure of the political impact. I draw your attention to scenario 2, which applies the information we got on preferences to the ones that have exhausted. It suggests in the Charters Towers example that Labor would have lost narrowly if the exhausted preferences had split. I have gone on—and this is explained in the notes—to calculate two effects there. One of them, the exhausted factor, is positive towards the Labor Party. It means that any exhausted preferences assist the Labor Party because they got the highest vote. The other factor is the missing preferences factor, which is because the majority were flowing to the National Party and they missed out on them; therefore, they were disadvantaged.

On the third page, I have gone through all the elections in Queensland since 1992 and elections in New South Wales since 1988. I have missed 2004 in Queensland, as I did not have the data available. In the first two blocks for Queensland and New South Wales are all the examples I could come up with where I would say that the party that won may not have won under optional preferential voting. In the right-hand column, I have come up with what I call the advantage to the winning candidate from missing preferences and the advantage from exhausted votes. The prime example I draw your attention to is Burdekin in 2001, where Labor won with 36 per cent of the vote. There were three competing conservative candidates. Overall, 60 per cent of votes exhausted, and this cost the National Party the seat. That is one of the largest advantage effects from optional preferential voting that I have seen.

Senator BRANDIS—This seems to me, if I may so, Mr Green, to be an extremely exhaustive and scientific proof of the hypothesis I put to you before that optional preferential voting in this country tends to favour the Labor Party.

Mr Green—It tends to favour the largest party.

Senator BRANDIS—And, as these data indicate, it tends to favour the Labor Party.

Mr Green—I would point you towards Willoughby in 2003 and Albury in 1999. Both of those seats were won by the Liberal Party on preferences. The Labor Party ran third in direct preferences to an Independent, and the Independent was unable to catch up because of optional preferential voting. In the same election, an Independent won in Dubbo by 14 votes and should have won by further.

Senator BRANDIS—I know that you have to take it on a case-by-case basis, but, on balance, if one were to generalise from all the instances we have, most often optional preferential voting in this country favours the Labor Party, doesn't it?

Mr Green—In most cases. I would also point out that, under compulsory preferential voting for the last 25 years, it is the Labor Party that has overwhelmingly been advantaged. It is the Labor Party that consistently comes from behind on compulsory preferences and wins on Green preferences. You can go through them. I think Labor did it in 10 cases in 1990.

Senator MASON—Sure, Mr Green, but that has changed. That is a fracture on the left.

Mr Green—Yes.

Senator MASON—The fracture now, as Senator Brandis says, is on the right, particularly in Queensland, with the National Party and One Nation.

Mr Green—You are both Queenslanders and of course have very different perceptions of this because the split has been on the right.

Senator BRANDIS—We have a state with a three-party system.

CHAIR—Not just on this, I might add.

Mr Green—I put at the bottom two other examples. I would point out that, on my measures there, in Mulgrave and Mundingburra at the 1995 election there was no particular disadvantage or advantage for the Labor Party. That is the measure I have constructed. I happen to think that that measure there is not correct, because that was an election where the Green preferences did not flow to Labor, but it does not come up under my construct as being one where there was an advantage or disadvantage. I would also point out that, with the exhausted votes, the safer the seat the bigger the advantage you get from the exhaustion.

Senator BRANDIS—Sure.

Mr Green—In marginal seats it is entirely to do with preferences.

Senator BRANDIS—But that is just another way of putting the same proposition, because ex hypothesi the safer the seat the larger the block of the leading candidate is going to be.

Mr Green—That is right.

Senator MURRAY—Mr Green, just to balance this out, it is true, is it not, that optional preference voting systems are always less in the interests of minor parties and Independents than compulsory preference systems?

Mr Green—No. It is always to the advantage of the candidate with the highest vote. One of the problems for Independents is that when they are first elected they rarely win the primary vote. If you go back over the last 30 years, you will see that most Independents who have been elected have been elected from the second position, on the preferences of the excluded major parties.

Senator MURRAY—Which is my point. The compulsory preference system is better for them than the optional preference system.

Mr Green—On that first election. Once they are elected they often increase their vote substantially.

Senator BRANDIS—It is also better for minor parties for another reason, too, and that is that even when they do not get elected—and in most cases they do not—the way in which they exercise political leverage is through preference decisions. You go to optional preferential voting and you remove from minor parties the most potent weapon in their political armoury.

Mr Green—No, you actually increase it. I will explain why. Under compulsory preferential voting there is a huge central tendency that the Labor Party does not really have to worry about the Green preferences because 70 per cent will flow to them anyway. Under normal circumstances, you do not have to worry about One Nation or the Christian Democrats because their preferences will flow to you naturally.

Senator MASON—If they are forced to.

Mr Green—If they are forced to. The 2001 Western Australian election was the one case where I would say that there was evidence of something else occurring. But it is unusual for a party of the left and right fringe to not direct to the party of the left and right in the middle. Under optional preferential voting, the parties of the centre can no longer presume that those preferences will come to them. So the New South Wales Labor Party and the Queensland Labor Party have had to pay more attention to the Greens under optional preferential voting than they would under compulsory, because they know they are going to come to them under compulsory. Under optional preferential voting, the Liberal and National parties have to pay more attention to small parties of the right than they do under compulsory. So I disagree with your point. I have never understood the Democrats policy on compulsory preferential voting for this reason. I think optional preferential voting actually gives them another option, which is to say: ‘No, we don’t like your policy; we’re not directing our preferences.’

Senator BRANDIS—Maybe the reason the Democrats are in a different position is that the examples you gave are of parties that are strongly identified with the right or the left, so perhaps that assumption may be made. But with a minor party which represents itself to be a centre party and is more discriminating and judgmental in its preference decisions, there is not that presumption of automaticity.

Mr Green—The Democrats have always been of the view that they are not there to encourage their voters to direct preferences and that it is up to major parties to appeal for those preferences. As the Democrats have directed preferences more in recent years it has tended to be as a result of deals with the Senate which they have been forced to make because the Greens tend to behave that way.

Senator MURRAY—That is right.

CHAIR—Let us keep moving on—

Mr DANBY—Can I just follow up on Senator Brandis’s point?

CHAIR—Yes, you can. I am just going to give you an update on the time frame. It is all right; I am not about to remove you from the committee or anything like that!

Senator BRANDIS—We have not dealt with the Senate yet.

CHAIR—No, we have not.

Senator MASON—The most important topic.

Senator BRANDIS—Certainly the most exciting one.

CHAIR—We have three sections to get through. The optional preferential stuff I am particularly interested in. You have put forward great evidence. Perhaps we can wrap that up and move on to the Senate stuff, which is of considerable interest to all of us and an obsession of some of us, if I can put it that way. We will let the senators talk about that and then move on to the last section. We are grateful for your stay with us but we will really need to finish up at 12.45 at the latest on this one. The other witnesses have been very flexible, which I am grateful for, but our next witnesses are coming in specially at that time and we have to hear from them before 1.15 pm.

Mr DANBY—I will not ask a question about it, but I want to pursue the answer you gave to Senator Brandis by making a comment. I think that is a brilliant exposition of the effect on centre left and centre right parties of the introduction of optional preferential voting. It would be, in fact, to enhance the power of people further out to the right and further out to the left, which is one of the principal reasons that I do not favour optional preferential voting. I think Australia is well served by having centre right or centre left governments. I obviously prefer centre left ones. I would prefer not to have a centre right government that was in the maw of Pauline Hanson.

I just want to ask one question, which is not quite on optional preferential voting. Could you please explain your idea of provisional enrolment. We have heard lots of people advocating against provisional voting, saying that it is somehow destroying the integrity of the electoral roll. What is your attitude to provisional voting?

Mr Green—Perhaps I should find another term, given that the two might be confused. My idea of provisional enrolment is that if the government is going to tighten up on the paperwork that has to be presented to get on the electoral roll, I would hate to see it become a series of jumps you have to go through—for example, if you turn up with not quite the right number of documents to get on the federal roll then you have to go away and come back again.

CHAIR—But you would be happy with any one from a list—if you had a list of things, and you only had to provide one?

Mr Green—What I am saying is that if there is some difficulty on the day someone tries to get on the roll—because they might meet the state criteria to get on the electoral roll—I do not see any problem with putting them on the roll. You mark them as provisional and they cannot vote until they provide documentation, and that documentation can be provided on polling day. That is just where someone has turned up and their documents are not quite right.

I know people have remarked that it is easier to get on the electoral roll than to borrow a video but, to be honest, while most people in this room might not understand it, for most average voters there is more benefit from joining a video club than getting on the electoral roll. So I would hate to see a jump put there which means people turn up and try to enrol and vote, and get knocked back and then do not get around to doing it again.

CHAIR—Nevertheless, voting is more important than hiring a video.

Mr Green—But it may not provide as much joy.

Senator BRANDIS—I assume you say that because there are a lot of good videos on politics.

Mr DANBY—*The Rise and Rise of Michael Rimmer* being an appropriate one on optional preferential voting.

CHAIR—Do we want to move to the Senate? Perhaps we will start with Senator Murray. I will not ask any questions on the Senate; I will leave it to the senators. Perhaps the deputy chair and I will ask some questions on the third area. We will do this for 15 minutes, and then we will do the last section for 15 minutes.

Senator MURRAY—I will start, if I may, with a compliment. Mr Green, I think you provide Australia with a professional service which is not only valuable but also entertaining, objective and very professional.

Mr Green—Thank you.

Senator MURRAY—From the perspective of an informed observer, I have valued your input over many years. Every action has a reaction. As a scientist, you would recognise that. It seems to me that the increased understanding of the opportunities that preference harvesting offers for upper house elections, including the Senate, has meant the proliferation of parties and candidates often known as microparties. Legislatures have then reacted by saying, ‘That starts to make democracy unwieldy.’ You produced the tablecloth as an example. ‘To try and curb that, we’re going to raise the registration fee, we’ll make it harder to register, you’ll have to have more signatures for nomination, we’ll require minimum numbers for a party to be raised and we’ll make party registration more onerous,’ and so on and so forth. It seems to me all that is often a reaction to the fundamental problem, which is that people have recognised that if you exercise political skills and preference harvest you have the opportunity to get elected when otherwise your vote is so low it would be very unlikely. That is the first proposition.

The second proposition goes to the fundamentals of democracy—that is, democracies should represent an informed vote. The proposition you put of preferencing above the line and therefore removing lodged tickets would address the two problems. Firstly, it would reduce the number of microparties because the opportunities for preference harvesting would diminish, if not disappear. Secondly, it would lead to an informed vote. People would know where their vote is going. I would like you to react to that summation of a view I have.

Mr Green—My biggest problem with preference harvesting is that I do not think the sorts of deals people do to harvest preferences and get into the Senate on tiny votes is the right sort of preparation for people who are going to have to sit in the Senate in a fine balance of power situation and compromise on legislation. The Senate, because of its tradition of fine balances, is about negotiating, compromising, doing deals and sorting out legislation on the process through. Preference harvesting to an extent allows parties to be very divided, to have individuals with their own section of the green movement or their own section of the far Right political spectrum and to have, as we have seen with the history of One Nation, people with violently clashing egos who are constantly disagreeing on who should run and who should organise the party.

Mr DANBY—And who should steal public funds.

Mr Green—They use public funds to sue each other, rather unfortunately. Those groups run against each other and then can still swap preferences, and the lottery of the ballot elects one to the Senate. So these people who could not actually negotiate and compromise enough to be in one political party have the potential to end up with the balance of power, when that is exactly the sort of behaviour they need: the ability to negotiate and compromise. That is why I think there is a real problem with preference harvesting. This comes about because of compulsory preferential voting and ticket voting. As people like Glenn Druery, who ran ‘liberals for forests’ at the last election and who also organised much of the 1999 tablecloth ballot paper in New South Wales—

CHAIR—Could I just interrupt—we will not go over this again now, but we have had special hearings where we have covered this in detail. One thing which would help us is if you could tell us what he has run for in the past at a state level and what party, parties or groups he has represented.

Senator MURRAY—Before you respond to that, if you could lodge that in your mind and then finish your answer.

Mr Green—Yes, I will come back to that. I will finish the senator’s point.

CHAIR—You can come back to my question later.

Mr Green—When ticket voting was introduced it was a terrific system. Before ticket voting was there, a party which was split or a party which did not have much support in the electorate could never get elected because they could never issue enough how-to-vote cards to get votes and also control preferences. For example, at the last federal election, under a system of issuing how-to-vote cards, the Labor Party would not have done that sort of deal with Family First in Victoria. While the Labor Party might have been able to deliver on its end of the preference deal with how-to-vote cards, Family First did not issue enough how-to-vote cards to influence their flow of preferences to Labor. So some of the deals which are done are only possible because of ticket voting. They would not have applied under another system. People who want threshold quotas and things introduced have got to understand that the problems that are causing this are the compulsory preferences and ticket voting.

Voters in New South Wales at the last election were presented with the option of voting 1 above the line or numbering 78 squares below the line. The High Court has ruled in the past that the federal parliament has the right to determine the complete methods for voting, but I think there comes a point where someone is going to ask whether the methods the parliament has adopted are in fact burdensome upon the voter. If people were offered the choice of voting either 1 above the line or 78 below the line, the 78 below the line option is one which no rational voter would take because it takes too much of their time. There has to be some alternative through either voting above the line using tickets or allowing expanded optional preferential voting below the line, which will encourage more voters to express the preferences they have.

I have here the ticket voting book for New South Wales. It is nearly 80 pages long. The Labor Party lodged three different tickets. One of them has a bewildering array of numbers swapping backwards and forwards between the Greens and the Christian Democrats. That is based upon the idea that if the Greens get enough for two quotas Labor will give them a second preference

before they give it to Fred Nile, but if it is the other way around then they will give it to the Greens before Fred Nile. No voter can understand that. As I pointed out, in Victoria the DLP ticket gave their second preference to Julian McGauran, who was on the coalition's ticket, and their next preference to Jacinta Collins. Anyone who knows how the voting system works knows those preferences to McGauran would never have worked. They were not going to go there. That entire ticket was going to go to Jacinta Collins, not to Julian McGauran.

Senator MASON—Because McGauran was assured of being elected.

Mr Green—Because McGauran would have already been elected on the Liberal surplus.

Senator BRANDIS—Your criticism of this is that there is a degree of artificiality or lack of authenticity about these preference deals and yet, leaving aside the science of it, I cannot immediately think of any two Victorian Senate candidates who would philosophically be more congruent with the DLP's ideals than Julian McGauran and Jacinta Collins. So, contrary to your criticism of that method of allocation, there seems to me to be, regardless of the motive, integrity and credibility about it.

Mr Green—I would agree with that point entirely, except that if people, having adopted ticket voting, come and look at one of these books and at a preference switch like that—

Senator BRANDIS—Because the tickets have to be on display at the polling booths.

Mr Green—Yes, but if you turn up on voting day and try to figure out what one of these tickets means, you have to know a lot about the electoral system. I might have been able to call the results in Queensland and Victoria by about half past nine on election night, but I had a complex bit of software. I do not think there were many people in the country able to figure it out for the next two to three weeks, but it was possible.

Senator MASON—We were very impressed, Mr Green!

Senator BRANDIS—I read your web site slavishly more than once a day during that period!

Mr Green—And Mr Barnaby Joyce rang me every day for three weeks!

Senator MURRAY—Coming back to the two propositions I put to you, I summarise your response as agreeing with me that legislatures have addressed the symptoms rather than the cause. I think that if one attends to the very important principle of democracy that one should have an informed vote, that is a really important criticism of the present Senate voting system. And I might be arguing contrary to my own interests, because I am not at all sure that what you are suggesting and the alternatives around it would in fact favour a party such as mine. But it does seem to me to produce two positive outcomes: to increase informed voting and to reduce the ability for preference harvesting and for the creation of parties which are purely mechanical devices for individuals' ambitions.

Mr Green—I have suggested several options. One is to put a higher hurdle in place for the registration of parties. I have suggested higher deposits for those wanting access to a ticket vote. They are issues to deal with the proliferation of parties on ballot papers. I have also suggested

ways to deal with preference harvesting by, for instance—this might sound complex—limiting the number of other parties on the ticket that a party can direct preferences to. There is a simple reason for doing that. As I have explained, the case of Victoria is a classic example, where the Labor Party decided to do a deal with Family First in an attempt to try to maximise the chances of electing one of its own senators. In the end it actually minimised its ability to determine who was elected if its own were not elected. So it was a strategic deal which backfired. If you limit the number of preferences on a ticket you make it harder for parties to engage in strategic deals at the same time as you also limit the options for preference harvesting.

Senator MURRAY—Could you now elucidate for us the question of ‘liberals for forests’ and Glenn Druery, which was put to you by the chair.

Mr Green—I will deal first with the point regarding the DLP and the order of the candidates. I agree with you, but allowing parties to do that complicates these ticket books in a way which makes it harder for voters to really understand.

Senator BRANDIS—But that is artificial, surely, because nobody understands them anyway.

Mr Green—So you admit we have an electoral system where no-one will understand the ticket voting system. The voter cannot find out about it, but the only way they can vote is above the line because it is too hard to vote below the line.

Senator BRANDIS—It seems to me, with respect, that you are taking far too sophisticated a view of this; that we are dealing with making more transparent something that is to 99.99 per cent of the electorate, including I might say a lot of professional politicians, utterly opaque.

Mr Green—The standard method of voting in the Senate is that you vote for the candidates in the order you want to see elected. My argument against ticket voting as it applies at the moment under compulsory preferential voting is that parties do not have to behave that way. They can deal and gamble on the way the preferences work, and that is what is distorting the system. The voters have got no say in this. When you go to vote in New South Wales you get 78 below the line, one number above the line. You have to choose between the two, and if you want to vote above the line and adopt the parties’ tickets you cannot find out what the preferences are. You do not know. If you choose to vote—

Senator BRANDIS—You can if you take the trouble to look, but your point is that it requires an unusual degree of political sophistication.

Mr Green—If you look and you can figure out what those preferences mean, what do you do if you disagree with them?

CHAIR—There are two things.

Senator BRANDIS—You vote below the line.

Mr Green—You have to number 78 squares, which means you have to vote for a lot of people you have never heard of, and you have to take the risk your vote will not be counted. What I am

arguing is that if people do not agree with that ticket and they want to take the option, they need to be given another option.

Senator BRANDIS—But you have never heard of most of the people on the House of Representatives ballot paper. I do not see what the drama is about that.

Senator MASON—Senator Brandis you have to admit we discussed this——

Mr Green—I will come back to Glenn Druery.

Senator MURRAY—I wanted your question answered, Mr Chairman.

Mr Green—Glenn Druery—I have got it written here. I will make sure——

Senator BRANDIS—If you are going to reserve that, I want to ask my question which follows from the discussion we have just been having. I am going to put this to you very quickly. I know you recommend optional preferential voting but you also in your submission say that even if we stay with compulsory voting there should nevertheless be above-the-line preferential voting in the Senate.

Mr Green—Yes.

Senator BRANDIS—It seems to me—and I think Senator Murray may have touched on this a little earlier—that if you do that, you give a bonus to the major parties or the parties with the wherewithal to staff their polling booths with booth workers. It is less likely that people are going to be able to vote for a party unless they have a how-to-vote card in their hands, so that the effect of following your recommendation, were we to stay with compulsory voting, is that you would handicap minor and microparties.

Mr Green—Yes.

Senator BRANDIS—I am not saying it is a bad thing, but you acknowledge that that would be a consequence.

Mr Green—That is exactly what happened in New South Wales. New South Wales has retained ticket voting in the shape you see on the ballot paper, but parties no longer have tickets which direct preferences from one group to another. If you vote for the Labor Party or the Liberal Party it only applies to that ticket. I do not think that system will work for the Senate because you only elect six, not 21.

Senator BRANDIS—But you affirm the proposition I am putting to you.

Mr Green—The point I would make on that is that, of all the people who used the option above the line, the Labor Party got 77 per cent of people to follow the how-to-vote card and the Liberal Party got 42 per cent to follow the how-to-vote card. So the more how-to-vote cards you handed out, the more people followed it. If you abandoned ticket voting between the groups and went back to encouraging people to vote above the line, you would certainly advantage them. The other point is that you may have to then deal with the issue of how many parties are on the

ballot paper because that still requires 29 preferences in New South Wales, and it would be awkward on how-to-vote cards.

Senator MURRAY—My proposition is the number of parties would reduce because there is no gain any more for preference harvesting.

Mr Green—That would certainly be the case.

Senator BRANDIS—Which is your earlier point that one effect of this would be to change behaviour, not just voter behaviour but the behaviour of the people who might otherwise be trying to game the system.

Mr Green—That is right.

Mr DANBY—Is it an either/or proposition above the line?

Mr Green—I would like to encourage finding an easier option below the line for people who want to vote below the line. I would like to have above-the-line voting so people could vote for parties as an alternative as well.

Mr DANBY—Could they still vote ‘1’? Would it be a ticket or this? I want to know what you are recommending.

Mr Green—I would like to see the limitation of votes between tickets. I think the difficulty has been that it is complex to vote. This is a very easy option. If you look at, say, Tasmania versus the other states, Tasmania gets that level of people indicating their own preferences up to 20 per cent. All I want to do is just increase the number.

Senator MASON—In terms of voting above the line, I do agree with you. I remember discussing this with Senator Brandis at the time. In Queensland, with Family First, you would recall that they directed their preferences to, for example, the Australian Democrats before the Liberal Party. I have friends who voted for Family First and, without being rude to Andrew, they would always vote for the Liberal Party second, perhaps after Family First or maybe the National Party. And that was not the ticket.

Senator MURRAY—Unless I was standing!

Senator MASON—Yes, of course. I agree with you on that, Mr Green—in other words, the deal was done at the party hierarchy level and the people who voted for Family First did not even know they were voting in effect for the Democrats before the Liberals. You touched on my next issue briefly. If we are worried about a multiplicity of parties and voter harvesting, convince me about this: what is wrong with a minimum quota? Four per cent has been flagged I think in the past, even three per cent. What is wrong with that?

Mr Green—Are you talking about a threshold quota?

Senator MASON—Yes, a threshold primary quota.

Mr Green—The threshold quotas apply in some European systems, particularly Germany, and in New Zealand.

Mr DANBY—It is five per cent there, isn't it?

Mr Green—Yes. The important thing to remember about countries that use threshold quotas, like Germany and New Zealand, is that their electoral system does not have a quota. There is no minimum quota for election. It depends on how divided the vote is—how far down the list you go with members. They also do not have preferences. They are based on the first past the post principle.

Senator BRANDIS—It is an order of election.

Mr Green—Yes, and they put that threshold in just to minimise how far down the list you go. It would have to be very low, but you would not need it if you did not have this vast, full set of compulsory preferences in tickets. If parties were not ordering their tickets all the way down their line to ensure that if A goes out, then it will go to B, then to C and then to D, if you actually limited those tickets from the parties, the problem would not arise. If you were, say, limited to five tickets, the Labor Party and the Liberals would sit there and say, 'Liberals might get elected, then the Nationals, Labor, Greens, Democrats. All right, they are the first five.' But you would not sit there and choose between the Four-Wheel Drive Party, the Outdoor Recreation Party and The Fishing Party, which you currently do. That is how those parties can get elected, as Glenn Druery showed. If you stay in a count long enough, you start to get ahead of other people. Once you are ahead of those people, you start to pick up somebody else's preferences that you do not expect to pick up. At the 2001 election, a former mayor of Hornsby—his name escapes me—came very close to election from way down the ticket because of the way the Greens had done their preferences by putting other parties before the Democrats.

Senator BRANDIS—If you limit it to five, you eliminate that problem.

Mr Green—I am saying five or six.

Senator BRANDIS—The large blocks.

Mr Green—That would force the parties to actually put the parties they want to get elected at the top of their tickets and not the ones they want to do deals with. If you introduce minimum quota, major parties will put every party that is going to get below four per cent at the head of their ticket and you would make the problem worse. You can do it because you know the deal will not reverse if you have a threshold quota.

CHAIR—In respect of your proposal on Senate voting, would you be happy to redesign the ballot paper from the last election, perhaps with the assistance of the AEC, to show the committee a sample of what the ballot paper would look like? It will be covered in the committee's report, but people really need to see it. You could take the Queensland ballot paper, for example.

Mr Green—My suggestions would actually produce the same ballot paper.

CHAIR—I am asking you to show what it looks like.

Mr Green—My suggestions are that, apart from a few changes to the instructions, the ballot paper would be the same. I would suggest that if you allow voting all the way across the line, you should be allowed to default.

Mr DANBY—But the how-to-vote cards would be different.

Mr Green—Yes, the how-to-vote cards would be different.

CHAIR—Yes. Could you take the Queensland ballot paper from the last Senate election and redesign it?

Mr Green—My suggestions actually would not change the ballot paper.

CHAIR—Not at all?

Mr Green—Not at all. That is what New South Wales did. New South Wales has a radically different counting system, but the ballot paper looks exactly the same as it did before and exactly the same as the Senate's.

CHAIR—In that sense the how-to-vote cards have to be different, obviously.

Mr Green—We are confusing several things here. If you keep compulsory preferencing above the line and you get rid of ticket voting as it exists currently then you are going to have to change all your how-to-vote cards. I think that is going to be a major difficulty and it will increase informal voting. I am suggesting that this above-the-line ticket preferencing be allowed as an alternative for voters to use to direct their own preferences in an easy way, and along with it should go the limitation on the number of preferences parties can give on their ticket votes. My suggestion is for a new alternative for voters above and below the line and limitation on the party tickets.

Senator MURRAY—Three alternatives instead of two?

Mr Green—There are three things which reach the same objective.

Senator MURRAY—You can vote for your first choice, you can number 1 to 15 or you can number 1 to 78.

Mr Green—I am suggesting it would be easier to vote above the line. If you really want to vote for candidates, my suggestion is that you do not have to go all the way to 78.

Senator BRANDIS—If we do not follow your suggestion in relation to optional preferential voting, although it is not your preferred position would you nevertheless favour compulsory preferential voting above the line in the Senate rather than the status quo?

Mr Green—I would favour the current group ticket voting option with a limitation on the number of preferences.

Senator BRANDIS—With a limitation on the number of preferences?

Mr Green—The point that comes out of that is that, if someone does make a mistake voting above the line, it can default back to the ticket. So you are not increasing the informal vote. There is a combination of reasons that come to the same solution.

CHAIR—We might move on to the next section. I know the deputy chair has some questions. Then we will go back to Senator Mason on some of the other issues that Mr Green has touched on in the third section of his submission.

Mr DANBY—I am sorry to sound like a broken record, but I want to take you through some of the evidence that the committee heard from a previous witness. I am particularly interested in your attitude to the effect of the early closure of the roll. Are you aware that the Electoral Commission has provided us with tables that are no longer confidential which show that there are three categories totalling some 400,000 people who enrol during the week after the election is announced?

Mr Green—I think I had a brief look at them on the internet site last night.

Mr DANBY—There are three categories. The first is people who change addresses across electorates, of which there are about 255,000. The second comprises 76,000 new voters, mainly young people aged 17 to 20 who have not voted because the opportunity since the last election has not arisen. The third is a category I think we have all missed, certainly during the last two inquiries, and that is re-enrolees. These are people who have put themselves back on the electoral roll. The most obvious category I can think of is people who returned from overseas and did not re-enrol before the election was announced, but then thought, 'I've forgotten to enrol. I'd better do it quickly or I won't be allowed to vote.' That comes to some 400,000 people. In a compulsory voting system, do you think it is important for the Electoral Commission to enrol all these people at their correct address?

Mr Green—I think it should be done at the correct address. If you have some awareness of the date of the upcoming election—and most of the states that have moved to fixed state elections have closed the rolls on the day of the writs being issued—then you can regularise the enrolment drives around the dates you already know. If suddenly the election is called two to three months early, people will not have regularised their enrolment. You will cut young people off, as the numbers show, and you will also see a significant number of people who are currently re-enrolled at their correct address trying to vote with their old address by absence and postals. It just strikes me that you will actually see an increase in the number of people trying to vote absent and postal, and then there will be questioning about whether they live at an address or not.

Mr DANBY—You are aware that this committee, whether it has been Liberal or Labor dominated, has for the last 20-plus years supported that week after the election?

Mr Green—I will rely on your statement that the committee has always supported it, because I cannot vouch for it myself.

Mr DANBY—You might want to look into that, because you have the most comprehensive knowledge of these kinds of issues that I have come across in an individual.

CHAIR—If committees never changed their mind, we would not sit. We would just table the same report every three years.

Mr Green—It is a longstanding response to the 1983 snap double dissolution.

Mr DANBY—Could you explain that a little more?

Mr Green—The election was announced very quickly and very suddenly, with the calling of a double dissolution completely out of the blue, which closed all the rolls on that day. The argument is that lots of people were disenfranchised as a result of that.

Mr DANBY—What happened when voters actually came to the polling booth, with electoral officials—especially part-time electoral officials—who were not 100 per cent aware of the process?

Mr Green—To be honest, I do not know. I was not particularly involved in politics back in 1983. But I would imagine it would be the sort of confusion that polling officials hate, which is people turning up and saying, ‘I should be on the roll and I’m not on the roll.’

Mr DANBY—It has been the attitude of the Electoral Commission as a professional agency, in all of that period of time, with whatever government has been in power, to support that week after, because of issues of integrity of the roll, because of avoidance of chaos at polling booths—a whole panoply of reasons. Would it surprise you to learn that the Electoral Commission has changed its view on that and believes that an advertising campaign directed by the government would capture those 400,000 people at the right addresses?

Mr Green—It does surprise me. I was not aware that they had changed their attitude on that. Previously the electoral commissioners have always been very keen to ensure as many people vote as possible. Australian electoral commissioners internationally are well known for being very liberal about their views about trying to get as many people to vote as possible.

Mr DANBY—That is because in a compulsory voting system you want the democratic franchise to be as wide as possible.

Mr Green—Yes. You also do not have it compulsory to vote but then, when people turn up to vote, make it as difficult as possible to vote. Generally we have had a very good tradition in that area.

CHAIR—I will ask a couple of questions on that, Mr Green, and I will not try to ensnare you into the political argy-bargy of the issue, if that is okay. You would agree, wouldn’t you, that there is a contradiction in the law. The law says that you must enrol if you are over 18, you are an Australian resident and you meet the requirements, and you must have your details up to date at all times. That is the law. It does not say, ‘It would be good if you could,’ it says, ‘You must.’ But then there is this other law that says, ‘If you have not done that’—in other words, if you

have not followed the law—‘you can enrol in this seven-day period or re-enrol.’ That is a contradiction, you would have to say.

Mr Green—It is. But I worked in a Scottish election in 1999, at St Andrews in Scotland—

CHAIR—That would have been difficult.

Mr Green—It was cold, I will tell you, but laughingly called a Scottish spring. When the students moved into university accommodation, the university put them on the electoral roll with the local council. But, unfortunately, the next year when new students moved into the same accommodation no-one ever took the names off. So by the time the election came around after four years, there were eight people living in two-bedroom accommodation. They were all sent voting cards, which meant that those people could have turned up under multiple names.

CHAIR—That is interesting for the earlier witness.

Mr Green—Yes. If you are interested in voting cards, chase up the evidence of the Coburg by-election in 1994, where they sent out voter cards.

CHAIR—Over there?

Mr Green—No, here, in Victoria. The Victorian electoral office tried voter cards in 1993 or 1994, in a state by-election in Coburg, and everyone thought it was fabulous—the Electoral Commission, the people who turned up to vote with their cards—but the parties thought it was a disaster because it was a brand-new area for voter fraud. To return to your question, the difficulty is that most Australians do try their best to fit within the act. You will find a lot of people, such as university students, continue to maintain their enrolment at their parents’ address, even though they do not live there. They are not intending to break the law. They are fitting in with the law in what they think is the best way to do it.

Senator BRANDIS—What is the test? Is it principal place of residence or ordinary place of residence?

Mr Green—I do not know, but principal place of residence always gets interesting.

CHAIR—Irrespective of what your personal view is, or what anyone’s view is on whether or not the roll should be closed, the Electoral Commissioner made a good point last Friday, a week ago, in Canberra when he said—as Mr Danby accurately said—that if there were to be a change they would shift their advertising focus and all the rest. He also said that, if there were to be a change and it was very late, that would present a big problem for them in doing their communication tasks. I put it to him that, irrespective of what one thought about the merits of changing it, if the government were minded to change it, the sooner that change took place the better.

Mr Green—We are in a current style of the electoral cycle where we can usually be pretty sure when the federal election is. We know the government is not going to have a double dissolution before the end of the current Senate term in three years, which means that, given the terms of the current Senate and the date of the last election, we know the next federal election

will be sometime between the first week of August and the end of November. We know that. So in terms of the next election, everything the Electoral Commission says about increasing their advertising would potentially work because we have a rough idea of when the election is and they could crank it up. The issue is that in the next term of parliament, if there were the possibility of a double dissolution or something like that and if a snap election were called, we would again run into the problem that we had in 1983.

CHAIR—But you would agree that if the government were minded to make a change, even if you disagreed with that change, you would say, ‘Well, if you are going to do it, do it as early as possible.’

Mr Green—It goes without saying, that would be correct.

Senator MASON—Mr Green, in your submission you said:

The Commonwealth Electoral Act provides no definition of what it means to be a member of a political party.

You also discussed the consequences of that in relation to Hanson and Ettridge. What do you propose we do about that?

Mr Green—I was fascinated with the various cases, and I am not a lawyer. The first civil case which caused the deregistration of One Nation I thought was a very readable document in terms of talking about what a party member is. Then you had the conviction of Pauline Hanson and David Ettridge, and then the Supreme Court, which overturned that judgment, referred to a whole series of High Court cases which I do not have the faintest idea of what they are about. That has become the test now for what a party member is. There has to be some more basic test put in there about what a party member is. In New South Wales, a register is kept and that must be regularly checked by the Electoral Commission. Queensland has put a much firmer test in there in terms of limits and defining what a party member is. For instance, the giant ballot paper in New South Wales was partly produced under incredibly loose party registration rules, which basically meant that you could sign a petition and become a member of a party. There needs to be some minimum level of what a party is. The Electoral Commission has complained to this committee before that it has difficulties because of the term ‘party’.

Senator MASON—And it should be adopted nationwide obviously.

Mr Green—If anything could be—

CHAIR—Nationwide and statewide so that you could have a national threshold and a state threshold.

Mr Green—I happen to think if one thing should be standardised across state and federal it should be a standard register of parties. It is 100 in Tasmania and 50 in the Northern Territory; it is very high in Queensland and New South Wales.

Mr DANBY—What is it in Queensland? It is 750 in New South Wales, isn't it?

Mr Green—I think Queensland adopted the same figure as the federal figure, so I think it is 500.

CHAIR—One of them is 750.

Mr Green—It is 750 in New South Wales, and there is a substantial deposit to register.

Senator MASON—In relation to that point, I will read the last few recommendations you made. Recommendation 15 says:

Some fee should apply for the registration and supervision of political parties.

Recommendation 16 says:

Some form of local endorsement should be required for parties nominating candidates using the central list nomination procedure.

Finally, recommendation 17 says:

Deposit fees should be reviewed. Some special deposit fee could be introduced to Senate Group Ticket Votes.

In a sense, they are all combating the multiplicity of parties problem.

Mr Green—That is right. And the fact that registered parties are allowed central nomination is also one of the reasons House of Representatives seats are seeing more and more candidates. As I remember at the last state election in New South Wales, a local newspaper in Albury rang me up and said, ‘We have a Citizens Electoral Council candidate, an Australians Against Further Immigration candidate, a Democrat and a Green, and they all live in Sydney.’ None of them could have nominated if they had to get local people. That is another reason for making it tougher to register parties. Some of those tiny parties would then have to leap higher hurdles before they get access to that central nomination process, which is one of the things that is clogging up House ballot papers.

CHAIR—They just would not be able to do it practically or in the time.

Mr Green—Yes. There is a whole series of recommendations there which, if they interacted, would actually raise the threshold higher and solve some of the other problems that are flowing through.

CHAIR—Thanks for that, because that is very much a live issue. If you were happy to do this, would you mind jotting us a note that we could take as a submission that took us through what happened with the New South Wales ballot paper, Mr Druery and all of that. I will not force you to go through it now. I will let you do it in a considered way—

Mr Green—I have some background material on that.

CHAIR—and then anchor it to the discussion we just had.

Mr Green—I will point the committee towards a publication I did for the parliamentary library here on prospects for the 2003 Legislative Council election. That dealt with all the changes to party rules and it dealt with the changes to the ballot paper. The Electoral Commissioner gave me access to the data from all the ballot papers in 1999 and I did a full research brief on how people voted below the line compared to the upper house. I will dig out some of that stuff and provide it again, but I would recommend that to the committee.

CHAIR—We would be most grateful. Thank you very much for appearing. Thank you for staying longer and for giving us that information. If there is any other material you would like to provide to us in the next week or so, feel free.

Mr Green—Someone did ask me about the incidence of optional preferential voting. I will provide something on the number of electorates decided with less than 50 per cent of the vote and the number of instances where candidates have come from behind to win on preferences, and I will do the same for the federal figures.

Mr DANBY—I also congratulate Mr Green and ask, as a compliment to him, whether we should produce this or maybe he could: a table on the number of people it takes to register as a political party in each state and also—

Senator MURRAY—I have asked the secretary to provide that.

Mr DANBY—Party registration costs too—that \$10,000 figure you mentioned.

Senator MURRAY—I have asked the secretary to do all of those.

Mr Green—There are also some differences. In some states, Independents cannot have the word ‘Independent’ on the ballot paper; they just appear without a party label. It varies from state to state whether ‘Independent’ appears. South Australia has a specific provision which allows people to register as an Independent with six words after the name, so ‘Independent Liberal’ and ‘Independent Labor’ works in South Australia and you get ‘Independents Ban Duck Shooting’ and names like that.

CHAIR—So it actually has that in there first.

Mr Green—Yes.

Senator MURRAY—I should say in closing that that sort of observation lies behind my intention to urge the committee to recommend that the COAG process of electoral consultation be beefed up, because I think they are mechanical areas which could be harmonised, to the great benefit of us all.

Mr Green—The electoral commissioners are well aware of that. One of the difficulties is sometimes resistance—either federal or state—to changing their acts.

CHAIR—There is one final thing that I took a note earlier to raise with you that we have not raised today. I would be grateful for your thoughts on four-year terms. You would have noticed that there has been a bit of discussion about that. I have had quite a bit to say publicly. At the

moment it is certainly going to be a feature of our report. I did not want to spend your time on it today.

Mr Green—I suggest you go back and read the no case for the 1988 referendum to see Peter Reith's words on what was wrong with four-year terms. I think one of the no case arguments was: it is not fixed. If you have a referendum to have four-year terms, you will get the same argument tossed back at the referendum.

CHAIR—If there is anything you want to put in, by way of a submission, please feel free. Thank you very much. We will be grateful to receive that material. We will be reporting in October.

[12.54 pm]

HARDAKER, Mr Ron, Executive Director, Australian Finance Conference

COLLINS, Mr Terry, Chief Executive Officer, Australian Institute of Credit Management

ELMGREEN, Mr John, Lawyer, Perceptive Communications Pty Ltd, trading as FCS OnLine

FITZGIBBON, Ms Margo, Director and Commercial Manager, Perceptive Communications Pty Ltd, trading as FCS OnLine

CHAIR—Welcome. We have received a number of submissions. Ms Fitzgibbon's has been numbered 110; Mr Hardaker's, 109; and Mr Collins's, 70. They have all been authorised for publication. Is there anything you wish to correct or amend in any way?

Mr Elmgreen—In relation to the FCS OnLine submission, we would like to tender an additional submission. The original submission was prepared in March and some other matters have arisen since.

CHAIR—Is it the wish of the committee that the additional submission be accepted as evidence? There being no objection, it is so ordered. We have had a look at your submission and, in other capacities, your representatives have had discussions with me and the deputy chair raising the problem of access to the electoral roll. I will ask one of you, maybe you, Ron, to briefly run through what you think the solution to that is and then we can ask some questions.

Mr Hardaker—I would like to table something as well, if I might. It is basically a summary document that covered the issues about which I wrote to the committee. At the time this committee last met, on the previous election, the process came out with—

CHAIR—I am sorry, I just have to get that document considered formally. Is it the wish of the committee that the summary document be accepted as evidence? There being no objection, it is so ordered.

Mr Hardaker—In the finance industry more generally, we were not aware of the proposal within this committee, as it previously was on the 2001 election, to prohibit the use of electoral roll data for commercial purposes. We came late to that process and the bipartisan position had been put into the bill, had been through the Senate and very quickly became an act. A very important use of electoral roll material is in identity verification services, and we were concerned that this was suddenly going to be an issue that would have major prudential, commercial, AML and a range of other implications. We approached the government and people from a range of parties about this concern. The result of that was regulation No. 1 of 2004, which allowed access to roll data for the purposes of complying with the Financial Transaction Reports Act. At the time, parliament rose for the next election, and the representative from the bankers and I were due to meet with this committee the day after parliament rose.

Our concerns with the existing regulation go to the limitations based on the Financial Transaction Reports Act. Upwards of 30,000 to 40,000 uses of identity verification data using the electoral roll happen each day. Only a fraction of those are to meet the 100-points test within the Financial Transaction Reports Act, simply because of the narrow definition of 'account' for opening and verification purposes. That will all change with the new anti money laundering legislation which is in prospect. As a consequence, the regulation that is there will need to be amended and will likely take into account the wider scope of accounts for which the electoral roll data can be used.

The second element to that looks at who has access for those purposes, especially if the scope of people under the AML legislation is widened—as is in prospect—to meet a range of international commitments. You could have literally thousands of institutions or intermediaries fall within that scope and have access to the roll or have a copy of the roll. We find that a bit unwieldy. It is certainly inefficient that each of my 60 members would have to obtain, update and maintain their copy of the roll to use it for those purposes. It is much more effective and efficient that a range of service providers can be licensed to incorporate that in their service. FCS OnLine is one of our members and we expect that there would be a few others that would do that.

The importance of it getting in at that level is that it is hardwired into the systems, so that you are not reliant on people turning up with documentary proof of identity. Those can be so easily counterfeited these days. The important thing is to get a yes/no match hardwired into the system so that the range of proofs of identity match one with the other, within their own register and then across the registers. They are the major impediments out there to controlling identity fraud.

Senator MURRAY—There is an interesting potential benefit to what you are proposing. I want to ask how you behaved in the past when you did have access. In the past, when someone presented identity that you crosschecked with the electoral roll and you found discrepancies, did you advise the AEC of that fact?

Mr Hardaker—There are two elements to that, and Ms Fitzgibbon might like to add to that from the operational sense. Most of it would be online and systems driven from the financial institutions' point of view. They would grade the degree of mismatch and the cross-referencing. If it looked really suspect, they have obligations under the suspect transaction reports element to report it. What actually happened in practice, I cannot comment on.

Senator MURRAY—You can see that you are asking for special access on the grounds that you argue. Governments, the parliament and this committee would have to consider that. There could be a potential benefit, provided that the reciprocal obligation was to make a contribution towards the integrity of the roll. In a minor number of cases you might come across fraud, but I would suspect that in most cases you would just assist in keeping the roll updated. If there were a mutual obligation—to use a current term—of that sort, how would your organisation react to that?

Ms Fitzgibbon—We would very much welcome that. As a matter of fact, our existing company and previous companies have had access to the electoral roll for over 10 years, and about eight years ago we discovered a series of people living in Parramatta River, which we reported to the Electoral Commission.

Senator MURRAY—Did they report back to you on what action they had taken?

Ms Fitzgibbon—No.

Senator MURRAY—So you do not know whether they followed it up?

Ms Fitzgibbon—No.

CHAIR—They might still be living in the river!

Ms Fitzgibbon—They might.

Mr DANBY—Presumably they are living on the river in houseboats or something like that?

Ms Fitzgibbon—The way it was done, it appeared the address was actually the river. There was obviously no house there—we went to the trouble of checking it we reported it to the Australian Electoral Commission. But I think it would be a desirable situation, and I have always thought this, that with access to the electoral roll we could have reciprocal arrangements to keep your data up to date. Our company, FCS OnLine, does 1.4 million searches a month and in a lot of cases we find the addresses are inaccurate.

Senator MURRAY—Is the substance of your submissions that, whereas in the past it might have been considered that a proportion of your checks were for a commercial purpose—in other words, you wanted to establish people were who they said they were so you could lend them money—now, because statute is forcing you to make checks for other reasons—such as money laundering, antiterrorism, tax offences, all those sorts of things—there is in fact less commercial purpose than there was before? Is that an accurate view?

Ms Fitzgibbon—Mostly what we do is complying with Commonwealth government regulations. You cannot lend money unless you have checked somebody's identity. The new regulations that are coming through from Senator Chris Ellison indicate, for example, that the identity of anyone who does a real estate transaction must be verified. You cannot rely on a drivers licence to verify an identity, because I would say that 80 per cent of identity fraud occurs by people forging drivers licences. You cannot have just paper documentation in front of you; you have to have access to an actual source to make sure that the identity of the person who is presenting is right. Anyone who is participating in fraud or terrorism or anything like that will not come up with their real identity, they will have a fictitious one.

Senator MURRAY—My point is that—and let's stretch the time frame—if you went back 30 years, any bank or financial institution would have done an automatic prudential check for their own commercial purposes.

Ms Fitzgibbon—Yes.

Senator MURRAY—It does not make sense to lend money to a bad borrower.

Ms Fitzgibbon—A bad risk.

Senator MURRAY—My point is simply that now, for other reasons which are enshrined in statute, the commercial purposes for which you do that sort of checking are less than they used to be.

Ms Fitzgibbon—Very much so.

Mr Hardaker—The commerciality is overridden by all of those other regulatory requirements.

CHAIR—Given that you are relying on the roll to quite an extent—and you have given us good evidence—if somebody is able to get on the roll without providing proper identification, isn't there a risk for you that you are taking that as gospel?

Ms Fitzgibbon—We could come to a reciprocal arrangement with you to give you access to our identification system, if you like—

CHAIR—That is what I am getting at.

Ms Fitzgibbon—but our company also has access through the ACA to daily updates of the new telephone numbers. Every day we get fed from all carrier service providers administered by Telstra, through the Integrated Public Number Database, IPND, a list of all the newly connected and disconnected numbers.

Mr Hardaker—There is not just one set of data; everything is interacted. The more things that are online and able to be cross-referenced, the less likely it is for identity fraud to occur. Clearly if somebody comes in with just a docket from the Electoral Commission or, indeed, a drivers licence, as I said, you are stuck.

CHAIR—Can you take us through an example of what happens when you do a check and it turns out the address is wrong?

Ms Fitzgibbon—With the system we have, it depends on how wrong the address is. The address could be completely wrong and we give that an X rating, which means the people are not who they say they are and do not live where they say they do. Depending on how serious it is, it can be reported to the police.

CHAIR—What about somebody who has not updated their electoral details?

Ms Fitzgibbon—You usually find that they have updated their telephone details. If they have not updated their telephone details, there is not a lot you can do. If people do not want to be found, if people do not want to be identified, there is usually a reason for it.

Mr Hardaker—On the application that is being processed you quite often have a former address, which, in that instance, would cancel out that cross.

Ms Fitzgibbon—That would be great, just thinking about it: we could have previous addresses on the electoral roll.

Senator MASON—I want to go to the specifics of your submission. You suggest that regulation 11 be varied along certain lines. You suggest that it be prescribed that ‘permission based identity verification is a permitted purpose’. You go on to say:

And it is hereby further prescribed for the purposes of s91B(3) that no such purpose is a commercial purpose.

Are you saying that permission based identity verification is a legitimate purpose for the use of the electoral roll but that you would not be using the electoral roll for a commercial purpose?

Ms Fitzgibbon—I will refer this to my solicitor. That is the reason I brought him along.

Mr Elmgreen—This is clarified in the second additional submission that we handed up this morning.

Senator MASON—Do you mean this one—the blue one?

Mr Elmgreen—It is white. It is on the second page. There is a general prohibition in the act against using electoral roll information for a commercial purpose. In permitting the use of that information for verification of a person’s particulars on a consent basis, it would need to be made clear in the act, I would suggest, that that is not disqualified by being a commercial purpose.

Senator MASON—If it is consensual?

Mr Elmgreen—Yes. It would usually be used for a commercial purpose, but if you are going to make a regulation that allows that use then you ought to make sure that that does not conflict with something else in the act. That is the point.

Senator MASON—Sure.

Mr Elmgreen—It is only a technical point.

Senator MASON—I thought Senator Murray’s questions raised that. When you ask for ‘permission based identity verification’ for the purposes of a bank loan or real estate or whatever, they really are commercial purposes—or if someone is selling something and you are facilitating that process. Would you agree?

Mr Elmgreen—Yes.

Senator MASON—To take up where Senator Murray left off, if the Commonwealth were to give you free access for essentially commercial purposes, would you be willing to pay for it?

Ms Fitzgibbon—That depends. We were initially thinking that we were just going to cover costs and give it to clients for 20c or 30c. We view access to the electoral roll to be important. We do not want to provide it as a community service as such—that would be a bit of a stretch—but we do not want to make any money out of it out of providing it. We would just provide it as a service to enhance our existing services.

Senator MASON—But do you think the Commonwealth should be giving you access to its databases for your commercial purposes?

Ms Fitzgibbon—I think it is prescribed in law and it will be much more entrenched in law in the future that external or governmental forms of verification be made available. For example, I was talking with Senator Ellison regarding the real estate industry. He is requiring every single real estate agent in the whole of Australia to identify who they are dealing with. I think it would be a very good service to the community to have an online access that costs real estate agents very little money—that is, without putting in very complicated systems that cost real estate agents, some of whom are very short of money at the moment—so that they could verify who they are dealing with, with something like a simple point score along with it. Yes, I think the Electoral Commission should grant it.

Senator MASON—You do?

Ms Fitzgibbon—Yes.

Mr Hardaker—Speaking on behalf of Margo's customers, we would only assume a modest take from the government if they were required to redo their systems.

Ms Fitzgibbon—We would even be prepared to assist with the setting up of it and the costs of implementing it.

Senator MASON—Senator Murray flagged it before, but it is an issue down the road, I suppose—one thing at a time.

Ms Fitzgibbon—We realise that could be an issue, and we are quite prepared for that.

Senator MURRAY—Of course, I should make the point that, if the enrolment were not compulsory, the value of the roll to you and to anyone else who wants to use it for verification would diminish quite significantly.

Ms Fitzgibbon—Yes, and I realise the problems with compulsory enrolment. But we cannot get over this—as I was just mentioning about the discussions I was having with Senator Chris Ellison. It is becoming the password—I think they call it 'customer due diligence' now—through all government departments. That is what they call it!

Senator MASON—Yes.

Senator MURRAY—I should also say that your remarks and your submissions are a rather nice third-party testimonial as to the integrity, accuracy and veracity of the electoral roll, because you would not have that view if you thought it was crummy, fraudulent and badly compiled.

Ms Fitzgibbon—Can I just tell you one thing. Yes, it is very good. When we first started our process of verifying online, we had a major bank's finance company. They were able to detect half a million dollars worth of potential fraudulent transactions in the first three months.

Senator MASON—Really? Just from the intelligence on the electoral roll?

Ms Fitzgibbon—Yes.

Senator MASON—Are there any federal-state issues here, in terms of state legislation that is inconsistent or difficult?

Ms Fitzgibbon—There is a little bit of confusion regarding the use of the electoral rolls—

Senator MASON—If we adopt some of your recommendations, will this involve us talking to the states as well?

Ms Fitzgibbon—No, because the Commonwealth holds the electoral roll. The states have agreements with the Commonwealth to use the electoral roll as held by the Commonwealth.

Senator MASON—What do you think we should do, what measures do you think we should take, if people were to misuse the electoral roll? What sorts of auditing measures would we have to ensure that people did not?

Ms Fitzgibbon—As far as we are concerned, we are prepared to have an open audit so that anyone can come in and audit our systems and what we have done at any time.

Senator MASON—So you do not think there would be questions then of people misusing—

Ms Fitzgibbon—As far as we are concerned, I think these are the types of steps you should take. You should request to be able to have an open audit of anyone's systems. We anticipate not storing the data, just using it for the verification once only and not storing it. I think it should be a prohibition to store it, because then people can build up their own files and create databases, which is what the Privacy Commissioner does not want them to do.

Senator MASON—I was going to ask you that. Have you consulted with the Privacy Commissioner?

Ms Fitzgibbon—Yes.

Senator MASON—And what does she—

Ms Fitzgibbon—Karen.

Senator MASON—say?

Ms Fitzgibbon—She is pretty upset that her jurisdiction does not cover the electoral rolls.

Senator MASON—Okay, but she can still recommend processes for privacy protection. The jurisdiction may not cover it, but—

Ms Fitzgibbon—Actually, we have gone right through our processes with the Office of the Privacy Commissioner.

Senator MASON—That is my point. She is satisfied with your processes?

Ms Fitzgibbon—Yes.

Mr Hardaker—I think that the licence to have the roll would have audit processes with it, otherwise—

CHAIR—It has been good to hear that evidence from you particularly, Ms Fitzgibbon, but your broader point is that the intention of the restriction is to prevent people from commercially benefiting from the roll?

Ms Fitzgibbon—No-one should use it for marketing purposes.

CHAIR—Yes. That was the intention underlying the change, I assume. I was not on the committee at that stage.

Senator MASON—It was difficult, Chair, because, as we discussed, it does facilitate commerce. I am not saying that is a bad thing. The Liberal Party believes in commerce. But I just wanted to note that it obviously does and I think we all accept that. People should not make money from it.

CHAIR—I was not on the committee, but I assume that the intention was to prevent KFC or McDonald's getting hold of it.

Senator MASON—Sure.

Ms Fitzgibbon—I think the main problem was that there was no consultation before it was incorporated into the act. If there had been consultation and we had been able to give good reasons, I am sure that it would not have been incorporated haywire like it was.

Senator MURRAY—If I may add to the chair's understanding of it, the prejudice against its previous use was that it was being used proactively—in other words, people were being cold-canvassed on the basis of electoral roll material—whereas you are proposing a reactive use. Somebody may approach you for something or you may be required to do something by statute, and you are suggesting that you should have access to the roll because you are reacting to a situation.

Ms Fitzgibbon—That is an excellent way of putting it.

Senator MASON—I am just worried about the grey areas, though, Senator Murray. I am not sure it is going to be black and white.

Senator MURRAY—I understand that.

Ms Fitzgibbon—I think that if the people who have access to it are prepared to submit to an audit at any time on the way it is being used and whether they have stored it or not stored and things like that, no-one can do anything wrong by it. If they are found to do anything wrong, you can just put penalties on it that will send them broke.

Mr Hardaker—That is the commercial purpose test!

Mr Elmgreen—Can I add one comment here. The submission of FCS is that this is permission based. Someone's details cannot be accessed, however that is done and however it is audited, unless that person has given permission.

Senator MASON—You are right, but permission is a funny thing. Free will is a funny thing. You might not particularly have free will if a bank says you have to have this for a loan.

Senator MURRAY—You want the loan so badly that you give your permission—yes.

Senator MASON—I accept what you say—

Mr Hardaker—We all understand that situation!

Senator MASON—but it is qualified free will.

Ms Fitzgibbon—Yes but, talking about commercially, no person can possibly expect to get a loan—

Senator MASON—Absolutely.

Ms Fitzgibbon—Senator Mason, will you lend me \$100,000?

CHAIR—I hope the answer is no, Senator Mason, otherwise we will need a whole new hearing.

Senator MASON—I do not have it, Chair.

Ms Fitzgibbon—I am just making the point that you will not lend money to anyone or give them goods unless you know who they are.

Senator MASON—Of course.

CHAIR—It has been good to hear from you, but as a counter to what Senator Mason says, you are right about the electoral roll, but you would have had to have jumped several other hurdles in terms of identification anyway to get the loan, so you have revealed your identity.

Senator MASON—Sure.

Ms Fitzgibbon—Yes.

Mr Hardaker—You have filled in an application form with a whole series of identifiers.

CHAIR—Yes—it is not the only thing you have to have done by the time they get to it.

Ms Fitzgibbon—We are not just talking about finance; we are talking about telephone companies. The use of telephones, especially mobile telephones, is very prevalent in terrorism and money laundering, where people have prepaid phones. The value to the provider is so small that they do not do expensive checks. They just want to check if they have got the telephone and if they are on the electoral roll and check their drivers licence—we have got that in hand at the moment. They just want to check three things to make sure that they are who they say they are.

CHAIR—You have been very open in saying that you are happy to be audited. That is welcome. That is something we will certainly make mention of when we are making recommendations on this. Would you also be happy with a system, perhaps, where you gave the Electoral Commission regular updates on which people you—

Ms Fitzgibbon—We would welcome that.

CHAIR—You could actually have a reporting requirement.

Ms Fitzgibbon—We would welcome that.

CHAIR—I would just be a bit concerned that, if there is a complaint from someone down the track, it will go to the Electoral Commission and they would be in a position to say, ‘That would be why, but we really—

Ms Fitzgibbon—We would really welcome that.

CHAIR—On a weekly or a monthly basis, we access the following—

Ms Fitzgibbon—That is something that I wanted to do before. Quite frankly, the Electoral Commission was not terribly interested. I am not being negative about that. I will give you the example of what happened in Parramatta. I wrote to them and gave them proof that that was there, and I never heard back from them.

CHAIR—But I mean with all transactions.

Ms Fitzgibbon—Yes; no problems.

CHAIR—Thank you very much for your time in appearing. You can be assured that we will be taking your evidence into account.

Senator MURRAY—Mr Chair, through you, could I ask that the AEC officers note the reference to Parramatta and let the committee know what their reaction was to the information given to them by the witness.

CHAIR—Yes.

Ms Fitzgibbon—That was given to them by a company called MOSdata.

Proceedings suspended from 1.26 pm to 2.04 pm

CLOHESY, Ms Alanna, Deputy Director, Advocacy, People with Disability Australia

HUGHES, Mr Digby, Senior Advocate, People with Disability Australia

CHAIR—Welcome. We have received your submissions, which have been numbered as No. 50 and No. 68 respectively. They have been authorised for publication. Is there anything you wish to correct or amend in those submissions in any way?

Ms Clohesy—No thanks.

CHAIR—We have had a number of witnesses advocating for people with a disability across the country, so you are following in that vein and it is great that you are here. Would you like to make a very brief opening statement before we go to some questions?

Ms Clohesy—Thank you for the opportunity to appear before you today. Most of the detail is contained in our submission, but we would like to point out that the lack of access for people with a disability extends right across the spectrum of voting, from prepoll information to actual voting processes. We would like to urge the committee to recommend necessary changes to the Commonwealth Electoral Act in order to bring about a trial of electronic voting that the Australian Electoral Commission is proposing. We would also like the committee to recommend the necessary funding to allow that trial to proceed. We would also urge the committee to recommend that the Australian Electoral Commission develop a disability action plan and allocate appropriate resources for its implementation and that that action plan cover the spectrum of access issues that people with a disability face.

CHAIR—We have had evidence from a range of groups, particularly from blind and sight impaired people who have the additional barrier to and difficulty in performing a secret ballot. We have done that in Victoria and South Australia and we are across what happens in the ACT, where they have electronic voting—which I am sure you would be aware of. We had a presentation on that last Monday in Canberra. Just to bring you up to speed, what the committee has said in a bipartisan way is that we are certainly minded to look towards recommending additional access for people who are sight impaired—and that obviously raises the issue of people with other disabilities as well—but not electronic voting on a wider scale beyond that.

As a first step, we have said that it would be prohibitive for the commission to do it in every single booth across Australia, but we have been looking at having one prepoll location in each electorate where people would have access on every day through that period and on election day. You would be aware that on election day the prepoll area becomes an interstate voting area, and that has the aim of allowing the AEC to have their specialised staff there to assist. How would you feel about that sort of approach? Be frank. What is wrong with it and what is right with it? We are open minded.

Ms Clohesy—The purpose of the trial seems quite narrow, and we would like to see a roll-out as quickly and as far as possible, really.

CHAIR—When you say ‘the trial’, do you mean the AEC trial?

Ms Clohesy—Yes.

CHAIR—We would be proposing this in every electorate.

Ms Clohesy—We would support a proposal to that extent, definitely.

CHAIR—So, in an ideal world, at the next election people who have a disability in a certain category—you would appreciate it cannot be for people with every single disability but for those for whom voting is particularly difficult and who require assistance—would have one location in the electorate that would be quite well publicised, and they would be able to vote on any day through the prepoll period or on election day.

Ms Clohesy—For us, the issue is equal access. I think that one booth in one electorate could be difficult for rural and remote voters, particularly.

CHAIR—Yes, with rural and remote voters, we would obviously have to have more than one.

Mr Hughes—Think of Kalgoorlie.

Ms Clohesy—But there are the larger suburban electorates as well. Particularly when you are thinking about things like lack of access to public transport anyway, which makes it difficult to vote, getting from one end of the electorate to the other to the booth that is accessible is prohibitive. Equal access is the key—equal access across every booth.

Senator MASON—You mentioned that the AEC has failed to provide all sorts of things—there is a list. What do you think is the most important? If you had to pick one of those that you think should be done immediately, what is the most important?

Ms Clohesy—I think it needs to be done systematically. The framework for that would be a disability action plan, where people with a disability were consulted in its development and implementation. That action plan should be adequately resourced for its implementation. So, rather than saying one need is greater than the other, I think there needs to be a broad overview about what needs exist and that should be done in a staged and systematic way.

Senator MASON—So the priority should be to determine that, in conjunction with you.

Ms Clohesy—Yes, using the usual strategic planning processes, looking at resources, availability and that sort of stuff.

CHAIR—What range of people with a disability do you represent?

Ms Clohesy—We are a cross-disability organisation. We represent people with all types of disabilities.

CHAIR—If we were minded to make a recommendation that asked the AEC to provide greater access along the lines people have been advocating, would you be happy to sit down with the AEC and agree on a list of relevant disabilities for which this additional facility should be available?

Ms Clohesy—We would be happy to work on a disability action plan with the AEC.

CHAIR—Okay. You could see that, for it to operate at the next election, there would be quite a bit of legwork. That is certainly the ambition of this committee. Then there is a communications issue as well. You would be happy to do that?

Ms Clohesy—Absolutely. That is the urgency of the matter too, of course.

Senator MASON—If the concerns you have raised were addressed, how many people do you think would be enfranchised?

Ms Clohesy—There is no systematic data collection on lack of access, so that makes it difficult. But I can say that a significant number of our members have continually raised this with us over the years. The problem continues to grow, particularly as some of the issues that could quite simply be addressed have not been addressed, like moving polling places to accessible buildings. The extent is quite difficult to assess.

Senator MASON—Issues like disabled access and so forth seem to be not a problem so much for this committee but an issue for the AEC or the local divisional returning officers. Are you happy with the response you have received from the Electoral Commission over the years?

Ms Clohesy—No. We have been trying to work with the Electoral Commission for a number of years—most recently perhaps in the last four to five years—particularly encouraging them to develop a disability action plan. There might be a number of reasons why the AEC is unable to work in this direction, but we do applaud their recent moves. We have been involved in meeting with them for the last two months, and we find that is quite positive. We would like a lot more involvement in those processes.

Senator MASON—Ultimately, of course, money is a limiting factor and you would appreciate that. In a sense, the AEC has to balance their budget and balance their priorities. You would appreciate that.

Ms Clohesy—Of course.

Senator MASON—Perhaps we can do a bit more.

CHAIR—You call for the AEC to have a disability action plan. You would be happy if we recommended along the lines that they consult with you as soon as practicable to develop that and develop it in consultation with you and other relevant groups?

Ms Clohesy—That is right. Also I think that the recommendation needs to look at the thorny problem of resources and recommend that resources go hand in hand with the development and implementation of an action plan.

Senator MURRAY—I have one proposition to put to you. One of the difficulties with the development of any plan or action program from the AEC's perspective is of course the cost and implementation process, and not knowing whether it will work as envisaged because there is not really an opportunity to trial it. It goes to a full general election with 150 constituencies and it

has to be done. It occurs to me that history and precedent indicate that you can pretty well expect a by-election every cycle, unfortunately, from deaths, ill health or resignation. It is possible that there will be a by-election before the next election. Would it be your view that the AEC, rather than just planning for the full deal, which is the general election, should also plan for a trial basis at a likely event which is going to come? At this event, they could put a lot of resources into trialling all the various propositions put by the various disability groups and then see which work most effectively, which are cost efficient and which allow them to maximise voter satisfaction without being prohibitively expensive.

Ms Clohesy—A disability action plan would not necessarily need to have the next federal election as the end date for its implementation. A disability action plan could go through a number of terms, for example, depending on what was in the plan and the amount of work and resources that were required for its implementation. Some things are relatively easy to fix. Some things are more complex and rely on other changes to the voting system. Therefore an action plan would need to necessarily extend across a number of terms. We would hope though that those things that could be changed easily would be changed before the next federal election.

Senator MURRAY—Do you agree with me that by-elections offer a very good and cost-effective way of field testing changes to systems and processes and so on?

Ms Clohesy—Yes, in theory they could act as pilot programs for implementation.

CHAIR—Is there anything that any of the state electoral commissions do better than the federal commission or is it just as bad at the state level?

Ms Clohesy—It varies across the states.

CHAIR—It does vary?

Ms Clohesy—That is right. We would hope that the AEC would look at best practice in the development of an action plan.

CHAIR—And around the world?

Ms Clohesy—Yes.

Mr Hughes—One thing we are currently working with the AEC on is a pilot program in boarding houses in Sydney. The residents are mostly people with psychiatric and intellectual disabilities and we are developing a program with other service providers to try to inform and encourage people to get onto the electoral roll and vote. We are working with the state office of the AEC on that and that is a very positive program because we should get the information in accessible formats for people.

CHAIR—Thank you for coming today. With the assistance of the secretariat, you might get the submission numbers of all the other groups so that you are aware of what they have been proposing in their submissions. You would know of some of them, but we have had a number of submissions on this issue. It is fair to say we have probably devoted more witness time to this than to almost anything else, certainly from the Melbourne, Adelaide and Perth hearings. We are

interested in it. Could you have a look at those over the next few days and, if there is anything you particularly disagree with, let us know? The consistent thing is their strong advocacy, but there is not consistency across all the solutions.

Ms Clohesy—No, and that is why a disability action plan would seek to resolve some of those.

CHAIR—Absolutely. As a peak group, you would need to manage it that way, I think.

Ms Clohesy—Yes.

CHAIR—Thank you very much.

Ms Clohesy—Thank you.

[2.20 pm]

BANKS, Ms Robin, Chief Executive Officer, Public Interest Advocacy Centre Ltd

STRATTON, Ms Jane, Policy Officer, Public Interest Advocacy Centre Ltd

CHAIR—Welcome. We have received your submission. It has been numbered 144 and authorised for publication. Is there anything you wish to correct or amend?

Ms Banks—No, thank you.

CHAIR—Before I invite you to make a brief opening statement, I thank you sincerely for being flexible with your time and for your patience today.

Ms Banks—It is a pleasure.

CHAIR—I am not sure if other members of the committee are aware of it, but we had a necessity to change the witness order earlier and we had to move a few people around. I know you were supposed to appear earlier and that you were here much earlier. Thank you very much for agreeing to appear later. We appreciate it.

Ms Banks—Thank you. It was interesting to listen to Mr Green's evidence and to the detail he was able to go into.

CHAIR—I ask you to make a brief opening statement. We have seen your submission and we will go to some questions on that once you have given us your introduction.

Ms Banks—Before I go into the detail of our brief statement, I take this opportunity to endorse the submissions made by People with Disability Australia Inc. Access for people with disabilities to electoral processes is an issue that we similarly have concerns about. We absolutely support anything that can be done to enhance the capacity of people who are currently excluded from voting.

There are two particular points I want to turn to in our written submission, rather than going into any detail beyond that. Before I do so, I would like to remind the committee that PIAC is interested in this issue because it has an ongoing interest in civics education, representative democracy and enhancing the capacity of the community to participate in those processes. We raised issues in relation to a limited number of areas that touch on the recent federal election and we would like to pursue two of those briefly.

The first is that we would encourage the committee, government and parliamentarians more broadly to respond to what appears to be a level of concern about community engagement and trust in electoral and political processes and to do so in a way that enhances the trust and engagement rather than doing anything to provide for easier disengagement. There are some concerns from our point of view about moves to change the compulsion to vote and the proposal to limit the period between the calling of the election and the closing of the rolls. In our view,

both of those things would undermine the flourishing nature of Australia's representative democracy and are of great concern.

While we understand that some of the proposals are being driven by concerns about reduced voter turnout and high informal voting rates, it appears to us from a review of the patterns over the years that you see waves in the areas of both turnout and levels of informal voting. The last election is not an exceptional one in looking at that pattern. If you look at Australia's levels of voter participation and informal voting levels on an international comparison, Australia's record is very impressive. We strongly urge the committee to ensure that the recommendations it makes are about encouraging participation in all ways possible.

The other issue that we are particularly concerned about is the way in which the Senate voting process occurs. You heard a lot more from Mr Green this morning in a lot more detail than I am ever going to go into. We were concerned about the level of confusion in the last election that arose from the way in which preferential deals affected the outcome in ways that people who voted would probably never have anticipated. It is an issue that we think needs to be resolved to enable the electoral process to be more transparent, so we would encourage a move to something in the order of an above-the-line preferential voting system. We had not turned our minds to some of the other options that Mr Green raised, but we think anything that can be done to make that process more transparent and to ensure that the way in which votes end up being counted reflects the preferences of the voter rather than of parties should be encouraged. That concludes my opening remarks, and I am happy to take questions.

CHAIR—I only have a couple of questions by way of clarification. I have seen your submission, which covers quite a few details. You mentioned voluntary voting in your opening presentation and in your submission. You would be aware that I am a strong proponent of voluntary voting for philosophical reasons and have written some things on it, but what is often not reported is the government's position, which is that we have no intention of altering that prior to the next election. The first reason for that is that it is not government policy; it is a personal view I and some other members of the government have. The Prime Minister said publicly that we would not alter it before the next election. That is precisely for the reason you point out. You said that public support for a raft of policies ought not to be seen as an endorsement of a specific electoral reform. That is our view. We did not run to the last election saying that, if we got re-elected, we would introduce voluntary voting. That is my view as well. Even though we obviously have a strong philosophical disagreement on that, we can be in heated agreement on the fact that—

Ms Banks—Nothing is going to change before the next election.

CHAIR—nothing will change until a political party runs to an election saying that is their policy. That is the way it ought to be. That was all I wanted to say; it was not really a question. Senator Brandis has some questions relating to regional Australia and some other voting issues.

Senator BRANDIS—There are a few topics I would like to touch on. We may as well start with what you have to say about postal and remote polling. As I understand your submission, you adopt what Mr Scott, the member for Maranoa, told us. You may or may not be aware that the committee spent a couple of days in his electorate taking evidence in two large regional centres. One thing that was brought home very strongly was the greater difficulties occasioned to

people who live in remote communities by the reduction in the number of polling places at the last election. Do you want to elaborate on what you have to say, or are you happy to go along with what Mr Scott told us?

Ms Stratton—What appealed to us in what Mr Scott had to say was the contextualised approach that he took.

Senator BRANDIS—What do you mean by that?

Ms Stratton—I mean that a one-size-fits-all approach is not going to work because of the diversity and the distances that are involved. No one electorate is the same as the next. We are advocating that the Electoral Commission take into account the challenges in each electorate. That will mean probably having a better on-the-ground knowledge of what is required. It is great to hear that you have been out there to this particular electorate where it seems that there were some significant problems but the Electoral Commission should have the capacity and the knowledge, electorate by electorate, about what is going to work and what is not going to work and what the particular challenges are. That is what I mean by a contextualised approach.

Senator BRANDIS—That is rather congruent with some evidence we heard earlier this morning—I do not know if you heard it—from a DRO who criticised the AEC for being too ‘head office’ centred and insufficiently conscious of what was happening in each local electorate. That is your very point, isn’t it?

Ms Stratton—That is the point we are making.

Senator BRANDIS—I suppose one could go on to say that, just as a citizen has a duty to vote, the AEC has a duty to facilitate and make as easy as possible the fulfilment by the citizen of that duty.

Ms Banks—I think that is absolutely the case. In many ways, I guess it is also coherent with the view I expressed in the opening statement about supporting moves to make voting for people with disabilities easier in a range of ways.

Senator BRANDIS—Absolutely.

Ms Banks—In many ways, opening up access for one group will definitely enhance the access for others because of distance and other concerns.

Senator BRANDIS—I agree with that completely. Let us move on. Let me touch on the Senate. Ms Banks, you said you were here when Mr Green gave his evidence. I do not know if you were, Ms Stratton.

Ms Stratton—In part.

Senator BRANDIS—I asked Mr Green about the consequences for minor parties of introducing preferencing above the line for Senate ballot papers. On the hypothesis that we still had compulsory voting, Mr Green was of the view that we should nevertheless make it necessary to allocate preferences above the line. That is going to favour parties which have the

wherewithal to get a how-to-vote card into the electors' hands. Correspondingly, it is going to handicap parties that do not, which presumably means minor parties. What do you say about that?

Ms Banks—I think that is probably correct. I think that may well be an inevitable consequence of trying to enable voters to indicate their own preferences rather than relying on ticket preference deals. It may seem incongruous for an organisation like ours to be advocating that sort of position.

Senator BRANDIS—You are usually for the rights of the minorities, aren't you?

Ms Banks—Indeed. I do not think there is anything inconsistent—

Senator BRANDIS—Whenever I see the words 'public interest' or 'advocacy' in a title, I always think that here are advocates for the rights of minority groups.

Ms Banks—And we have both of them. Minorities do not necessarily vote for minority parties. I guess that that is an important part of an answer. At the same time, I think it is vital that all of the parties respond to the needs of minorities and be looking to ensure that the votes that are cast reflect the intention of voters. I was certainly attracted by Mr Green's position in relation to allowing people not to completely exhaust the however many below-the-line votes they currently require.

Senator BRANDIS—Just have five or six.

Ms Banks—Yes, so that people can in fact vote for those people or parties that they know of and have some level of support for and whose policies they endorse, and not have to go beyond that. I think once you go beyond that you are taking away that notion of people being informed in their voting. I do not think there is anything particularly wrong with a situation where there are less one-issue minor parties and independents running. I think that if what you get is a more informed electorate voting for a more sophisticated range of politicians that is not a bad thing.

Senator BRANDIS—On one level that is almost self-evidently true. I just wonder if the argument does not take on a slightly artificial air because, in my experience, what people are quite certain about is who they will vote for. If they arrive at a sophisticated understanding of anything, that is what they arrive at a sophisticated understanding of. Where the preference flows might go way down the ticket—whether in the House of Representatives or the Senate, for that matter—is, I suspect, something that people barely, if at all, concern themselves with. The point I am getting to is if you have preference voting above the line in the Senate so that it is basically the same as for the House of Representatives, isn't it still going to be the case that people, having decided that they want to vote Liberal, Labor, Green or whoever, are generally going to follow the how-to-vote card anyway by rote, little dwelling on the consequences of preference flows at the nether ends of the ticket? The people who do not fall into that category are the very sort of people who are going to vote below the line.

Ms Banks—It may be true that at the moment they would be the people who would vote below the line but that is because they are forced to. It seems to me that that is a mechanism that is not necessarily beneficial to the voting process. If a person like me, who tends to vote below

the line, is forced to because that is the only way I can exercise my preferences for the first five or 10 of the politicians, or aspiring politicians, and I could vote above the line in a preferential system I would certainly prefer to be able to do that, and the risk of the vote being made informal by me making a mistake is much lower.

Senator BRANDIS—Do think it is worth handicapping the minority parties that cannot get the how-to-vote cards in people's hands? That is the balancing exercise, isn't it? Let us face it: if you are going to mandate preferencing above the line in a compulsory system then people are going to vote for the parties that get a how-to-vote card into their hands. They are going to be the coalition parties, the Labor Party, maybe the Greens, certainly from my experience in the last federal election the Family First party, which although recording a relatively low vote had an awesome—

Ms Banks—Presence.

Senator BRANDIS—Yes, an awesome booth presence—and perhaps the Australian Democrats. But there will be other bona fide minor parties that will have the opportunity to facilitate a vote for them rendered almost nugatory. Is that too high a price to pay?

Ms Banks—For some voters it certainly would be the price they would pay in terms of the way they voted but, as you say, most people go to the booths with probably at least their first preference in mind. Perhaps not all of them, but I imagine the significant majority of voters know—

Senator BRANDIS—If they are thinking about anything, that is what they are thinking about.

Ms Banks—Yes, absolutely. They may be thinking of who they will vote for second and third and who not to vote for, but beyond that they may not be at all concerned about what happens in the intervening numbers. If people are concerned to vote for the minor parties or Independents, you are not taking away their right to do that by voting below the line. It would seem to me that if you go to the poll thinking, 'I'm going to vote for'—to use a controversial example—'the liberals for forests,' you would vote below the line because there is no way that voting above the line is going to give your vote the way you want to.

Senator BRANDIS—But you do limit the opportunity for advocacy—the advocacy to be found in putting a how-to-vote card in somebody's hand recommending a vote for the koala protection party, for argument's sake. It strikes me that it is paradoxical that the Public Interest Advocacy Centre should be recommending a course of action that limits the possibilities for advocacy by minority groups.

Ms Banks—If a minority group has the capacity to put their how-to-vote card in your hand then they have got over that concern. We would encourage people to use other forms of advocacy. I do not think we necessarily consider what happens at polling booths to be the most effective form of advocacy, other than for the major parties, and we in fact encourage people to use many of the other political processes like lobbying and participating in activities like this committee inquiry rather than thinking that a simple vote at an election is going to make a huge difference.

CHAIR—I think Ms Stratton wanted to say something.

Ms Stratton—I was just thinking that there is a systems effect to this as well, in that you are forcing minor political parties—rather than spending their limited energies and resources in backroom deals—to engage in convincing people who are going to vote for them to do that in a public and transparent way. So it has a systems effect. I suppose that is the public interest that we are interested in advocating.

Senator BRANDIS—That is a very good response, very persuasive. Finally, I note that you support four-year terms for the House of Representatives, and I notice you are of the fixed four-year term school. Given a choice between the status quo and non-fixed maximum four-year terms, would you favour the former or the latter?

Ms Banks—Probably the latter, on the basis that I think longer terms make for better government.

CHAIR—And if the first three years were fixed—

Ms Banks—Absolutely, I would prefer that. I think the problem is—

Ms Stratton—The uncertainty.

Ms Banks—the feeling that you are constantly in election mode when you have got shorter and unfixed terms.

Senator BRANDIS—I agree with you in favouring a four-year term but I think the problem that a lot of people have with fixed terms is that it does not allow for the possibility of instability in the parliament so that, on rare occasions, a government which has an unstable majority or loses its majority in the parliament may wish to go to the people—

CHAIR—Let the people resolve it.

Senator BRANDIS—and let the people resolve the deadlock.

CHAIR—Rather than have a government—which used to happen a lot in our early history, which Senator Brandis is referring to—change two or three times in a three-year period.

Senator BRANDIS—There were three changes of government in Australia between 1903 and 1908 and not one of them happened at a federal election. That is not good, is it?

Ms Banks—No, but it has not happened with that sort of regularity for a very long time.

Senator BRANDIS—It happened in 1941.

Ms Banks—I would tend to think that our governments have become more stable rather than less.

Senator BRANDIS—Maybe. Anyway, you can see the argument for a degree of flexibility rather than having a mandated election date.

Ms Banks—Yes, I can see there is an argument but I am more attracted by the idea of having a minimum, saying that you cannot go earlier than X but you can go within—

Senator BRANDIS—As Mr Smith reminded me before, that was the way it used to be in Victoria.

CHAIR—The reason we are asking this is that, whilst you and I disagree on voluntary voting, it appears we agree on four-year terms—at least the principle—so that is a good thing. We will have a major chapter on this in our report. There is some bipartisanship about it. Mr Danby, the Labor deputy chair, had to return for a meeting, but he certainly has some views and Senator Murray has some views.

Senator MASON—That is the House of Representatives but, more importantly, what about the Senate?

Ms Banks—For practical reasons I would suggest that the term should be a doubling of the term that is—

Senator MASON—Eight-year terms?

Ms Banks—I think that is the inevitable outcome.

CHAIR—It's the cost.

Senator BRANDIS—Why do you say 'cost', Mr Chairman?

Senator MASON—It is the benefit.

CHAIR—Being a lower house member, I am perhaps closer to the people!

Senator BRANDIS—Ms Stratton was explaining to us before the importance of stability in the system. That is why we need stable senators.

CHAIR—On a serious note, you would agree that there have been proposals in the past which have really sunk the four-year argument—to have the Senate go back to four, which of course would be a major change. It would remove half-Senate elections and—

Ms Banks—No, I think we would retain the half-Senate election process and just extend that term.

Senator MURRAY—Whenever I hear the word 'bipartisan', my heart sinks because, of course, it does not represent more than two parties and excludes the National Party. So I like the term 'cross-party'. I have done some work on the last century which has established that, by and large, we have had between seven and nine—depending on how you calculate it—more elections

than we should have. In today's terms that is probably at a cost of, say, \$600 million. So there is a cost as well as the instability and insecurity and so on.

I and my party have long advocated longer terms. We think that is in the interests of Australia and that it reflects international democracy far better than the three-year term does. But the difficulty is the constitutional issue. If you want to go to four-year terms you have to go for a referendum; however, if you want to extend the average length of parliaments without going to a referendum, you can do so by fixed-term legislation. I think that is a key consideration, and of course that does not alter the relationship between the House of Representatives and the Senate. It seems to me that the contrast between those who want a fixed term on a date and those who want a fixed term with flexibility—which is the Victorian model, as we should describe it—

CHAIR—It was.

Senator MURRAY—is an interesting one. If you want to hold the nexus of the Senate and the House of Representatives, you could say that a fixed term will go to at least the July preceding the three-year end, and then you have six months during which the Prime Minister has the flexibility to call the election. Regardless of what the committee says and what the government decides to do, if they go for the four-year, eight-year term there is going to be a scrap with the community whatever happens, because that is the nature of it, and it could be rejected. To my mind, it might be better to get some certainty in the meantime through the fixed-term approach. If you were stuck with the choice of having fixed terms on the existing nexus, either on the set-date or on the flexible-date model, or a four-year term, which would be your preference?

Ms Banks—I think it would still be the four-year term. While I accept that it is a matter that would require a referendum to change the length of the terms, particularly for the Senate, with polyparty or multiparty support referenda are much more likely to succeed, and history would demonstrate that. It seems to me that it is not something I could imagine a vast majority of the community having a lot of opposition to. If you said, 'Here's this proposal. You will have more certainty that government will run for longer once it has been elected. There will be less cost, and you will not have to go to the vote as often,' the majority would be more likely to be attracted to that in the first instance. Whether they could be persuaded away from that by strong advocacy from lobby groups is another matter, but if the majority of the parties were saying, 'We think it's a good thing,' I would imagine that a referendum would succeed.

Senator MURRAY—There is existing criticism that, in the intervening period between a general election and a change of the Senate, the Senate is no longer representative of the will of the people, because the numbers are not the new numbers. Let us test that proposition. How would you react to the proposition, which is apparent in a number of governments all over the world, that there should be five-year terms for both?

Ms Banks—My response would be that I would need to be persuaded.

Senator MURRAY—What is your instinctive problem with that?

Ms Stratton—I know it is only a year's difference, but in having five-year terms two terms would be 10 years. It seems to be an eternity.

Senator MURRAY—It works in Great Britain.

CHAIR—Can I point out to you another argument you might wish to—

Senator MURRAY—Before you proceed, it works in Great Britain—with due regard that Mr Blair is not being authentically elected.

Ms Stratton—I do not think it is a question about authenticity. The reason we have made this proposal is, I suppose, out of frustration with the political expediency to the argument of: ‘What could we do? It was a three-year term. We made you the promise but we’ve been kicked out.’ There is no continuity. It lessens the accountability, really, of government. A year is almost long enough for something to begin and fail. In three years you might get something, but four years just seems to be slightly longer—the wheels are rolling.

Senator MASON—A compromise?

Ms Stratton—Yes, a compromise position. I do not know why, but my instinctive feeling is that five years is just too long. Because, added up, three terms—

Ms Banks—I also think you would have a significantly lesser chance of getting that through a referendum than four years. I think with four-year terms people would say, ‘It’s only a little more than’—

CHAIR—I just want to wrap up that issue to assist everybody. The history of this is interesting—this is not a question; it is more of a discussion. The Australian colonies inherited five-year terms from Britain and of their own accord they went to three because they thought five was too long. Britain has always had five-year terms. The main reason we have three-year terms, federally, is at the time of Federation the state premiers, with the exception of the Western Australian Premier, demanded three for consistency. Now three has gone to four everywhere except Queensland.

So four has a consistency—that is another important argument. But they felt five was too long and shortly thereafter three was too short. Actually, when you look at what some of the founding fathers had to say—particularly Barton and Deakin, who headed up a subcommittee on constitutional issues to deal with elections—they already felt at the time of Federation that three was going to be too short. They tried to get four into the Constitution. It is interesting history. They were ahead of their time in that sense and they actually drafted four in and it got knocked back again after ferocious debate.

Senator MURRAY—Let me please continue my line of questioning. What concerns me in this debate is that the focus is on the four, not on the eight. I suspect that when the proposition is put to people, it will be the eight-year term of the Senate which will be the stumbling block. The referendum could be lost because the eight years will be the stumbling block. Eight years applies to the New South Wales state system but I understand—correct me if I am wrong—that that was not put to the people; it was imposed by parliament.

Ms Stratton—A simple act of parliament.

Senator MURRAY—There was no referendum, was there?

Ms Stratton—That is right.

Senator MURRAY—I bet that would not have been accepted if it had been put to the people. The proposition I am putting to you is that it is in fact the eight years which is the danger, and it is the Senate—because of its proportional nature and the way in which it is constituted because of the half-Senate elections—which operates for governments, both Labor and the coalition, as a frustration. That frustration will only increase when you have eight-year terms and the people, I think, will say, ‘Look: the way in which the Senate has been operating we can live with, we are used to it,’ and so forth.

I am not sure I want somebody elected at this time who is going to stay there eight years regardless of the changing circumstances. I am trying to put in your head the potential opposition which will emerge to the four plus eight. To my mind, the people are more likely to accept a three-year fixed term—even on a flexible basis—or a five and five option than they are a four and eight option. I think people, by being focused on the four years, are not sufficiently anticipating the opposition to the eight-year Senate term. How do you react to that proposition?

Ms Banks—My initial response is that I think you are right—there will be concern. But I think that, to the extent that people are aware that government is created in the lower house—the House of Representatives—and that the Senate’s role is, while important, limited, what is more important is to create an effective mechanism to enable governments to govern for longer and keep us out of the electoral cycle for longer. It will not necessarily be seen as such a disastrous outcome to have people for eight years in the Senate. While I think you are right and that eight years will ring alarm bells for some people, a significant percentage of the population, through awareness that in effect government is the lower house, will be more concerned to give that stability to government than be concerned about the way the Senate operates.

Senator BRANDIS—I agree with you, Ms Banks. I think if people think the life of a government should be extended by a year they are not going to change their minds on the argument that we cannot have senators for eight years.

Ms Stratton—Senator, I think—

Senator MURRAY—I must remind you that I am one who, as a direct electionist, wrote the no case with the constitutional monarchists for the referendum—and I ended up being right.

CHAIR—No, you ended up winning.

Ms Stratton—An important distinction.

Senator MURRAY—I said at the time that the combination of constitutional monarchists and direct electionists would sink it. Whilst there is the possibility that the argument put by you and as agreed by Senator Brandis will prevail, I am merely stating that I think it has underplayed the possible resistance to the eight-year Senate terms.

Ms Banks—I would agree, except that I do not know what the other strong argument is that sits beside it in the same way that in the referendum on the question of a republic there were clearly two very strong—

Senator MURRAY—Because the alternative is the fixed term, and people are aware that that would lengthen the life of governments quite considerably.

Senator MASON—Thank you for your submission and thank you for your work on civics education—I wish it was not necessary in this country, but it is.

CHAIR—Thank you very much for your evidence and your submission. I also thank all of the witnesses who have appeared today.

Resolved (on motion by **Mr Tony Smith**):

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

Committee adjourned at 2.57 pm